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To: Supreme Court
Four Courts, Inns Quay, Dublin 7
For the attention of
Mr. Justice O'Donnell,
Mr. Justice McKechnie and
Mr. Justice Charleton

6 November 2019

Re: Appeal rec. no. 62/13(SC) Permanent TSB Plc & ors v Skoczylas

Dear Justices,

I refer to your *prima facie* determinations made in the judgment delivered on 5 November 2019 in the above proceedings. **Your judgment is not subject to an appeal, which must be respected. However, an effectual administration of justice requires that I respectfully record that, as is manifestly clear from the detailed and fact-based table below, your judgment includes a plethora of great many patent fundamental factual errors and omissions, which is grossly unfair and unduly harmful. I am, in particular, deeply distraught by the fact that your judgment, which is based on non-existent facts (i.e. falsehoods) and meaningful omissions, might be construed as having an effect of (unfairly) impugning my good name and my motives**.

In this regard, it is relevant that many judges have determined in numerous formal court judgments that I have acted *bona fide* to vindicate legitimate rights. In one of the latest of those judgments, Judge Hogan determined on behalf of the Court of Appeal in paragraph 101 of his ruling delivered on 2 October 2018 in *Dowling v. Minister for Finance* [2018] IECA 300 (i.e. in the "main" proceedings seeking to set aside the July 2011 *Ex Parte* Direction Order) that: *"Contrary to what was at least hinted at in some of the submissions to this Court [1], I am perfectly satisfied that the appellants[2] would appear at all times to have acted bona fide in defence of their legitimate interests as shareholders."*

In this context, it is important that this formal letter be put on the record, for the sake of an effectual administration of justice. The objective of the letter is to respectfully record formally:

a) multiple patent factual errors and meaningful omissions, which your said *prima facie* determinations are based on, which is greatly unfair and unjust, having regard to the fact that there is no appeal from your judgment, as well as having regard to the upcoming High Court trial on the matter; and

b) my objection to your multiple erroneous *pima facie* determinations, based on said patents errors and omissions, which may be construed as having an effect of (unfairly) impugning my good name or my motives, having regard to the fact that you have made – ***"wrongly perhaps"*** **[3]** (as you have yourselves explicitly admitted) – certain **manifestly false inferences in said judgment**.

This letter is fact-based and written with utmost respect; nothing in this letter should be misconstrued as being in any way disrespectful vis-à-vis the institution of the Supreme Court of Ireland.

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[1] Judge Hogan referred to submissions of Mr. Gallagher SC on behalf of ILPGH, whose submissions herein you freely adopted when making many of the patently erroneous *prima facie* determinations in your judgment, which are referred to in this letter.

[2] I was the lead appellant in that appeal, as was the case herein.

[3] Cf. paragraph 24 of the Supreme Court judgment delivered on 5 November 2019.

This letter is without prejudice to any legal steps that the Appellants herein may wish to duly undertake in due course at the European Court of Human Rights (the "ECHR") and other fora, having regard to the nature of your judgment and the nature of the proceedings.

Multiple manifest factual errors/distortions that your Supreme Court judgment is based on

Respectfully, following are selected multiple false/distorted *prima facie* determinations entailed in your judgment, which are confronted in the table below with unequivocal important facts that your judgment has erroneously distorted and/or omitted, often without even adverting thereto:

Selected false/distorted prima facie determinations in your Supreme Court judgment[4]	***Unequivocal facts distorted and/or omitted in your Supreme Court judgment***
4. … It appears, however, that Mr. Skoczylas and Scotchstone acquired their shareholding in the group holding company at a time when the banking system in Ireland was in distress and the share price had dropped to a few pence.	**That *obiter dicta* of yours is patently false**. For the avoidance of doubt, Scotchstone and I are not speculators. I have lost my livelihood because of the actions of the Irish State in respect of Irish Life & Permanent Group Holdings plc ("ILPGH"). Hence, I am determined to vindicate my rights.
1. In the Irish Courts alone there have been at least 13 different sets of proceedings between these or related parties.	You have omitted an important fact that the proceedings you referred to are offshoots of the same overall litigation, and certain proceedings were directed by the courts to be initiated procedurally as separate plenary proceedings, given the complexities involved.[5]
*24. From the evidence subsequently adduced, I infer, **perhaps wrongly**, that the sending of a general notification under s. 160(7) of the 1990 Act occurred because Mr. Skoczylas, as the overall tactician in the litigation, was seeking, or at least considering, further weapons to deploy in his battle with the group holding company. It is apparent from the evidence that the group of shareholders issuing the notices had not formed a fixed intention to actually commence proceedings, or decided on what grounds, if any, they would be brought. Nevertheless, the issuance of a formal notice under s. 160(7) without any specifying information must have appeared a simple step that would be a useful salvo in*	**I respectfully confirm that your inference was indeed wrong, as you have rightly suspected**. It was greatly misleading to state – as you erroneously did – that allegedly *"It is apparent from the evidence that the group of shareholders issuing the notices had not formed a fixed intention to actually commence proceedings, or decided on what grounds, if any, they would be brought"*. Evidence clearly shows – which I explicitly reiterated in the Supreme Court – that it was only Scotchstone, the sole corporate litigant, that decided not to fulfil its original intention to initiate the s. 160 proceedings, in fear

