Neutral Citation: [2014] IEHC 219

THE HIGH COURT

[2012 No. 898 P.]

BETWEEN

MARK REYNOLDS AND GLEN CRAN

PLAINTIFFS

AND

EUGENE MCDERMOTT

DEFENDANT

JUDGMENT of Mr Justice Ryan delivered the 29th April, 2014

1. Introduction

This is an application by the plaintiffs pursuant to notice of motion dated 10th September, 2013, seeking the committal of the respondent, Mr Gilroy, for contempt of an order of this Court made on the 5th March, 2012, by his conduct on the 31st August, 2013.

The plaintiffs were appointed joint receivers of the property comprised in Folio 9703 of the Register of Freeholders, County Kildare in November, 2011 pursuant to provisions in a mortgage deed executed by the defendant in 2005 to secure borrowings from Anglo Irish Bank.

The receivers went into possession of the lands which they secured with fences and they engaged a security firm, LAS Group, to protect the property. There was difficulty with the defendant mortgagor who initially refused to co-operate or to hand over vacant possession of the property. The receivers issued proceedings in this Court and Murphy J. on 5th March, 2012, granted the plaintiffs the reliefs sought. The court restrained the defendant and any person having notice of the order from engaging in any of the following conduct:

(i) Interfering with the receivers' activities;

(ii) Preventing the plaintiffs taking possession;

(iii) Remaining in occupation or refusing the plaintiffs access;

(iv) Trespassing;

(v) Dealing with the property m any way which would breach the agreement.

In his grounding affidavit, Mr Reynolds, the plaintiff and joint receiver, avers that the defendant did not obey the order and because his continued breach thereof, Mr McDermott appeared before this Court on the 21st November, 2013, to purge his contempt.

Mr Gilroy had been advising and assisting the defendant in dealing with the receivers and accompanied him to a meeting with Mr Reynolds during the summer of 2012. Notwithstanding the difficulties with the mortgagor defendant, the receivers identified a purchaser, Mr Naughton, who signed a contract of sale in January, 2013 and was allowed into possession under a caretaker's agreement. The sale of the property was ultimately completed in December, 2013 or January, 2014.

This motion is concerned with events that occurred on the lands on Wednesday 28th and Saturday 31st August, 2013. It is not in dispute that a group of about eight or perhaps ten men went onto the land on Wednesday 28th and they included Mr Gilroy. The receivers do not accuse Mr Gilroy of doing damage but they say that persons in the intruders' group did substantial damage to fences and other property; they threatened and intimidated the security personnel who ultimately had to withdraw; and they erected barriers to prevent access. Some altercations took place between the group and the security men, including one in particular when a gate was forced closed. Gardaí from Naas attended at the scene, including Superintendent Ian Lackey.

On Saturday 31st August, 2013, a crowd variously estimated at between 100 and 300 came onto the land without consent and ejected the security personnel. Members of the crowd assaulted and threatened the security men - one photograph that is not disputed shows a Mr Corr, an employee of the LAS Group, being manhandled.

The plaintiffs claim that Mr Gilroy was a prime mover in these events. They allege that he was in contempt of the court order of the 5th March, 2012, by his involvement in organising the invasion of the land on Saturday 31st August, 2013, his presence there and participation in the events which included addressing the crowd. The receivers do not allege that Mr Gilroy was in contempt by his presence on the land on Wednesday 28th; they maintain that the significant thing that happened on that occasion was that Mr Gilroy was served with the court order containing the penal endorsement.

Mr Gilroy agrees that he was present on the land on both dates but he says that he was there by invitation and as an observer only and not as an organiser or active participant. He denies that he was served with the order properly or at all and that he was in contempt of court as alleged or at all.

The issues that fall to be determined accordingly are:

1. Was Mr Gilroy served with the court order having the appropriate penal endorsement under O. 41, r. 8 RSC on Wednesday 28th August?

2. If so, was he in contempt by his conduct on Saturday 31st August?

3. If so, what sanction, if any, is appropriate?

The motion is brought on affidavit evidence and the respondent, Mr Gilroy, submitted a number of affidavits. He served notice of cross-examination of all the plaintiffs' deponents and the application was heard over three days when they gave evidence and were cross-examined by Mr Gilroy, who is a litigant in person.

2. The Evidence
Superintendent Ian Lackey confirmed the contents of his affidavit of 15th January, 2014. He said that he observed Mr Aidan Devlin serving Mr Gilroy with the court order by touching his arm with the order and heard Mr Devlin telling him he had been served. Mr Gilroy let the order fall and said he did not recognise it.

