

THE HIGH COURT

[2016 No. 3162 P]

BETWEEN

SINEAD MCNAMARA

PLAINTIFF

AND

JERRY BEADES AND ANY OTHER PERSONS WHO ARE MEMBERS OF OR ACTING IN CONCERT WITH THE ORGANISATION KNOWN AS THE LAND LEAGUE AND THE NEW LAND LEAGUE

DEFENDANTS

JUDGMENT of Mr. Justice Paul Gilligan on the 22nd day of April, 2016

1. The background to these proceedings is that by order dated the 23rd of April, 2015, made in proceedings entitled *ACC Loan Management Limited v Peter Kingston & Tracey Kingston* Record Number 2015 282 S, this Court (McGovern J.) granted ACC Loan Management Limited summary judgment in the sum of €2,451,366.33 together with interest and costs. The indebtedness of Peter and Tracey Kingston arose from loan facilities of €2,000,000.00 granted to them on the 8th November, 2007, together with a further loan facility of €500,000.00 provided on the 22nd of August, 2008. On the 11th of August, 2015, an execution order was issued in favour of ACC Loan Management Limited against Peter and Tracey Kingston. ACC Loan Management Limited appointed David Swinburne as receiver of the property pursuant to a deed of appointment dated the 24th of September, 2015. Following the expiry of the three month stay referred to in the order of the 23rd of April, 2015, ACC Loan Management Limited obtained an order of *fieri facias* from the Central Office of the High Court on the 11th of August, 2015. On the 6th of October, 2015, ACC Loan Management Limited served the said order on the plaintiff in her capacity as sheriff for the County of Cork.

2. In the grounding affidavit for the interim ex parte order application the plaintiff sets out her concerns to the effect that Peter Kingston and Tracey Kingston have retained the defendants to obstruct the lawful sale of their herd of cattle at Cradenhill, Nohoval in the County of Cork.

3. The animals in question are subject to the provisions of the Animal Health and Welfare (Bovine Tuberculosis) Regulations 2015 (S.I. No. 58 of 2015) and the plaintiff confirms that she has to act in accordance with the relevant restrictions as therein set out. The plaintiff has possession of a certificate which allows for the sale of the cattle and for them to leave the Kingston farm but this certificate expires on the 29th day of April, 2016.

4. The plaintiff sets out in considerable detail in her affidavit the steps she has taken to protect the farm, look after the cattle and arrange for the auction of the cattle which has now taken place on the 12th day of April last.

5. The plaintiff became aware on the 10th April, 2016, of an article by Maeve Sheehan in *The Sunday Independent* of that day entitled "Protestors are planning to storm the fire sale of a prize winning herd of 1,000 cows and calves seized by ACC Bank from a well-known family of dairy farmers who were winners of Ireland's Fittest Family on RTE". The article further referred to the New Land League and that Jerry Beades, senate contestant and spokesperson for the New Land League, said that a meeting about the planned protest would take place in Cork on the night of the 10th April, 2016.

6. The plaintiff refers specifically at para. 42 of her grounding affidavit of the 10th day of April, 2016 to an article on the facebook page of the first, second and third named defendants which makes extensive reference to the background involving the proposed auction of the cattle and generally making remarks to the effect that farmers were angry, that there was no reason for the type of expenditure involved as Mr. and Mrs. Kingston had cooperated fully and given no resistance to the Receiver or Sheriff and that the farm was taken over in a military type operation, a farm manger and farm hands were flown in from Holland, and K-Tech security men arrived from Dublin to be accommodated in luxurious accommodation and there was reference to a protest on Tuesday the 12th of April, 2016. The content of the posting on Facebook includes in its last three lines the following:

"Jerry Beades, 087 255 9221

Chairman Friends of Banking Ireland

Spokesperson for the New Land League Groups"

7. The plaintiff expressed her concerns for the conduct of the auction and wrote to the defendants requiring that they provide her with an undertaking that they would not prevent or disrupt the sale of the herd but no undertaking was forthcoming and in these circumstances noting the undertaking as to damages the Court made the order as dated the 11th day of April, 2016 in the following terms:

"It is ordered that the first named defendant be restrained until after Tuesday 19th day of April, 2016 or until further order in the meantime from:

(a) Preventing, impeding and/or obstructing the plaintiff, her servants or agents, from selling the herd of cattle the subject matter of the proceedings herein and collecting all income and/or profits related to the selling of the herd on the former family farm of the Kingston's at Cradenhill, Nohoval, Co. Cork.

(b) Threatening or intimidating or seeking to threaten or intimidate any person or persons involved in the sale of the herd or in bidding or making any offer or purchasing any of the said herd.

(c) Interfering with the function and office of the plaintiff as Sheriff for the County of Cork in relation to the sales of the

said herd.

