

APPROVED
NO REDACTION NEEDED



THE COURT OF APPEAL
CIVIL

Appeal Number: 2026 152

Neutral Citation Number [2026] IECA 190

Allen J.

Meenan J.

Egan J.

IN THE MATTER OF PERMANENT TSB GROUP HOLDINGS PLC

AND IN THE MATTER OF THE COMPANIES ACT 2014

AND IN THE MATTER OF A PROPOSAL FOR A SCHEME OF ARRANGEMENT

PURSUANT TO PART 9, CHAPTER 1 OF THE COMPANIES ACT 2014

AND IN THE MATTER OF THE IRISH TAKEOVER PANEL ACT 1997

BETWEEN

PERMANENT TSB GROUP HOLDINGS PLC

APPLICANT/RESPONDENT

AND

PIOTR SKOCZYLAS, SCOTCHSTONE CAPITAL FUND LIMITED,

JOHN PAUL MCGANN AND TIBOR NEUGEBAUER

APPELLANTS

RULING of the Court delivered on the 11th day of September, 2026

1. This is an application by Mr. Piotr Skoczylas, said to have been filed pursuant to Court of Appeal Practice Direction CA14, for an order varying or rescinding a final judgment and order of the Court pronounced on 8th July, 2026 striking out his appeal for non-appearance. The order is said to have been made *suo moto*, *in limine* and *ex parte* and to have been made despite certified medical evidence that he could not travel internationally.

2. The papers appear to have been prepared on 9th July, 2026 but for whatever reason were not filed until 7th August, 2026.

3. The draft notice of motion suggests that:-

“[T]his application patently and substantively concerns an issue of constitutional justice, and the grounds of the application objectively demonstrate that there is a substantive issue concerning a denial of justice in the proceedings, while the application demonstrates cogent and substantive grounds which are objectively sufficient to enable this Court to enter upon an exercise, by way of a hearing of the application on the merits, of the exceptional jurisdiction, pursuant to which the application is made.”

4. In a nutshell, Mr. Skoczylas, having previously been refused permission to argue his appeal remotely, failed to appear to prosecute his appeal, which was struck out; and would now contend that that was a fundamental denial of justice and a violation of his constitutionally protected rights, beyond discretion inherent in judicial proceedings, going to the root of the fair and constitutional administration of justice. While he insists that nothing in his application is to be construed as being in any way disrespectful, Mr. Skoczylas would assert, variously, that the Court perversely converted an evidenced medical impossibility into a procedural default; that the disposition of his appeal was an unprecedented travesty of justice; and that the “*judicial annihilation*” of his appeal was “*unjust to the point of grotesque*”.

5. Remarkably, although the premise of the application is that Mr. Skoczylas was not in a position to present his appeal in person, he does not say where he was on the day it was listed for hearing and the papers do not disclose where he was on the following day when he swore the affidavit grounding this application.

6. On 13th May, 2026 the High Court (Sanfey J.) made an order pursuant to s. 450(3) of the Companies Act, 2014 directing that a scheme meeting of Permanent TSB Holdings plc (*“the Company”*) be convened for the purpose of considering and, if thought appropriate, approving (with or without modification) a Scheme of Arrangement made by the Company with BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft (*“BAWAG PSK”*) on 14th April, 2026 under Rule 2.7 of the Irish Takeover Rules. That order was made on a motion on behalf of the Company on notice to the Irish Takeover Panel, only, but in circumstances in which the appellants, including Mr. Skoczylas, had issued separate proceedings seeking directions in relation to the conduct of any meeting of members or of a class of members of the Company which might be convened to consider the proposed scheme of arrangement, Sanfey J. heard Mr. Skoczylas’s opposition to the orders sought by the Company.

7. Mr. Skoczylas appeared remotely at the hearing before Sanfey J. on 11th May, 2026. It was evident from an affidavit sworn on 11th May, 2026 that he was then in Frankfurt am Main. He was in Dublin in the previous week when he swore an affidavit before a commissioner for oaths on 7th May, 2026 and made an application to Kennedy J. in the other proceedings. An affidavit sworn by Mr. Skoczylas on 12th June, 2026 showed that he was then back in Frankfurt am Main.