When Superintendent Lackey arrived he had spoken with Mr Reynolds and Mr Devlin and allowed them to sit in the unmarked patrol car to conclude their discussion in relation to the court order. Superintendent Lackey said Mr Gilroy was one of the ringleaders of the group but they calmed down somewhat when Mr Naughton, the purchaser, was accompanied onto the land to inspect his livestock. Mr Gilroy, Mr Allen and Mr Squires were the three main people involved in the incident.

He saw between eight and ten protestors. He did not witness any assault on Mr Gilroy. He said that about fourteen Gardaí attended the incident but none of them noticed the alleged assault. When Mr Gilroy told him he had been assaulted, his advice was for him to call to the Garda Station to make a complaint. No one reported an assault on Mr Gilroy to him.

He was aware that Mr Devlin had a court order in his possession because he had seen it, Mr Reynolds having shown it to him when he arrived. He did not physically see the order that was served but believes it to be the court order he was shown.

In cross-examination, Superintendent Lackey said that he was asked to prepare an affidavit by Ms. O'Callaghan of the plaintiffs' solicitors, Eugene F. Collins, and accepted that he must have seen Mr Devlin's affidavit first. He could not recall seeing Mr Devlin's affidavit but insisted that if he had referred to it, he must have seen it.

On re-examination Superintendent Lackey confirmed that when he was preparing the affidavit he did not have the benefit of having seen the video before the court.

Mr Aidan Devlin referred to his affidavit of 3rd September, 2013. He is a director of the LAS Group, a property management services company contracted by the plaintiffs to guard the property at Brannockstown. Mr Devlin received a phone call from Mr Reynolds on 28th August, 2013, and organised for three staff plus himself to attend at Kennycourt Stud. He contacted the Gardaí to ask if they might dispatch some assistance and arranged to meet the car that was already there in Brannockstown. There was a group of eight to ten people on Mr McDermott's land, shouting abuse as they approached. He was aware of Mr Gilroy from his election campaign in the Meath East by-election and newspaper footage and it was apparent that he and Mr Allen were the leaders as they were shouting the loudest abuse and the others in attendance were deferring to them. None of the crowd would provide details as to who had carried out the damage and they became quite abusive.

He approached Mr Gilroy, said "this is for you. You've been served" and handed him the order, touched him on the arm with it and Mr Gilroy threw his hands in the air, the order fell and Mr Devlin continued walking up the road.

He agreed that after Mr Naughton had been on the land the crowd calmed down. He rejected all the allegations made by Mr Gilroy in relation to his behaviour on that day. Mr Devlin said that he at all times tried to be professional and courteous with Mr Gilroy. In relation to the alleged assault, Mr Devlin said that Mr Gilroy was behind him as he was talking to his colleagues and when he turned Mr Gilroy had a camera not six inches from his face. He pushed the camera away and that was the extent of the assault. He did not attack either Mr Gilroy or a freelance photographer who was there for a time.

When asked how he had come to see John Corr's affidavit, Mr Devlin said that Mr Corr produced a report which was sent to LAS Security. That was forwarded on to Eugene F. Collins solicitors who transcribed it into an affidavit and returned it to Mr Corr who then signed it. Mr Corr signed it on September 5th and Mr Devlin signed his on September 3rd. When asked how he had seen it if he had already completed his affidavit, Mr Devlin said he had seen a draft and that nothing was changed in the final version.

Mr Joseph Moran confirmed his affidavit of 1ih January. He saw Mr Devlin going towards Mr Gilroy and touching him with the order and saying "you've been served". There was a confrontational situation on site between the security and the protestors with the security staff being verbally abused. His impression was that Mr Gilroy and Mr Squires were a separate group because they seemed to refer to each other and knew each other. The ringleaders seemed to be Charlie Allen and Ben Gilroy. After the order was dropped a man picked it up and a number of people read it. He could not say if Mr Gilroy was one of them.

In cross-examination Mr Moran said he had not witnessed any assault on Mr Gilroy but had noticed Mr Gilroy acting very aggressively towards Mr Devlin, pushing him and trying to get at him, being forceful and more than boisterous. In his opinion, the document produced by Mr Devlin and served on Mr Gilroy was the court order.

His explanation for the similarity of his affidavit and that of Kieran Sands was that he had travelled with Mr Sands and they had both prepared their affidavits which were then arranged by their solicitors.