(d) Watching or besetting and further entering the former Kingston farm, Cradenhill, Nohoval, Co. Cork with intent to disrupt the sale of the herd from midnight on the 11th day of April, 2016 to midnight on the 15th day of April, 2016.

(e) An order directing the notification to the first named defendant of this order by e-mail at Jerry.Beades@gmail.com and by telephone at 087-2559221.

(f) The plaintiff shall post notice of the making of this order on two access roads leading to the farm and at the entrance to the farm. The notices shall be in a reasonably legible format and placed in protective plastic covers.

(g) An interim order granting the plaintiff liberty to serve all proceedings herein on the first named defendant personally at 162 Richmond Road, Fairview, Dublin 3.

8. The order itself was made on the 11th day of April, 2016 but was not perfected until the 12th day of April, 2016.

9. The notice of motion before the Court on this occasion is an order seeking interlocutory relief in the same terms as the order granted on the 11th April, 2016, and in addition, two further reliefs were sought. Notification in this regard was given to Mr. Beades by way of a letter of the 19th April, 2016.

10. The two additional reliefs sought are orders against the defendants restraining them from:

(1) Bidding or making an offer or procuring that other persons bid or make any offer with the purpose of frustrating the sale of the cattle or realising the proceeds of sale.

(2) Seeking to interfere with the collection of cattle purchased or with the transportation of cattle from the former Kingston farm at Cradenhill, Nohoval, Co. Cork and further an order to restrain the first named defendant from attending at a further sale of cattle at the former Kingston farm or being present within five kilometres of the farm on the day that any sale is taking place.

11. An issue arose as regards the first named defendant being on notice of the additional reliefs as claimed. This Court was of the view that Mr. Beades very clearly indicated that he had not received a copy of the letter of the 19th April, 2016. Mr. Callanan, on behalf of the plaintiff, indicated to the Court that in fact what had occurred was that on the 19th day of April an envelope was handed to Mr. Beades in the round hall of the Four Courts by Mr. O'Sullivan, barrister at law, the junior counsel retained in the case on the plaintiff's behalf, and that this envelope contained the letter of the 19th April which put Mr. Beades on notice of the two additional reliefs being sought. In this Court's view Mr. Beades was denying that he had received the letter of the 19th of April, 2016, and in the circumstances adjourned any further hearing for a period of time to allow Mr. Beades to consider the letter, and having done so, proceeded with the application. Subsequently, it became apparent that in fact Mr. Beades was accepting that the letter of the 19th of April, 2016, from the plaintiff's solicitors was in the envelope as handed to him by Mr. O'Sullivan but that he was not aware it was there even though he considered the other papers that were in the envelope.

12. In any event this Court takes the view that the additional reliefs 1 and 2 are simply an elaboration of the reliefs as already sought in the notice of motion which in effect seeks orders restraining the defendants from preventing, impeding or obstructing the plaintiff, her servants or agents, from selling the herd and collecting all income or profits relating to the selling of the herd and further at para. 4 of the notice of motion the order that is sought seeks to restrain the defendants and each of them and anybody acting in concert with the defendants or having knowledge of the making of any order made by the Court from interfering with the functions and office of the plaintiff as Sheriff for the County of Cork in relation to the sale of the herd and the collection of the income from the sale of the herds or otherwise arising from the sale of the herd. In essence both the additional reliefs claimed at 1 and 2 in the plaintiff's solicitor's letter of the 19th April, 2016 are within the breadth and scope of the reliefs as already sought in the notice of motion.

13. This Court considers that the additional reliefs set out in the letter of the 19th April, 2016 and enumerated 1 and 2 come within the breadth and scope of the reliefs as already claimed in the notice of motion but in any event it appears that Mr. Beades did have a copy of the letter of the 19th April from Tuesday the 19th day of April and furthermore had an opportunity to consider the additional reliefs as claimed and having done so did not make any application that he wished to put in a replying affidavit or that he was prejudiced in some way and accordingly the court directed that the matter proceed and that Mr. Beades, the first named defendant was entitled to make any argument he wished to make in respect of the additional reliefs as claimed.

14. The application for the interlocutory injunction and the additional reliefs as set out in the plaintiff's solicitor's letter of the 19th of April, 2016, is premised on the original affidavit of the plaintiff and also on a supplemental affidavit as sworn on the 18th day of April, 2016 and filed and served.

15. The plaintiff deposes that she set out laminated copies of the orders made by this Court on the 11th April at the start of all access roads to the former Kingston farm and at every entrance to the farm, and that copies of the court order were given to the driver of every car entering the premises. As I understand the situation these were notices of the making of the order and not the perfected order. Likewise Mr. Beades was served by e-mail on the evening of the 11th April, 2016 and he received this e-mail albeit he alleges that the e-mail was accompanied by a virus which prevented him from initially reading the content of the e-mail. In any event the plaintiff's solicitors received an e-mail from Mr. Beades the first named defendant at 5:42am on the 12th April which e-mail clearly indicates that Mr. Beades did receive notice of the making of the order.