[4] The list, which includes quotes verbatim from the judgment, is not exhaustive.

[5] Cf. § 7 of the Appellants' Supplemental Submissions dated 5 February 2018 (exhibited in tab 7 of the Core Book of Appeal), which provided an overview of various ongoing proceedings initiated by the Appellants and their status, as well as the pertinent determinations made by the courts. This was addressed on pages 17 and 18 of the 18-pager I handed out at the beginning of the hearing. An excerpt from said submissions has been provided to the Court, presenting the said overview of the outstanding litigation and stating, *inter alia*: *""the "main" proceedings are stand-alone statutory public law proceedings under s. 11 of the 2010 Act, in which the only relief the Applicants could seek was the setting aside of the July 2011 Ex Parte Direction Order. For that reason, there are a number of ongoing interrelated offshoot proceedings ... in which "serious issues to be tried" have been acknowledged by the Courts, which have been initiated by various groups comprising altogether more than 50 ILPGH shareholders, and which procedurally had to be started as separate plenary proceedings"*.

the battle, bringing additional pressure to bear upon the board members and therefore the people who would decide both in relation to his participation in the company, and the litigation more generally.	of an application for a security for costs.[6] You have omitted that fact – and the related evidence – from your judgment. This is in the context of the fact that the 10-day notice letters under s. 160 CA 1990 are in any case supposed to communicate an *"intention"* – not a final decision. The matter of the grounds for the intended s. 160 proceedings is addressed below in this table. You have also omitted an important fact that the shareholder litigants went before the High Court to seek to include the reliefs under s. 160 CA 1990 in the s. 205 proceedings (with which the s. 160 proceedings were explicitly to be joined), which makes it clear that said reliefs were not meant to be any *"salvo in the battle"*.
34. … Mr. Skoczylas argues that s. 160(7) merely requires that notice be given of the proceedings, and does not require any more detail. This argument faces at least two difficulties. First, it admittedly runs counter to the observations of Fennelly J. in Director of Corporate Enforcement v. Byrne [2009] IESC 57, [2010] 1 I.R. 222, set out above. In that judgment, he said that s. 160(7) illustrates "the general principle that any person who is to be the subject of an application under the section must be given clear notice of that fact and of the grounds on which the application is to be made". … It is suggested by Mr. Skoczylas that this is obiter, and should not be followed. However, quite apart from the respect which is due to the observations of Fennelly J. on such matters, it is clear that the reasoning was closely related to his views on the resolution of the particular case. … *35 … However, in a case such as this, where proceedings come out of the blue, I have no doubt that the plaintiffs have established a strong prima facie case that a notice under s. 160(7) was required to contain more than a notification that proceedings would commence, to identify the relevant subsections of s. 160(2), and to identify, at least in general terms, the matters relied upon.*	You have omitted in your judgment an important fact that the issuance of the s. 160(7) notices in this case was manifestly not *"out of the blue"*; it was preceded by very comprehensive correspondence[7] clearly giving reasons for the s. 160 proceedings, having regard to the fact that, out of the possible sub-sub-sections of s. 160 CA 1990, the s. 160(7) notice in question could have been only construed as having been issued in respect of subsection (d), i.e. the directors' *"conduct unfit to be concerned in the management of the company"*. You have also omitted an important fact that, while comments by Fennelly J were undoubtedly *obiter*, that was by no means my leading submission. My leading submission was that the s. 160(7) notices in this case indeed gave *"clear notice"* and *"grounds on which the application is to be made"*, and thus complied with both the statutory provisions and the statement of Fennelly J in *DCE v Byrne*, given that Fennelly J did not require that *sub-sub*-sections of s. 160 be referred to in said notices. <u>Notably, it is only your judgment that now has made it mandatory in Ireland to specify the *sub-sub*-sections of s. 160 in the s. 160(7) Notice (or its current equivalent). The Companies Act 2014, whose provisions have replaced the relevant</u>