Mr Kieran Sands is another director of LAS Group. He did not see any of the other affidavits before preparing his own. He said Mr Gilroy let the order fall to the ground and walked away, putting his hands up in the air. He heard Mr Devlin say "This is for you, you're served". He saw the document prior to it’s being served, and understands it was the court order. It was a typed document with some writing on it. On returning to his car after accompanying Mr Naughton onto the lands he noticed some of the protestors reading the court order. He agreed with Mr Moran that the behaviour of the protestors was aggressive and threatening but he did not personally feel threatened or in fear. The only two people identified to him were Mr Allen and Mr Gilroy.

In cross-examination, Mr Sands said that he would partially agree that the reason he considered Mr Gilroy had been in charge of the protest was because he had been out on the road for most of the day passing remarks.

Mr John Corr testified about the events of Saturday, 31st August, 2013. His affidavit was sworn on the 5th September, 2013. He is a security operative with LAS Security and attended Kennycourt Stud on 31st August, 2013 but had not been there on the 28th. A group of protestors began assembling in the afternoon at the defendant's house, which he reported to Mr Devlin. Mr McDermott, the defendant, was on his porch with Mr. Gilroy and Mr Allen and a group of 20 or 30 people broke into the stable yard, which is part of the property for which the receiver had responsibility. By 3.30pm, the crowd was up to 45 people and they parked on the receiver's

land. One man approached himself and his colleague, Mr Donovan, and warned them that up to 200 more people would be arriving and that they should leave.

More protestors arrived shortly afterwards and tried to take photos. He said that some of the crowd, between 50 and 60, started walking towards him and he recognised Mr Allen and Mr Gilroy. He felt worried for his safety as he had never been in that position before. He was forcibly removed from the land onto the road and was punched, kicked and dragged from his car. He made it clear that Mr Gilroy did not physically assault him. He was then hit in the face with a placard while standing on the public road. His evidence was that Mr Squires in no way tried to assist him and was actually involved in pushing him off the land.

Mr Corr witnessed Mr Gilroy making a speech to the crowd and was then approached and told that if he did not hand over his car keys, it would be cut in half. The three people in charge were Mr Allen, Mr Gilroy and another man in front of Mr Gilroy. He was verbally abused and upset by the whole experience. Someone had affixed au-lock to the gates at the entrance to the farm. They protestors then produced a con saw and sawed through the u-lock. Some of the protestors were under the influence of alcohol and spat on Mr. Corr. He attended Naas Garda Station to make a statement but there was no one available to take it. He had not pursued this since but intended to do so with the Gardaí.

In cross-examination, Mr Corr said that Mr Gilroy had been chanting with the crowd. Mr Gilroy insisted he had not been one of the leaders of the protest and suggested Mr Corr had been antagonistic by wearing a scarf covering his face.

Mr Mark Reynolds is one of the joint receivers and plaintiffs. He arranged for copies of the injunction order of 5th March, 2012 to be erected on the land but many of them were removed. He first met Mr Gilroy with Mr McDermott in Eugene F. Collins' office in the summer of2012. The order of 5th March, 2012, was in existence at that time. The sale of the property closed in December, 2013 or January, 2014 with Mr Naughton purchasing the property.

Mr Reynolds said that he arrived at the farm on the 28th August as a result of a phone call from Mr Naughton. He phoned Mr McDermott to ask him to call off the protest but got no answer. He could not get through the main gate because a new lock had been fitted so he had to cross a wall. Mr Reynolds, two Gardaí, Mr Devlin and three security officers from the LAS group then entered onto the property to carry out an inspection. He found that padlocks on the gates had been tampered with, a boundary wall had been dismantled and was placed as a new barrier so as to prevent access to other parts of the property, and a tractor and trailer were parked in the stable yard. Other various works which had already been done to keep protestors out, such as erecting concrete barriers, a concrete wall and fencing, had been removed. The welding from a steel gate had been prised open. He tried to close the gate but was stopped by six individuals, including Mr Gilroy and Mr Allen.

He said that at no stage did anyone from the protest group say to him that they were confused as to which land was in the receiver's possession. The main spokespeople were Mr Gilroy, Mr Allen and Mr Squires and each of them knew that they lands they were trespassing on were in Mr Reynolds' possession. Mr Gilroy introduced him to Mr Allen and explained to him that the property was in a trust controlled by Mr Allen. Mr Gilroy was very vocal in answering questions, being verbally abusive and taking the lead and it was apparent to Mr Reynolds that Mr Gilroy was in charge of the group. Mr Allen refused to provide proof of his alleged ownership of the lands under his alleged trust.