16. The plaintiff deposes that the first named defendant Mr. Beades and a number of other protestors attended at the property for the purpose of threatening and intimidating parties wishing to attend the auction and with the intention of disrupting the sale and she refers to a number of photographs. The photographs show Mr. Beades in the vicinity of the entrance to the Kingston farm and walking on the public road outside the farm. They do not show Mr. Beades carrying any placards nor do they show Mr. Beades actually intimidating or threatening any person.

17. The plaintiff alleges that there was considerable disruption outside of the farm premises with interaction between protestors and persons attempting to enter the farm site for the purpose of attending the auction. A number of these people who were actively protesting are shown in the photographs as exhibited with the plaintiff's supplemental affidavit and show posters bearing the inscription "Friends of Banking Ireland" and The Land League. The persons with these posters are clearly shown in the immediate vicinity of the entrance to the auction site and on the roadway immediately adjacent thereto.

18. The plaintiff deposes that the monies realised from the sale of the animals at the auction was less than half of what was expected to be realised and that a number of parties attended the auction and bid hundreds of thousands of euro for various lots but have failed in accordance with the terms and conditions of sale to turn up, pay for the animals purchased and to have removed them from the site. As a result of an intervention by Mr. Beades as to his views as to what was occurring in this regard, Mr. Callanan advised the Court that there were without prejudice negotiations taking place with two of the largest bidders and it may still be possible that that aspect can be resolved but if not the cattle in question will be resold by way, possibly, of a tender process, on Monday next, the 25th day of April, 2016.

19. The plaintiff refers to a press statement issued by the New Land League on the 16th April, 2016 which is exhibited in her affidavit at "SMCN 12". This document is entitled:

"Friends of Banking Ireland / The New Land League / Kingston Farms Debts / €2.4million"

20. The press statement goes on to deal with the background to the situation and then indicates that following a recent offer by the haulage contractors' representatives that in future cattle and sheep haulage men would refuse to transport farm animals acquired through forced sales of Irish farms by bank appointed receivers through forced sales in the Republic of Ireland, the Court asked Mr. Beades was the reference to the Irish Road Haulage Association and Mr. Beades clarified that this was an offer that was made by a number of haulage contractors.

21. The statement went on to say

"The New Land League now calls on the Seamen's Unions to support and stop the Live Export of animals acquired through forced Bank sales enforced on Irish Farms and Farming Families.

"IRELAND IS NOT FOR SALE – BANKS NEED TO TALK"

SPOKESPERSON | JERRY BEADES | (087) 255 9221"

22. Mr. Beades describes himself in his affidavit as the Chairman of the Friends of Banking Ireland and is the spokesperson for the New Land League.

23. In essence, the plaintiff's case is that she continues to be concerned that Mr. Beades, the Friends of Banking Ireland and New Land League will try to further disrupt any future potential sale and will try to disrupt the sale by bidding for cattle and then not paying for them and by intimidating persons who do wish to enter any premises for the purpose of a sale from so doing and to intimidate and prevent persons who have actually purchased any cattle at any future sale from collecting them and having them taken away and delivered.

24. The first named defendant, Mr. Beades, has sworn an affidavit as dated the 19th day of April, 2016, in which he deposes that he has never met or spoken with any members of the Kingston family and does not represent them. He deposes that he was merely acting as a spokesperson on behalf of the New Land League comprising a series of small groups from around the country and that at no time did he ever advocate anyone to stop the auction and was representing the interests of a group of creditors who will not now get paid as a result of the actions of a financial institution through their appointed agents acting as purported receivers in unison with the Cork County Sheriff.

25. Mr. Beades totally refutes all of the assertions and the hearsay contained in the plaintiff's affidavit and believes that they were sensationalized averments by the plaintiff to optimise and totally discredit him knowing that he is a candidate in the Seanad elections 2016. He deposes that there was a meeting called on in the Vienna Woods Hotel, Cork, on Sunday the 10th April, 2016 and this was an open meeting and not a closed meeting as averred to by the plaintiff. Mr. Beades deposes that the reports in The Sunday Independent as exhibited by the plaintiff are words that can not be attributed to him as he never advocated any form of disruption of the auction, however he did support a peaceful protest.

26. Mr. Beades deposes that the plaintiff is not entitled to the relief as sought or any relief.

27. I have the benefit of the submissions as made on behalf of the plaintiff and Mr. Beades' own submissions and I take these into account. The application before the court is one for interlocutory relief and in accordance with the Campus Oil principles the plaintiff has to demonstrate a serious issue to be tried, that damages would not be an adequate remedy and that the balance of convenience favours the granting of the order.