[6] The matter of the alleged lack of intention to initiate the s. 160 proceedings, as well as the reasons why Scotchstone (the sole company among the Defendants/Appellants) was the only Defendant/Appellant that decided not to follow-up on its intention to initiate the s. 205 proceedings (with which the s. 160 proceedings were to be joined), is addressed on pages 5 to 7 of the 18-pager I handed out at the beginning of the hearing, as well as in §§ 11C and 11D on page 15 of the submissions dated 14 December 2018 (Tab 1 of the Short Book of Updated Core Submissions and Core References).

[7] Cf. Exhibits PS2 to PS6 of my affidavit sworn on 21 January 2013 (tabs 37 to 41 [Book 2] of the original 2013 Appeal Books).

	provisions of the CA 1990, does not account for the notion introduced by your judgment.
46. … It is in my view an inescapable conclusion that the notification of the intention to bring a disqualification application was firstly a tactical step in the broader litigation, and second, intended to bring pressure to bear on the individual directors. … *49 … The absence of detailed grounds was not a mere oversight, but rather reflected the fact that the grounds had not been formulated finally (or perhaps at all), or agreed by the purported applicants giving notice. It was not even clear that the applicants collectively intended to issue the application of which notice was being given.* *50. This background makes more serious the evidence adduced by the plaintiffs in these proceedings of the wider circulation of the notices by and on behalf of the intended applicants and Mr. Skoczylas in particular. The existence of the notices was brought to the attention of parties who had no connection to the proceedings, and whose only connection to any of the parties hereto was their involvement in the proposed sale of the Irish Life Insurance business as prospective purchasers. … Notices which were themselves defective, which purported to notify an intention to bring proceedings which had not been fully formulated and which it appears some or all of the applicants had not yet decided to launch, were nevertheless circulated to parties who had no connection to those proceedings and, with a view, plainly, to damaging the individual directors' reputations, and attempting to interfere with a transaction, which was not, itself, in any way connected with the asserted s. 160 proceedings. … The statutory procedure was being used, for a purpose for a collateral and in my view improper purpose and accordingly constituted an abuse of process and that factor, together with the invalidity of the notice, would make it appropriate to restrain the prosecution of the proceedings.*	**Respectfully, the statements on the left-hand side of this table herein are patently misleading and/or false and/or divorced from evidence**. There is no evidence whatsoever to support the erroneous notion that allegedly *"the notification of the intention to bring a disqualification application was firstly a tactical step in the broader litigation, and second, intended to bring pressure to bear on the individual directors"*. By the very nature of the case, the s. 160(7) Notices gave an *intention* to commence s. 160 proceedings. Of course, the legal grounds for the proceedings did not have to be at that point *finally formulated,* as such a *final formulation* occurs in the respective court pleadings. As explained above, Scotchstone legitimately decided in the end not to fulfil its original *intention* to initiate the s. 160 proceedings, for the reasons given in evidence and referred to above. The letter in respect of the intended s. 160 proceedings, in which the executives of Canada Life were included, was part of an ongoing comprehensive correspondence regarding the re-sale of Irish Life between 5 January and 11 February 2013, involving the Minister for Finance (ILPGH's largest shareholder), executives of Canada Life and four Directors of Irish Life (who are among the 11 Director Respondents).[8] **You have completely omitted that crucial fact from your judgment.** While your *prima facie* determination of abuse of process is not subject to an appeal, the fact is that that determination is based on patently non-existent facts (i.e. falsehoods) and omissions of important facts. Indeed, that determination flies in the face of the determination of the trial judge, who actually stated in Court on 30 January 2013 (cf. p. 13 lines 15 to 21 of the transcript): *"When you talk about abuse of process, you talk about a misuse of court procedures. But all you have done is issue a statutory notice under section 160(7) of the companies Act. That is not a process. Or at least it could be argued that that*

[8] Cf. the letters exhibited in tab 56 (Book 3) of the original 2013 Appeal Books. The matter is also addressed on pages 13 and 14 of the 18-pager I handed out at the beginning of the hearing.

