THE HIGH COURT

[2014 No. 610 S.]

BETWEEN

BANK OF IRELAND MORTGAGE BANK

PLAINTIFF

AND

JAMES MARTIN AND DEIRDRE MARTIN

DEFENDANTS

EX TEMPORE JUDGMENT of Mr. Justice Noonan delivered on the 24th day of November, 2017

1. This is an application for summary judgment in a simple debt claim on foot of a mortgage loan advanced by the plaintiff to the defendants pursuant to a loan offer of 25th January, 2005. The amount advanced was €95,000 secured by way of mortgage against the defendants' property. The defendants defaulted on the payments due and it would appear ceased all payments since August 2012. A letter of demand was issued on the 17th February, 2014, by the plaintiff's solicitors seeking repayment of the entire sum due. Ultimately a receiver was appointed and the property sold subsequent to the commencement of the proceedings so that the claim now outstanding is for the balance due after crediting the proceeds of sale. The first defendant has sworn a number of affidavits in this matter. No affidavit has been sworn by the second defendant.

2. The first defendant's affidavits are couched in depressingly familiar language proclaiming at the outset that he is a non individual living man. These affidavits run to many hundreds of paragraphs of extraordinarily prolix and obtuse averments. They were clearly drafted by some third party on behalf of the first defendant. The defendant's son, Seamus Martin, has made several attempts to act as an advocate on behalf of his parents in the guise of a McKenzie friend. He attempted to do so on foot of a power of attorney and by order of the 2nd November, 2015, the President of the High Court ordered that he was not entitled to be heard on behalf of the defendants either on foot of a power of attorney or otherwise.

3. The affidavits of the first defendant are replete with references to original wet ink documents and free floating quasi legal concepts that are advanced in the abstract without any attempt to connect them to any fact arising in the case. They are invariably accompanied by mantra like demands for the proceedings to be struck out. They are suffused with material that is not only frivolous and vexatious but in many instances plainly scandalous in making the most serious allegations against not only officers of the plaintiff but their solicitors and counsel which are entirely baseless.

4. Moreover the affidavits contain demands concerning any member of the judiciary who may hear the defendant's case in terms that are contemptuous. Thus at para. 34 of his first affidavit, the first defendant avers:

> "It is a truthful fact that we demand that any judge assigned to the hearing of the particulars of this matter who has or did have a pecuniary interest in the outcome of this matter to recuse him or herself from the matter to avoid any situation of conflict of interest or potential conflicts, any possibility of actual bias or indeed any perception or apprehension of objective or subjective bias. By pecuniary interest we mean not merely having an ordinary mortgage with a major bank but by being a shareholder of a or any bank, have a mortgage and or insurance policy of any kind and, or having significant personal borrowings with a or any bank which may or may not be in default or have borrowings relating to inter alia property or otherwise. We further demand that where the spouses of any judges assigned and or their partners or members of their families have had or have to date any borrowings of any kind with a or any bank relating to inter alia property or otherwise."

Other contemptuous passages appear such as references to the court as "this alleged court" – at para. 45 of the same affidavit. Both I and other judges have commented in the recent past on pressure groups and McKenzie friends who espouse this approach to litigation which is a form of legal quackery – see *Start v. Kavanagh* [2017] IEHC 433, *KBC v. Flynn* [2017] IEHC 79 and *Fox v. McDonald* [2017] IECA 189.

5. It is however far more serious than that. The pursuit of litigation by these means is a deliberate and conscious waste of court time, an attempt to obstruct the administration of justice and a manifest abuse of process. I have had the advantage of reading all the papers in this case in advance of the hearing. Had I not had the benefit of doing that, this matter could potentially have taken days of court time, all entirely wasted. It remains a constant source of mystery how litigants in person, or more accurately those who advise them, can think that this is in any defendant's interest. Quite the opposite is the case. By raising a multitude of irrelevant, incoherent and nonsensical pseudo-legal points, the defendants not only vastly increase the costs of the litigation to their own detriment but also run the risk that if they have a good point, it will become lost in the quagmire of mantra like incantation that bears only a passing resemblance to understandable English.