Mr Gilroy encouraged the protestors to seek the assistance of the court in enforcing their order while they were still standing in the yard. This was before the court order document was served on Mr Gilroy. Mr Reynolds then advised the group, including Mr Gilroy, that there was a High Court order in existence dealing with trespass and they were breaching it. The situation was tense and it got to the stage where it was safer for him and his group to remove themselves. At that point the group attempted to close the gate to the yard behind them. It was a stressful environment with a lot of shouting and tension. He did not see Mr Gilroy carry out any damage to the farm. Two detectives arrived and Mr Reynolds briefed Detective Christine Brady, showing her a copy of the court order and informing her of the events. Mr Reynolds had brought copies of the order with him so he could pass them out to trespassers if required.

Mr Reynolds said that he dictated the penal endorsement on the court order to Mr Devlin in the Garda car which they had moved to in order to get away from the abuse and Mr Devlin transcribed it onto the order. Mr Reynolds got the endorsement over the phone from his solicitor. At that point, the protestors were walking across the property and were stationed outside the defendant's house. Some of Mr Naughton's cattle were sick and he had arranged for a trailer to remove the most unwell animals but they could not get down the laneway because of the protest.

In cross-examination, Mr Reynolds said that he had spent a lot of time writing his affidavit but he could not recall where he had signed it. He made some changes to the draft but not to the final section. Mr Reynolds conceded that the paragraph where he claimed Mr Gilroy had struck one of the security staff was incorrect - it should have stated that one of Mr Gilroy's group had struck Mr Devlin. Mr Gilroy submitted that the entire affidavit should be struck out because of this error.

Mr Gilroy suggested that the only reason Mr Reynolds had for suggesting he was the leader of the protest was the fact that they had met previously. Mr Gilroy denied that he introduced Mr Reynolds to Mr Allen saying that Mr Allen himself made himself known to Mr Reynolds. Mr Gilroy suggested that no one actually stopped Mr Reynolds and Mr Naughton from accessing the land to check the animals but Mr Reynolds disputed this.

There was other evidence that was not disputed. The plaintiffs and Mr Gilroy presented video footage and photographic evidence. In addition, there is a transcript of an interview Mr Gilroy gave to a local radio station on the 31st August, 2013. Mr Gilroy wished to refer to a later section of the interview and the plaintiffs produced an extended transcript to include the requested material. The transcript of that interview includes the following:

> Ben Gilroy: "Yeah, yeah, we did. As you know we took a farm back in Kildare there the other day and the security for the receivers broke back into the farm and hot-wired a digger...So it was fabulous today 300 people showed up and we parked our cars in a field beside the farm and we came in the back entrance....! have to be honest they unceremoniously dumped the two security men out on the road and their cars....
>
> .....it really was a fabulous day and remember we'd only 24 hours to organise this, we did not put up anything on social media until we were actually there and I just put up a little text up on Facebook so we kept it kind of quiet if you like and when you see the turnout on a Saturday from just a few phone calls within 24 hours it was really fabulous....
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> ....but that was one thing that was great today, I did not lead it, you know I stayed back with my camera and I just thought god look what we've started you know...

> Yeah but not only that, because the press and all were there it now raises another problem even if the security bet us and took it off us again who is going to buy the farm who could the receivers possibly sell it to, I'm quite convinced you could not give that farm away for nothing even if the owner gives his consent to sell it.
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> ....when we put out the message and just let's make a stand here...
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> ....I was expecting some sort of confrontation and I was just basically going to say if anybody showed me a court order I was going to show him the constitution and its basically like a game of poker..."

Mr Devlin, Mr Reynolds, Mr Sands, Mr Moran and Superintendent Lackey testified that Mr Devlin served a copy of the order on Mr Gilroy. Mr Devlin's evidence was that he served it by touching Mr. Gilroy's arm with it and saying to him "this is for you, you've been served", but that Mr Gilroy let it fall to the ground. Video evidence produced in court by Mr Gilroy shows that Mr Devlin extended the document to Mr Gilroy stating "That's for you Mr Gilroy. You've been served". Mr Gilroy, who was operating the camera, allowed it to fall to the ground. The video shows Mr Devlin, having served the document, walking away from Mr Gilroy. Mr Gilroy follows Mr Devlin saying "there's a lot of favouritism going on here isn't there?" to some gathered onlookers. There was handwriting on the document Mr Devlin showed to Mr Gilroy, as exhibited by a still from the video submitted by Mr Gilroy.