8. On 14th May, 2026 Mr. Skoczylas applied – in person – to a panel of the Court of Appeal for leave to issue a motion seeking a stay on the order of the High Court and was given leave to issue and serve a motion returnable for the following day, on the basis that his notice of

appeal and motion papers would be filed overnight, and in the expectation that the High Court order would be perfected overnight.

9. On 15th May, 2026 the Court of Appeal list judge dealt with Mr. Skoczylas's stay application – which was refused – and gave directions for the progress of the substantive appeal which was listed for hearing on 8th July, 2026. Mr. Skoczylas, again, was present in person. After the Company's lawyers had left court, Mr. Skoczylas returned to say that he was reserving his right to seek a remote or hybrid hearing of the appeal and was told by Allen J. that he did not need to reserve his right but could e-mail the office in the ordinary way, that there had never been a problem. There was no ambiguity in that exchange. Mr. Skoczylas did not then seek a remote or hybrid hearing of the appeal and was not told that he could have one.

10. On 1st July, 2026 Mr. Skoczylas e-mailed the registrar seeking remote participation at the hearing on 8th July, 2026. The Court, he said, was aware of his relevant personal circumstances. The Court was aware of his relevant personal circumstances which were that he was living in Malta but was required from time to time to assist with the care of his mother, who lives in Poland. There was no medical report attached to the e-mail of 1st July, 2026 but a series of medical reports previously provided indicated that Mr. Skoczylas's physical presence was required at frequent and unpredictable intervals, at short notice and unexpectedly. There was no indication in the e-mail of 1st July, 2026 that Mr. Skoczylas would be unable to attend Court in person on 8th July, 2026, still less any reason. Mr. Skoczylas was advised by e-mail later on the same day that, in the ordinary way, the appeal would be heard in person.

11. On 2nd July, 2026 Mr. Skoczylas e-mailed the registrar. He asserted that he would not be able to participate in the hearing in person, having regard to his duty of care to his severely ill and permanently disabled mother, classified as having the highest and permanent degree of disability. He attached a medical report of the same date which asserted that:-

“In particular, an intensified duty of care and a severe escalation of demands placed upon the patient’s son – requiring his physical presence with the patient and/or his availability to her – will arise between 6 and 10 July 2026, in conjunction with a medical procedure (arthroscopy) on the right elbow of the patient. He must not risk the patient’s well-being by travelling internationally during that period.”

12. The medical report of 2nd July, 2026 was obviously based on the template of the previous medical reports, which indicated that his presence was required from time to time at short notice and unpredictably. It did not say when the medical procedure had been or was to be carried out. It did not explain what care was and would be available to the patient. And it did not explain how Mr. Skoczylas might risk his mother’s well-being by travelling internationally.

13. Significantly, Mr. Skoczylas’s e-mail of 2nd July, 2026 asserted that, in refusing his request for a remote hearing, the Court had resiled from a statement made by the list judge on 15th May, 2026 that there would be no problem with his remote participation. That is not what was said at the directions hearing. Rather, what was said was that Mr. Skoczylas could apply in the ordinary way by e-mail for permission to attend remotely. That was pointed out to Mr. Skoczylas in an e-mail of 3rd July, 2026 in which he was invited to renew his application by reference to the new medical report, if he wished to do so. He was advised that if he wished to renew his application, he should explain why the particular circumstances now relied on were not mentioned in his e-mail of 1st July, 2026; when the medical procedure referred to had been arranged; and why it was not possible for him to make alternative arrangements for his mother for 8th July, 2026.

14. In his reply of 3rd July, 2026 Mr. Skoczylas did not attempt to explain his alleged unavailability but doubled down on the suggestion that the Court had resiled from the position taken at the directions hearing. He asserted that it was clear from the medical report that it was

not possible for him to make alternative arrangements: which it was not. He gave no information as to when the medical procedure had been arranged or when it had been, or was to be, carried out. He asserted that he had not had the medical report of 2nd July, 2026 on the previous day but did not explain why his e-mail of 1st July, 2026 had not mentioned the circumstances set out in the medical report.