	is not actually a process, so there is no abuse in that. It's simply a notice."
56. … It is noteworthy that O'Malley J. made a finding that "on the balance of probabilities, failure to recapitalise by the deadline would have led to a failure of the bank, whether by reason of a run on the bank by depositors, a revocation of its licence, a call for repayment of the various Notes, a cessation of funding under the ELA scheme or a combination of some or all of these possibilities". It is apparent that the affidavit delivered in December 2018 now seeks to recycle some of the matters adverted to in the proceedings under the guise of matters alleged to have only come to light in the recent past. The respondents for their part contest the allegations made by Mr. Skoczylas, but also challenge his entitlement to adduce evidence at this stage of the proceedings. *57. I doubt whether indeed it can be said that these matters can be said to have "come to light" or "occurred" after the judgment of Cooke J. was delivered in this case. Clearly, the accounts which Mr. Skoczylas alleges may not have given a true and fair view of the business of the company, and the statements which he alleged may have been false and mendacious, were made prior to the judgment delivered by Cooke J.*	**Respectfully the statements on the left-hand side of this table herein are wrong in fact**. Furthermore, the Supreme Court Determination in *Dowling v. Minister for Finance* [2019] IESCDET 55 dated 1 March 2019 is subject to: i) the proceedings before the ECHR; and ii) the proceedings rec. no. 2019/2991P against Ireland "In the Matter of Declaration, in accordance with the principles established by the Court of Justice of the European Union in, *inter alia*, the Case C-224/01 *Köbler v. Österreich*, the Case C-173/03 *Traghetti Del Mediterraneo Spa v. Italy* and the Case C-160/14 *João Filipe Ferreira v. Portugal*, that Ireland is obliged to make good damages caused to the Plaintiffs by infringements of EU law for which Ireland is responsible, where the alleged infringements stem from the decision of the court adjudicating at last instance, following the High Court proceedings rec. no. 2011/239 MCA, and In the Matter of related damages". Respectfully, it was patently wrong in fact to allege – as you did in your judgment – that the determinations of O'Malley J and the reasons therefor, including the sworn statements by the ILPGH Chairman, are not matters that came to light *after* the High Court judgment the subject of the appeal herein. **You have omitted the fundamental fact** that the directly contradictory statements in question *made* by the ILPGH Chairman *at different points in time* (some *after* the judgment the subject of this appeal) all referred to the *same status* of ILPGH *before* the *Ex Parte* Direction Order of 26 July 2011 – those statements did not refer to a status of ILPGH at different points in time, as you erroneously allege.[9] **Hence, some of those statements – including statements under oath and formal statements to investors used to make investment decisions – had to be mendacious (by the virtue of basic logic).**
58. … It is not at all impossible to contend on the one hand, that the business of the group was essentially solvent and viable, and that therefore the PCAR	**Respectfully, your *obiter dicta* on the left-hand side of this table herein is grossly incorrect in fact**. That *obiter* is also – incidentally –

[9] Cf. paragraph 18 of my affidavit sworn on 14 December 2018.