6. For example, the provisions of Clause 39 of Magna Carta 1215 are prayed in aid. The position is exacerbated by "demands" in the first defendant's initial extraordinarily long affidavit that it be "read into the record". As the Supreme Court have made clear in *Tracey v Burton* [2016] IESC 16, the days of reading things into the record, if they ever existed, have long since passed. Courts have a duty to protect their own processes from manifest abuse of this kind for the benefit of genuine litigants with genuine claims.

7. As if all of this were not bad enough, on the 6th February, 2017, this matter was listed for hearing before me and for the first time, solicitor and counsel appeared on behalf of the defendants. Counsel expressly disavowed the approach taken by the defendants to which I have already alluded and sought to have the matter adjourned so that his client's case could be put into proper form for presentation to the court. However subsequently, and extraordinarily, another affidavit in similar terms was delivered on behalf of the first defendant sworn on the 6th February, 2017, the same day the court was persuaded to grant an adjournment on the basis that this approach was being abandoned. Clearly therefore, this court was entirely misled as to the grounds for adjournment at the behest of the defendants whom it would appear subsequently discharged their lawyers. Yet again, when the matter was before me this morning, the first defendant produced a new 86 paragraph affidavit sworn today with a dossier of exhibits, undoubtedly in the hope that it would cause the case to be adjourned again. It contains more of the same.

8. One cannot help but be struck by the fact that throughout this overwhelming miasma of fake law, not once does the first defendant deny that the money was lent and not repaid. Instead, metaphysical concepts are introduced to suggest that the money

never actually existed although how the defendants contrived to purchase a property with non-existent funds is not explained. Further, statements of the following kind are made:

> "129. It is a truthful fact we are living a good conscience before God all day.
>
> 130. It is a truthful fact that we hereby request, that the honourable court makes the correct assessment, and align with the executor, beneficiary and commissioner;"

9. Affidavits of the type deployed by the first defendant in this case are increasingly common. They often display an extraordinary knowledge of the minutiae of statutes, court rules, EU and case law, almost universally to entirely misguided effect. It cannot have escaped the attention of those who draft such affidavits consisting almost entirely of argument and submission that the Rules of the Superior Courts expressly forbid this. Order 40 rule 4 provides:

> "Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, and shall state his means of knowledge thereof, except on interlocutory motions, on which statement as to his belief, with the grounds thereof, may be admitted. The costs of any affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall not be allowed."

10. In the past, it has tended to be the case that the courts have afforded a certain degree of latitude to impecunious litigants in person, who for genuine and understandable reasons may not be able to afford the services of a qualified lawyer. Thus non compliance with the Rules may be overlooked where the litigant in person is doing his or her best to put forward their case. In recent years however, and particularly since the economic collapse, there has been a sea change in the prevalence of litigants in person assisted by agenda driven pressure groups and individuals providing McKenzie friend services for reward.

11. Without exception in my experience, these groups and individuals cause significant harm to those they purport to assist by giving them advice which is not just wrong, but entirely detrimental to the litigant's interests. These people know well that they cannot represent their "clients" in court or make submissions on their behalf. Instead they incorporate their so-called submissions into affidavits which are sworn by the litigant, perhaps genuinely believing it will help his case, as a means of putting them before the court in blatant disregard of the Rules. In *KBC v Flynn* I referred to the many legal resources available at little or no cost to litigants. The fact that a litigant decides to seek the assistance of dubious McKenzie friends instead does not arise from an inability to obtain proper legal representation but rather from a conscious decision to engage in political protest and obstruction not just towards the opposing party but to the court.

12. The exponential increase in this category of litigant is now at a level where it presents a very serious challenge to the Irish courts system, already overburdened with an ever increasing case load of genuine cases. It seems to me that the time is now well past when the courts should indulge and tolerate the mode of litigation that this case typifies, engendered solely for the purpose of an anarchic attempt to frustrate and obstruct the administration of justice.

13. In summary, I am satisfied that the plaintiff's proofs are in order and the defendants have advanced nothing remotely approaching an arguable defence in this case. They certainly do not satisfy the test posited in *Aer Rianta v Ryanair* of having a fair or reasonable probability of having a *bona fide* defence. For completeness, I have examined the terms of the loan documentation herein and find nothing therein which in my view amount to an unfair contract term within the meaning of the European Communities (Unfair Terms in Consumer Contracts) Regulation, 1995. Accordingly, the plaintiff is entitled to judgment for the amount claimed.