3. Mr Gilroy's affidavits

In an affidavit dated 18th November, 2013, Mr Gilroy denied all of the plaintiffs' claims in their entirety and stated that he was not involved in organising any of the events as set out in their affidavits. Mr Gilroy averred that he is not associated with the Rudolphus Allen Trust and the events on the 28th and 31st August, 2013, were organised solely by them.

It is Mr Gilroy's account that he and Mr Squires were invited to Kennycourt Stud on Wednesday 28th August, 2013, by a senior member of the Rudolphus Allen Trust, who claimed to be the new owners of the property. The invitation was extended to allow Mr Gilroy and Mr Squires "observe" the new owners taking control of the property. Mr Gilroy contends that on arrival at the property there was some interaction with the plaintiffs agents but most of it was good natured.

Mr Gilroy cites Mr Devlin as an instigator of trouble on the 28th August. He says that Mr Devlin was quite aggressive at all times and refused to identify himself to the assembled crowd. Mr Gilroy contends that "for the most part I stayed out on the road taking photos" and that it was while he was doing so that Mr Devlin allegedly assaulted him in front of several witnesses.

Mr Gilroy was invited later that week to the second event planned for Saturday 31st August, 2013 where the trust planned to take control of the property and ask the appointed security men to leave. Mr Gilroy attended but again averred that this was only as a spectator at the invitation of the new owners. It is Mr Gilroy's belief that the plaintiffs have brought this action against him as he has previously been involved in organising similar demonstrations, but in this case he was a mere observer. He also alleges that the plaintiffs were encouraged to target him by Eugene F. Collins solicitors because of a personal grievance.

Mr Gilroy further avers that all of the plaintiffs' witnesses were "coached" when compiling their affidavits and they conspired to cause him harm, defame him, to cause distress to him and his family and to politically assassinate him. Mr Gilroy believes this conspiracy was orchestrated because of his political beliefs. He states that the plaintiffs purposely chose not to serve him with papers but rather advertised the proceedings in national newspapers to embarrass him, which he says is an abuse of process.

Mr Gilroy also alleges that his arrest and detention was unlawful. In relation to the property at Kennycourt Stud, he states that some parts of the land are covered by the court order of the 5th March, 2012, while others are not and it is unclear which parts of the land are out of bounds as there are no directional signs to that effect on the property.

In his affidavit of the 18th November, 2013, Mr. Gilroy avers that the order of Murphy J. is *void ab initio* and should be set aside. He claims the plaintiffs lack standing to bring these proceedings because their appointment was based on a false instrument. He argues that the defendant was taken advantage of and was denied his personal rights under Article 6 of the European Convention on Human Rights.

In a supplementary affidavit dated 5th February, 2014, Mr Gilroy avers that having reviewed the camera footage of the service of the court order of 5th March, 2012, he has *prima facie* evidence that he was not served properly, duly or at all. He maintains that Mr Devlin assaulted him and that Mr Colin Keegan, a freelance photographer, witnessed this. He approached Superintendent Lackey to complain about the alleged assault and it was then that Mr Devlin "appeared to come" at him. His evidence is that to avoid confrontation and keep the peace he withdrew from that group.

In summary, Mr Gilroy avers that service of the order was not effected because;

> 1. The plaintiffs' deponents could not say that the document attempted to be served was the court order;
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> 2. None of the deponents were truthful as to the behaviour of Mr Devlin;
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> 3. No deponent was able to recall the words spoken by Mr Devlin when he attempted service;
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> 4. All of the deponents suggested Mr Gilroy purposely allowed the order to fall to the ground. Mr Gilroy's position is that whatever Mr Devlin attempted to serve fell by itself and he had no information about what it was or what happened to it.

Mr Gilroy contradicts Mr Moran's evidence, stating that he did not stand in a group reading the court order at any stage. He also avers that Superintendent Lackey's affidavit "lacks candour" and is a deliberate attempt to pervert the course of justice and that he has "shown his willingness to falsify evidence or insert beliefs, which have no basis in fact or reality, into an affidavit in order to get the result he wants..."

4. Submissions

Mr Gilroy's first submission was that all of the plaintiffs' deponents perjured themselves in the course of the hearing as they each passed off a lie as a mistake. The affidavits are not a true reflection of the events in question. The issues are perjury, false statement and misstatement, misleading the court with evidence in a standard that should be to criminal standard and falls short. He suggests that the plaintiff's solicitors wrote all of the affidavits which is why the deponents were confused about certain details in court. More specifically he submits that;

> (i) Superintendent Lackey did not prepare his affidavit.

