

THE HIGH COURT

[2014 No. 2624P]

BETWEEN

PEPPER FINANCE CORPORATION (IRELAND) LIMITED

PLAINTIFF

AND

MICHAEL O'NEILL

DEFENDANT

Ruling of Mr. Justice David Keane delivered on the 7th May 2015**Introduction**

1. This is the Court's ruling on the plaintiff's application for an order committing the defendant to prison for contempt of court because of his refusal to comply with the Order of this Court made by Gilligan J. on the 27th February 2014.

2. The said Order required the defendant to do, or refrain from doing, a number of things. First, pending the trial of the plaintiff's action against him, he was to refrain from trespassing on the property comprised in Folio 39956, County Cork ("the property"), which is a plot of ground with the cottage thereon being part of the townland of Clontiquirk and Barony of Carberry East (West Division) and amounting to .4046 hectares.

3. Second, pending that trial, he was to refrain from obstructing, or interfering in any way with, the marketing and sale of the property by the plaintiff.

4. Third, he was to remove all of his personal possessions from the property, so that the plaintiff was to have vacant possession of the property pending the trial of the proceedings.

5. Fourth, he was to vacate the property and to turn over the keys to the property and possession of the property to a representative of the plaintiff.

6. The foregoing Order was stayed until 5 p.m. on the 31st March 2014 to permit the defendant an appropriate opportunity to make the necessary arrangements to vacate the property, and the defendant was ordered to deliver up vacant possession of the property to the plaintiff at 5 p.m. on that date.

The proceedings

7. In the underlying proceedings, commenced by plenary summons issued on the 21st February 2014, the plaintiff seeks permanent injunctions in similar, if not identical, terms, together with damages for trespass.

The background

8. By mortgage indenture made on or about the 25th September 2008, the defendant mortgaged the property to the plaintiff as security for a loan. The defendant subsequently defaulted on his obligation to make loan repayments in accordance with the terms of the underlying loan agreement. The plaintiff, which was then named GE Capital Woodchester Home Loans Limited, issued proceedings seeking delivery up of the property in 2009. Those proceedings bore the record number 1490Sp of 2009.

9. By Order of the High Court made in those proceedings on the 25th July 2011, Dunne J. directed the defendant to deliver up possession of the property. That Order contained a stay for a period of six months. By further Order of Dunne J. made on the 15th April 2013, the plaintiff was given liberty to issue execution in respect of the Order for possession.

10. It is common case that the defendant delivered possession of the property to the plaintiff on or about the 22nd July 2013. However, the plaintiff contends that in November 2013 it became evident that the defendant had reoccupied the property. As already noted above, the plaintiff's apparent reoccupation of the property resulted in the issue of the present proceedings and the grant of an interlocutory injunction on the 27th February 2014, in the terms already described.

11. The defendant did not comply with the terms of the Order of the 27th February 2014, as is clear from the terms of two further Orders made by Gilligan J. The first of those Orders, made on the 6th May 2014, records the defendant's undertaking to vacate the property before 3 p.m. on the 12th May 2014 and goes on to order the defendant to vacate the property by that time on that date. The second Order, made on the 14th May 2014, records the defendant's further undertaking to vacate the property before 2 p.m. on the 20th May 2014 and goes on to order the defendant to do so.

12. It would appear that, in breach of those Orders and his own undertakings, the defendant did not vacate the property.

13. That is sadly evident from the terms of an Order of the High Court made by Peart J on the 31st July 2014, whereby, at the conclusion of an appropriate hearing, the defendant was adjudged to be in contempt of court for disobeying the Order made by the High Court on the 27th February 2014, and was ordered to be committed to prison and to be detained there "until he purge his said contempt and is discharged pursuant to further Order." However, Peart J stayed execution of that Order until the 22nd August 2014 to afford the defendant one further opportunity to comply with the terms of the Order of the 27th February 2014.

14. Unfortunately, the defendant did not avail of that opportunity and it is common case that he was arrested by members of An Garda Síochána on the 27th August 2014 and committed to prison, where he remained until Peart J. directed that he be brought before the Court again on the 9th October 2014 and, on that date, directed his release. It appears to be common case that at no stage did the defendant seek to purge his contempt.

The present application

15. The present application was brought by notice of motion issued on the 4th November 2014 and first made returnable on the 13th November 2014. I heard the application ultimately on the 27th November 2014. Having considered the evidence and the submissions made on behalf of each of the parties, I was satisfied that the defendant had again disobeyed the Order of the 27th February 2014 in, by his own admission, being present at, and in occupation of, the property on the 4th November 2014, in clear breach of the terms of the enumerated paragraphs 1 and 2 of the Order of Gilligan J. made on the 27th February 2014.

16. I, therefore, adjudged the defendant to be guilty of contempt of court upon the basis just described and ordered that he be committed to prison for a period of one month. I imposed that sanction as a last resort in exercise of the Court's jurisdiction, in vindication of its own authority, to punish of its own motion a person found to be in contempt. I did so because I was satisfied that the contempt established, against the background I have already described, amounted to serious misconduct involving flagrant and deliberate breach of a court order. There is no suggestion whatsoever in this case that the defendant is unable, rather than unwilling, to comply with the terms of the Order of the 27th February 2014.

17. In an attempt to afford the defendant one final opportunity to comply with the terms of the Order of the 27th February 2014, I placed a stay on that Order for an initial period of two weeks and from time to time thereafter up to the date of the present ruling.

18. Regrettably, the defendant has failed to satisfy me that he is now in compliance with the terms of the said Order or that he intends to comply with it. On the contrary, the uncontroverted evidence adduced on behalf of the plaintiff establishes that the defendant again trespassed on the property on the 18th February 2015 and that he was again in occupation of the property when certain legal documents were served upon him there on the 19th March 2015, thereby continuing to obstruct and interfere with the marketing and sale of the property by the plaintiff.

19. Accordingly, I have no option but to lift the stay contained in my Order of the 27th November 2014, and continued from time to time thereafter, with the result that the defendant is hereby committed to Mountjoy Prison for contempt of court to be detained there for a period of one month.