

THE HIGH COURT

[2018 No. 1814 P]

BETWEEN

KBC BANK IRELAND PLC

PLAINTIFF

AND

GORDON SMITH, LINDA HUSSEY, BEN GILROY AND PERSONS UNKNOWN OCCUPYING
THE PREMISES AT 37 HAMLET AVENUE, CHIEFTAINS WAY, BALBRIGGAN, COUNTY
DUBLIN

DEFENDANTS

BACKGROUND and EX TEMPORE JUDGMENT of Mr. Justice Tony O'Connor delivered on the 3rd May, 2018.

The following lettered paragraphs were prepared after the delivery of the *ex tempore* judgment for context purposes and so that the series of events leading to the judgment can be identified.

- A) The plaintiff's motion to commit the first and second named defendants for refusing to vacate the house occupied by them in defiance of an order made by Baker J. on the 15th March, 2018, first came before this Court on the 26th April, 2018. The motion was adjourned to the 1st May, 2018, to allow the first and second named defendants obtain legal advice.
- B) On the 1st May, 2018, the first and second defendants were committed by this Court to Mountjoy prison as they refused to abide by the order of Baker J. After the luncheon break on the 1st May, the first and second defendants purged their contempt and agreed to vacate the property.
- C) Between the first and second named defendants' committal and the purging of their contempt, it came to the attention of the Court that the third named defendant, ("Mr. Gilroy"), had appeared on a video posted to a social media site at approximately 2 p.m. on the 1st May, 2018, referring to the matter before the Court and he made the following statements: -
 - (i) *"... One of the so called satanic cult members, Judge O'Connor, has broken many issues under the Constitution. He has actually made the Constitution of Ireland redundant...."*
 - (ii) *".... this guy is a genius ... he has now vacated his office...."*
 - (iii) *"We should all use the defence of the Dwelling Act and just wait for anyone coming through the door and blow their head off with a gun – maybe that is the answer...."* ("the statements").
- D) The Court advised Mr. Gilroy of its intention to cause inquiries to be made about the statements, informed him of his right to have legal representation and told him of his entitlement to apply for legal aid. The Court directed Mr. Gilroy to appear before this

Court on the 3rd May, 2018, at 11 a.m. to answer a potential charge of criminal contempt in light of the social media posting of the statements.

- E) On the 3rd May, 2018, the Court asked Mr. Gilroy whether he had taken up the order made on the 1st May, 2018. When Mr. Gilroy indicated that he had not done so, the Registrar, at the request of the Court, furnished a copy of the perfected order which recorded *inter alia* the statements and the intention to inquire.
- F) The plaintiff, through counsel, clarified that it was not a prosecutor and was in attendance to assist the Court. An affidavit exhibiting stills from the video posted was filed. The judgment of McGovern J. in *Allied Irish Banks plc v. Seamus McQuaid (and by order of 30th May, 2017) Ben Gilroy, and Charles McGuinness* [2017] IEHC 485 (unreported, High Court, 25th July, 2017) was also brought to the attention of the Court by counsel for the plaintiff.
- G) Mr. Gilroy wanted "*to know exactly the claim being made against [him] and [he wanted] to know exactly who is making the claim.*" Mr. Gilroy referred to his right to cross-examine, his intention to "*have a representative from the European courts because there is a case of Walsh v. DPP in the Supreme Court at the minute and [he believed] that's why a Civil (sic) Bill is before the House of Oireachtas on contempt*"
- H) Mr. Gilroy said that he had watched the video and explained that it was "*out of character for*" him and that he had removed the video. Mr. Gilroy also handed into Court a letter which he requested to be kept private.
- I) The Court read the letter after cautioning Mr. Gilroy that it could not assure him about publication in open court because justice is administered in public. Mr. Gilroy acknowledged the position and requested that his privacy be respected. The Court requested the Registrar to file the letter with a note of the request for privacy.
- J) The Court asked Mr. Gilroy whether he was standing over the statements and he said that he was "*embarrassed*" and genuinely did not remember uttering all the statements. Mr. Gilroy further confirmed that he retracted and withdrew each individual statement read out in Court and that he had taken the video down on the evening of the 1st May, 2018.
- K) This Court then rose to consider the information given and to conduct its own inquiries about the online hosting of the statements. On reconvening, counsel referred to the affidavit sworn by a solicitor for the plaintiff which identified the number of views, shares and reactions online by 09.52 a.m. on the 3rd May, 2017, for the posted video. The Court noted that its own inquiries revealed that the posted video could still be accessed.
- L) Mr. Gilroy assured the Court that he had sent a request for the relevant website administrators to remove the video and gave in writing to the Registrar and solicitor for the plaintiff the name of one of the two administrators. He said that he could not identify the name of the other administrator. Mr. Gilroy guaranteed that the video would be removed by 3 p.m on the 3rd May, 2018.