28. It is of some significance that the background details as previously outlined herein in relation to the judgment as obtained as against Mr. and Mrs. Kingston, and the subsequent referral of the matter through the normal legal channels to the Sheriff for collection of the debt, are not disputed and accordingly, the legal basis upon which the Sheriff is proceeding is not in dispute between the parties.

29. Prior to the institution of these proceedings, the first named defendant, Mr. Beades, was asked to give an undertaking not to interfere with the auction in any fashion whatsoever and he declined to do so. When asked by the court as to why he would not have given the undertaking if he was not involved in any way, his answer to the court was "why should I?"

30. I am satisfied that the plaintiff raises a serious issue to be tried between her in her capacity as Sheriff for the County of Cork, attempting to administer her authorised function as Sheriff, and Mr. Beades, in his capacity as chairman of Friends of Banking Ireland and spokesperson for the Land League. Furthermore, it is quite clear, particularly from the photographic evidence, that there were a number of people in the immediate vicinity of Mr. Beades at the entrance to the Kingston farm, and on the roadway adjacent thereto, who were carrying placards of protests on behalf of Friends of Banking Ireland and the Land League.

31. Mr. Beades offers a completely innocent explanation as to why he was present in the vicinity of the entrance to the Kingston farm, initially by stating that he was there on behalf of a number of creditors whom he was representing and who were concerned that they would not be paid the debt, as due to them, by the Kingston family, and more laterally towards the conclusion of the proceeding that he was there canvassing in his capacity as a candidate in the forthcoming Senate election.

32. I take into account that Mr. Beades denies all of what was stated by the Sunday Independent and attributed to him, but what is not denied by Mr. Beades is the subsequent statement as issued on 16th April, where Mr. Beades effectively signs off a press statement, on behalf of Friends of Banking Ireland, the New Land League and the Kingston's farm, which calls on the Seamen's Union

to support and stop the live export of animal acquired through force bank sales enforced on Irish farms and farming families. In addition, the balance of that statement clearly demonstrates Mr. Beades' views as regards the sale of the Kingston farm cattle.

33. There is also the issue that Mr. Beades indicates in his sworn affidavit that he supports a peaceful protest, but in this regard, a serious issue is raised by the plaintiff in her two affidavits, as regards the nature and extent of the protest as actually carried out and her views in this regard. There is, in my view, a serious issue to be tried as between the evidence adduced by way of affidavit on the plaintiff's behalf and the evidence as deposed in the affidavit of Mr. Beades. Quite clearly, on the evidence of the plaintiff, the protest that was carried out in the immediate vicinity of the Kingston farm on the day of the auction could not be described as peaceful and, it has to be accepted that Mr. Beades takes a different view.

34. In essence, at this point in time, moving forward, the interlocutory order that is sought is designed to protect the Sheriff in the carrying out of her lawful duties, and having raised a serious issue, I take the view that she is entitled to be so protected notwithstanding that a situation may arise where, in fact, there will now be no further auction either by way of tender or otherwise if the successful bidders at the auction on the 12th of April, 2016, pay what is due by them to the sheriff. In this regard, I have the undertaking of Mr. Callanan, on behalf of the plaintiff, that in the event that an injunction is no longer necessary, the Court will be advised immediately and the injunction set aside.

35. There is no indication from Mr. Beades, either on his own behalf or on behalf of any of the remaining defendant organisations that they would be in a position to meet any award of damages that may be obtained by the plaintiff against them and in the circumstances that pertain, I am not satisfied that damages would be an adequate remedy.

36. The balance of convenience, in my view, clearly favours the granting of the order as sought by the plaintiff so as to enable her to carry out her lawful duties, from this point in time on.

37. Accordingly, I take the view that the following is now the appropriate order to be made.

38. An order that the first named defendant and all persons having notice of the making of this order be restrained, pending the trial of these proceedings, or until further order of this Court, from:-

(a) Preventing, impeding and/or obstructing the plaintiff, her servants or agents from selling the balance of the herd of the cattle, the subject matter of the proceedings herein, and collecting all income and profits related to the sale of the herd on the former family farm of Peter Kingston and Tracey Kingston at Craden Hill, Nohoval, Co. Cork;

(b) Threatening or intimidating or seeking to threaten or intimidate any person or persons involved in the sale of the herd or bidding or making an offer, or procuring that other persons bid or make any offer with the purpose of frustrating the sale of the cattle or realising the proceeds of sale;

(c) Interfering with the function and office of the plaintiff as Sheriff for the County of Cork, in relation to the sale of the herd of cattle situate on the former family farm of Peter Kingston and Tracey Kingston at Craden Hill, Nohoval, Co. Cork;

(d) Interfering with the collection of cattle purchased or with the transportation of cattle for delivery from the former Kingston farm at Craden Hill, Nohoval, Co. Cork.