15. There followed a flurry of e-mails in which Mr. Skoczylas insisted that in refusing to allow him to participate remotely, the Court had resiled from the position previously indicated. He was supported in that by e-mails from Mr. McGann – who said that he had been present in Court on 15th May, 2026 – and Mr. Neugebauer – who acknowledged that he had not been. It was then said that if the Court was not willing to allow Mr. Skoczylas to participate remotely, the appeal should be adjourned; and later Mr. McGann portended a recusal application. Throughout this testy correspondence Mr. Skoczylas insisted that he was unavailable to appear in person but made no attempt to explain or justify his position.

16. When, on the morning of 8th July, 2026 the appeal was called on for hearing there was no appearance by or on behalf of Mr. Skoczylas. Similarly, Mr. Neugebauer, who had previously e-mailed the office to say that he would not be coming, did not appear.

17. Mr. McGann first applied for an adjournment of the recusal motion which he had issued the day before as well as the substantive appeal. The meeting of the Company to consider the proposed scheme of arrangement had been convened for 30th July, 2026. On 15th May, 2026 the appellants' motion for a stay on the High Court order had been refused but the appeal had been listed for a date which would have allowed it to be heard and determined before then. Mr. McGann's adjournment application was refused. More than once, Mr. McGann suggested that Mr. Skoczylas's mother was dying. Not only was there no evidence of that but it had never been suggested by Mr. Skoczylas.

18. Mr. McGann then sought to move the recusal application by reference to the affidavit which he had sworn on the previous day but without making any submissions. The Court, by a majority, decided that it would deal with the motion on that basis and refused it. It bears recollection that in opposing the recusal application counsel for the Company drew the Court's attention to an e-mail sent by Mr. Skoczylas at 22:09 on 6th July, 2026 in which he wrote:-

“If the Court is prepared, in light of the medical evidence before it, to grant me remote access to the hearing on 8 July, which — as the Court recorded — I duly sought on that basis, then please let me know forthwith and let me have a link to the remote hearing, so, in the interests of justice, the parties and the Court may focus on the substantive appeal, and may avoid or materially narrow the need to deal with the recusal application, which the Appellants believe is de facto forced upon the Appellants, inter alia, by the Court-created prevention of access to court by the lead Appellant in his own appeal, where that Appellant delivers oral submissions adopted by the other Appellants.”

19. In other words, the object of the recusal application was to try to bully the Court to provide Mr. Skoczylas with a remote link, and any suggestion of an appearance of objective bias would melt away if the link were to be provided.

20. The recusal application having been refused, Mr. McGann was invited to move his appeal. His immediate response was that he had been in contact with Mr. Skoczylas, who was available to participate remotely. That application was refused. Mr. McGann then said that he would rely on “*what's in the books*”. He was unable to identify what in the three boxes of papers which had been filed he was relying on. He declined to make any submissions but suggested, again, that the Court might provide Mr. Skoczylas with a link. The Court declined to deal with Mr. McGann's appeal on the basis that it should fish through the boxes, and struck it out.

21. The object of the appeal was to prevent the meeting of the Company taking place on 30th July, 2026 without a prior determination that there should be two classes of shareholders: the majority and the minority. Following the refusal of the stay application, the meeting was convened on the terms ordered by the High Court and it is a matter of public record that it took place as scheduled.

22. This application was filed on 7th August, 2026. As required by CA14, Mr. Skoczylas filed a draft notice of motion, a grounding affidavit, and short written submissions, marked as being precisely 1,000 words.

23. The grounding affidavit of Mr. Skoczylas purports to have been sworn remotely, pursuant to O. 40, r. 9 of the Rules of the Superior Courts. According to the jurat, the affidavit was sworn on 9th July, 2026 by remote attendance before a commissioner for oaths in Dublin as it was not possible for the deponent to attend in the physical presence of the commissioner for the medical reasons stated and exhibited in the affidavit. The affidavit gave Mr. Skoczylas's address in Malta. It did not disclose where he was when he swore it.