- M) The Court adjourned to 3.30 p.m. to allow it to read the affidavit, exhibits and material then before the Court and to complete its inquiries.
- N) On reconvening at 3.30 p.m., Mr. Gilroy asked the Court to accept another letter of “a personal nature” which the Court directed to be placed with the request for confidentiality on its file subject to the caveat about administering justice in public. The Court outlined again the rights which Mr. Gilroy had when defending a charge of criminal contempt. He was asked whether he wanted the issue tried on the 3rd May, 2018, or on another date. Mr. Gilroy elected to have the matter determined there and then. In answer to the Court’s question about how he wished to plead, he pleaded guilty to the charge of criminal contempt.

EX TEMPORE JUDGMENT of Mr. Justice Tony O’Connor delivered on the 3rd May, 2018

1. Taking into account (i) Mr. Gilroy’s unconditional retraction and apology to this Court at approximately 11:30 a.m. today for uttering the words on the 1st May, 2018, set out in the schedule of this Court’s Order of the 1st May, 2018, (ii) his co operation in identifying one administrator and contact number for the Facebook page, which posted a video containing the words uttered by Mr. Gilroy, (iii) his confirmation that the posting would be taken down by 3 p.m. today, (iv) the fact that it has actually been taken down, (v) the acceptance by Mr. Gilroy that the words which he uttered constituted a criminal contempt, (vi) the contents of the envelope handed into Court with Mr. Gilroy’s request for privacy, (vii) a further note from Mr. Gilroy viewed by the Court (which he requests be kept private and which in the circumstances now need not be read out in open Court), (viii) the judgment of McGovern J. delivered on the 25th July, 2017, and his subsequent order of the 6th October, 2017, and Mr. Gilroy’s representations to me in that regard, which he dealt with in the note, I find that this latest criminal contempt is somewhat characteristic of the matters referred to in the judgment of McGovern J. where Mr. Gilroy also pleaded guilty to criminal contempt.
2. In view of the current extenuating circumstances and in the interests of allowing Mr. Gilroy, for want of a better description, some peace, stability, security and to get on with his life, and given his reasonable approach today in this Court and the factors which he urges upon me, both in open Court and through the letters which he has proffered, I accept the plea of guilty and impose a suspended sentence of one month’s imprisonment, subject to the following two conditions which will allow the prison sentence to become enforceable and operative: -
 - (i) Mr. Ben Gilroy will desist for the period of 30 calendar months starting today from uttering words or contributing to social media postings which repeat or tend to repeat any of the statements set out in the schedule of this Court’s Order of the 1st May, 2018, and which he retracted this morning on the 3rd May, 2018.
 - (ii) If Mr. Ben Gilroy is found guilty of criminal contempt by any court in this State within 30 calendar months from today’s date, then the suspended sentence will become operative on an application to this Court.

3. To be clear, if Mr. Gilroy repeats or contributes to the repetition of the import of the words in any manner whatsoever set out in the schedule to the Order made on the 1st May, 2018, within 30 calendar months or is found guilty of criminal contempt by any court in this State, the suspension of the one month sentence may be actioned or varied by this Court, of its own motion, irrespective of who brings it to this Court's attention.
4. In those circumstances, Mr. Gilroy is free to leave the Court subject to those conditions.