assessment of substantial recapitalisation was unnecessary, but to accept that once the requirement of recapitalisation became binding, then the only viable source of such funding within the time period was the State, and that moreover the company would likely collapse without it.	inconsistent with the respective submissions of the State and of ILPGH. **That *obiter dicta* means that a solvent and viable company could be *legitimately* subjected by the State to unnecessary and excessive capital requirements threatening the company's existence, in order for the State to take over the company from its original shareholders**. While patently erroneous, the foregoing is an extremely novel notion, now introduced by the Supreme Court, which, I am sure, will be subject of further adjudication by courts in Ireland and elsewhere.
59. Since [Mr. Skoczylas] introduces [arguments regarding the discernibly misleading/mendacious statements by the ILPGH Board] as matters which have only occurred or come to light since the judgment herein, it is apparent that they cannot have been present to justify the issuance of the notices or the threat to issue the s. 160 proceedings in early 2013. Furthermore, even if the evidence can be properly adduced in these proceedings, (and I make no determination in that regard), I do not think it can, by its nature, be of assistance in these proceedings. It does not, and cannot, supply the defect in the notices which were issued, or render them valid.	You have failed to advert to an important fact that, given the nature of an interlocutory injunction, the alleged misconduct of the ILPGH Directors, need not only relate to events prior to the High Court judgment in early 2013. Indeed, any facts that came to light as a result of the subsequent proceedings are relevant. By discounting those facts, your *prima facie* determinations *de facto* confirmed a grant to the ILPGH Directors – without any due process – of an *a priori* temporary (and long-lasting) immunity from prosecution under s. 160 CA 1990 (or its current equivalent), in respect of those facts. That was patently wrong.
4. … Accordingly, the group was the subject of the first of three direction orders made at the suit of the Minister for Finance in respect of the bank and the group holding company under s. 9 of the Credit Institutions (Stabilisation) Act 2010 ("the 2010 Act"), each of which has been challenged by Mr. Skoczylas.	It is not true that I have allegedly challenged three direction order.
7. On 20 February 2012, proceedings were commenced (High Court Record No. 2012/1696 P) seeking an injunction directing that Mr. Skoczylas be immediately appointed as a director of the group holding company. An interlocutory injunction was refused by Murphy J. on 27 February 2012, with no order as to costs.	You have omitted an important fact that the order of Murphy J was given in the light of the formal undertaking by ILPGH to appoint me Director.
8. On 28 March 2012, proceedings were issued in the High Court (Record No. 2012/116 MCA) challenging the 2012 direction order made on that day. On 28 June 2012, the High Court (Peart J.) dismissed the application made by the first named appellant and others to set aside the direction order (see Dowling v. Minister for Finance [2012] IEHC 436).	You have omitted an important fact that the ruling of Peart J is subject to an ongoing appeal, which is now listed to be heard in 2020.

10 … It should be said that in the period between the commencement of the proceedings and the hearing of the interlocutory application, the appellants also issued a further set of proceedings on 21 January 2013 pursuant to s. 205 of the Companies Act 1963 (as amended) ("the 1963 Act") in which they sought reliefs on the strength of alleged oppression by the respondent directors as minority shareholders in the group holding company.	You have omitted an important fact that, as per the evidence before the Court, the intention of the shareholder litigants was to include the reliefs for the disqualification of certain directors of ILPGH in the s. 205 proceedings. However, the High Court determined that such reliefs could not be procedurally included in the s. 205 proceedings and had to be sought in separate proceedings.
18. … the contention that the injunction was impermissible because it denied access to the courts, particularly for seven years, requires more careful consideration. First, for the reasons set out above, the situation which ensued occurred partly because of Mr. Skoczylas's own tactical choice in the fact that he himself sought the type of order which he now contends is impermissible, restraining the further prosecution of the case in the High Court.	You have omitted an important fact that that it took six years for the Supreme Court to hear the matter, despite *multiple* letters from me asking for the appeal to be heard. You appear to treat the fact of an inordinate delay in hearing the appeal as obvious, when it is far from obvious that it takes six years for an appeal to be heard. Furthermore, respectfully, you are patently wrong in asserting that I have *"sought the type of order which [I] now contend is impermissible"*. **Such a statement is false**, given that there is a manifest difference between staying proceedings pending an appeal and restraining one from *initiating* proceedings.
18. Furthermore, the injunction was issued solely on the basis of non-compliance with the requirement under s. 162(7) [sic] *of the 1990 Act for ten days' notice to be given to the respondents. It follows that he could have issued such a notice without prejudice to his contention that it was not necessary as a matter of law and commenced the s. 160 proceedings.*	It is untrue that the shareholder litigants *"could have … commenced the s. 160 proceedings"*, given that the order the subject of the appeal herein stated *"IT IS ORDERED that the Defendants and/or each of them be restrained until after the trial of the Action from issuing proceedings seeking relief(s) under Section 160 of the Companies Act 1990 as amended against the Plaintiffs or any or them."*

My formal objection to your unduly impugning my good name or my motives

An effectual administration of justice requires that I respectfully note that, as is clear from the above table, your judgment does not include only one or two isolated errors or distortions – your judgment includes a plethora of great many patent fundamental errors, distortions and omissions. The effect of the above-mentioned multiple manifest factual errors, distortions and omissions, which your *prima facie* determinations are based on, is that your judgment might be construed as impugning my good name or my motives, which is wholly inappropriate and unacceptable. Thus, I do hereby respectfully record my objection in the strongest terms against the numerous wholly unjustified and patently false statements included in your judgment and against meaningful omissions therein, which could in any way lead to impugning my good name or my motives.

Yours faithfully,

Piotr Skoczylas
MSc, M.B.A., LL.M. in Finance