24. The medical reasons stated and exhibited in the affidavit were a short summary of the medical report of 2nd July, 2026, which Mr. Skoczylas exhibited. He emphasised the statement in the medical report that he *“must not risk the patient’s well-being by travelling internationally during [the] period”* between 6th and 10th July, 2026 and asserted that he was *“medically and morally prevented from travelling, but ready and willing to participate remotely immediately.”*

25. Order 40, r. 9 of the Rules of the Superior Courts – as substituted by the Rules of the Superior Courts (Affidavits) 2021, S.I. No. 127/2021 – provides insofar as is material for present purposes that:-

“9. (1) An affidavit taken in the State shall be sworn before a judge, commissioner to administer oaths, solicitor entitled to exercise the powers of a commissioner for oaths or other officer of the court empowered to administer oaths.

(2) An affidavit may be sworn by the deponent –

(a) in the physical presence of the officer before whom it is to be sworn or

(b) where, for reasons stated briefly in the affidavit, it is not practicable for the deponent to attend in the physical presence of such officer, by video conference with the participation of the deponent and the officer, subject to and in accordance with sub-rule (3).

(3) Where an affidavit is sworn in the manner referred to in sub-rule (2)(b), the following conditions shall be complied with - ...

(h) ... the jurat of the affidavit shall indicate the date on which the affidavit was made by the deponent, the place at which the officer was when taking the affidavit and the fact that the affidavit was sworn using a videoconference. ...

11. All examinations, affidavits, declarations, affirmations and attestations of honour in causes or matters pending in the High Court, or the Court of Appeal or the Supreme Court ... may be taken in any foreign country or place before any Irish diplomatic or consular representative or agent exercising his functions in that country or place or, where there is no such representative or agent or no such representative or agent conveniently near to the deponent in such country or place, before any notary public lawfully authorised to administer oaths in that country or place ... ”

26. While this ruling is confined to the question of whether the intended application is one in respect of which a hearing on the merits is justified, it is the view of the Court that the validity of the grounding affidavit is at the very least doubtful.

27. The primary requirement of O. 40, r. 9(2) is that the affidavit should be sworn in the physical presence of the officer before whom it is to be sworn. The possibility of swearing an affidavit by video conference is not engaged by the impracticability of attending in the physical presence of any particular officer but of any such officer. Thus, any impracticability or

impossibility of the deponent attending in the physical presence of the particular commissioner for oaths in Dublin would not be sufficient to engage the exception. In this case, there is no suggestion that on 9th July, 2026 Mr. Skoczylas's obligations to his mother were such that – wherever he was – it was not practicable for him to attend in the physical presence of a consular officer or notary public.

28. That apart, the stated impossibility of Mr. Skoczylas attending in the physical presence of the commissioner for oaths – like his stated inability to attend before the Court to prosecute his appeal – was exclusively focussed on the statement in the medical report of 2nd July, 2026 that he must not risk his mother's well-being by travelling internationally between 6th and 10th July, 2026. There was no discernible basis for that statement. If by reason of any previous or planned medical procedure Mrs. Skoczylas's need for care would have been increased, there was no engagement with the question of who might have provided any such additional support. Mr. Skoczylas's *prima facie* obligation to prosecute his appeal in person could not by itself have risked the well-being of his mother. As far as the swearing of the grounding affidavit is concerned, that did not require international travel so that the condition in O. 40, r. 9(2)(b) was not met.

29. In seeking a review of the decision of the Court of 8th July, 2026, Mr. Skoczylas would emphasise the urgency that the appeal should have been determined before 30th July, 2026. That was recognised by the Court at the directions hearing when the hearing date was fixed. He would assert that he was medically and morally prevented from travelling but persists in refusing to engage with the question as to what additional care his mother required and what, if any, arrangements he had attempted to make for it to be provided by anyone other than himself. Mr. Skoczylas referred to and exhibited a copy of the affidavit of Mr. McGann sworn to ground Mr. McGann's recusal application, which, in turn, had referred to and exhibited Mr. Skoczylas's protracted e-mail correspondence with the Court of Appeal office in the week

preceding the hearing date and a copy of the transcript of the ruling of the Court on that application. He did not attempt to engage with the submission of counsel for the Company – which was evident from the transcript – that the real object of what was put up as a recusal application was to get him a remote link.

30. From the refusal of his request for remote participation on the hearing of the appeal, Mr. Skoczylas would move on to the refusal of Mr. McGann’s adjournment application and from there to the refusal of Mr. McGann’s application on the day that Mr. Skoczylas should be provided with a remote link.

31. The fundamental problem with all of this is that it fails to acknowledge the authority of the Court and the rules for the conduct of appeals. The default position – as Mr. Skoczylas well knows – is that the business of the Court is conducted in person. In this and other litigation Mr. Skoczylas’s requests for permission to participate remotely have been accommodated when considered to be justified. It is tolerably clear that when Mr. Skoczylas first asked on 1st July, 2026 for permission to conduct his appeal remotely, he expected that it would be granted as a matter of routine. He was wrong about that. Thereafter, rather than seeking to justify an application for an exception to the rule, he doggedly insisted that the Court had resiled from an earlier decision to permit remote access and that any refusal of his application would be a denial of justice.

32. Mr. Skoczylas would contend that his appeal was struck out without prior notice that non-appearance would result in a strike out but does not suggest what else he thought might happen. The appeal had been listed on an urgent basis on a day on which the Court does not ordinarily sit in order that it could be dealt with before the Company meeting on 30th July, 2026. At the time of the directions hearing on 15th May, 2026 it was agreed that, if at all possible, the appeal needed to be disposed of before the Company meeting. Mr. Skoczylas would now argue that the striking out of his appeal was legally unprecedented and

constitutionally indefensible but that is mere assertion which runs contrary to invariable practice. Our legal system is adversarial. Litigants are obliged to attend court and present their cases on the dates fixed by the courts. If they fail to do so, their cases are struck out.

33. Mr. Skoczylas would contend that rather than striking out his appeal the “*constitutionally proportionate answer*” to his failure to appear would have been to have allowed remote participation, or adjourn briefly, or adjudicate on the appeal on the filed submissions. None of those options are sustainable.

34. For the reasons given, the Court had refused Mr. Skoczylas’s application to participate remotely on the grounds that he had not advanced a good reason. His non-appearance following that refusal could not possibly have amounted to a good reason. The proposition that the appeal might have been adjourned briefly ignores the fact that the lists are full and that other litigants are waiting to get their appeals heard. Moreover, it would effectively abdicate control of the lists to the litigants.

35. The object of the oral hearing is to focus attention on the main points in an appeal. Parties are required to assist the Court in identifying the real issues and then in resolving those issues. The Court has a discretion in an appropriate case to deal with an appeal on the papers but the net practical effect of the proposition that the Court should have done so in this case would be that a litigant could force the Court’s hand by failing to appear to prosecute his appeal. That would be intolerable. No less, it is at least implicit in the proposition that the Court might have determined the appeal on the papers that it might not have heard counsel for the Company. That would have visited a gross injustice on the Company.

36. This is a simple case in which the appellant failed to appear to prosecute his appeal and in which, for that reason, the appeal was struck out. There is no question of surprise or mistake. There was and is no evidence to support Mr. Skoczylas’s assertion that he was unable to attend

in person. If Mr. Skoczylas thought that he could engineer a reversal of the decision of the Court that he was not entitled to conduct his appeal remotely, he was mistaken.

37. Mr. Skoczylas has indeed lost the opportunity to have had his appeal adjudicated upon on the merits. He has only himself to blame.

38. Mr. Skoczylas has failed to identify any error of law or any denial of fair procedures.

39. The Court is satisfied that this application does not meet the threshold specified in para. A. 3 of Court of Appeal Practice Direction CA14 as one in respect of which a hearing on the merits is justified and it will be refused accordingly.