(ii) In relation to John Corr's affidavit, Mr Corr said he had been wearing his security badge at all times as permitted to by legislation but clear from the photos that this not the case.

(iii) It was impossible for Aidan Devlin to have seen John Corr's affidavit before he wrote his own because Mr Corr did not write his until two days afterwards. Mr Devlin also said he swore his affidavit in his office in Mulhuddart but on the back of the summons it states that it was sworn elsewhere.

(iv) Mark Reynolds did not know where he had signed his affidavit - he was sure it was at a solicitor's office but he wasn't sure which one. He said it definitely was not sworn at his solicitors' office but on the back page it states that it was sworn there.

Mr Gilroy did acknowledge that there was an attempt to serve him with something after Superintendent Lackey arrived but Mr Gilroy thought he was "being set up" for another assault and threw his hands up to protect himself. He also submits that he did feel paper hitting his arm but that neither he nor Superintendent Lackey saw where it went. Mr. Gilroy submits that the fact that Superintendent Lackey was the one serving the order and did not see where it eventually ended up showed that he had not been properly served. He submits that he did not hear Superintendent Lackey say "you're served" after. He walked away from them because he thought he was being "set up" and at no stage did he hear Mr Devlin refer to a court order.

He further alleges that Mr Devlin knew he had not been properly served and that Mr Allen had the opportunity to clarify the service but did not do so. He submits that the purported court order was a handwritten document with corrections made to it. This, he says, was not the official court order and therefore he was not properly served because Mr Moran gave evidence that the order was a typed document with the heading of a court document.

Mr Gilroy submits that he has shown there is ambiguity as to whether or not he was served and what exactly he was purported to have been served with and that the Rules of the Superior Courts do not allow for ambiguity or uncertainty. His claim is not that he did not read the order, it is that he has no knowledge of being served with an order. Order 121, rules 1 and 6 RSC state:-

"1. In this Order, unless repugnant to the context, "document" includes a pleading, notice, affidavit or order.

6. Where personal service of any document is required by these Rules or otherwise, service shall be effected as nearly as may be in the manner prescribed for the personal service of an originating summons."

Order 9, r. 3 states:-

"3. Personal service shall be effected by delivering a copy of the summons to the defendant in person, and showing him the original or duplicate original."

Mr Gilroy submitted that the plaintiffs' deponents misled the court with their testimony; that the proceedings were tainted because Mr Eamon Naughton did not swear an affidavit before the court and because the withholding of the security reports meant the full story could not be open to the court.

Mr Gilroy submitted that he would need access to all of the documents relating to the contract for sale between the bank and the deed that put Mr Naughton in charge over the lands. Mr Gilroy also requested access to the contract of sale and all associated documents, including; schedules; the security reports; the VAT and insurance numbers of Mr Reynolds and Mr Cran; the deed of transfer to Mr Naughton; the deed of appointment of the receivers; and, correspondence between Mr Reynolds and his solicitors at the time the reports were going back and forwards.

Relying on *Rondel v. Worsley* [1969] 1 A.C. 191, Mr Gilroy submits that because of the inaccuracies, falsehoods and misstatements in the affidavits he is within his rights to ask for copies of the reports because none of the deponents were clear as to what they were talking about and they did not seem to know whether they had written an affidavit or a security report.

He also submitted that the following cases support his position in relation to void and irregular proceedings, *i.e.*, that a void order has no effect and is erroneous and contrary to law; *Fry v. Moore* (1889) 23 Q.B.D. 395; *MacFoy v. United Africa Company Ltd* (1961) 3 All E.R.; *Bellinger v. Bellinger* [2003] U.K.H.L. 21.

With reference to his submission in relation to *locus standi*, he said that Mr Reynolds signed the contract for sale on 7th January, 2013, as an agent for the bank as mortgagee in possession and he could not act in that capacity as well as an agent for the defendant at the same time, on the assumption that the Bank would not be involved in fraud whilst signing a contract. The court order would have been nullified at that point because Mr Reynolds could not be receiver and agent for the bank at the same time.

Mr Gilroy submitted that Eugene F. Collins solicitors and the receivers and the bank have committed several offences against the Criminal Theft and Fraud Act and that Eugene F. Collins encouraged the plaintiffs to target Mr Gilroy because he had "beaten them in court" a number of times. He suggested there was a conspiracy against him and instead of serving him papers, advertisements were taken out in newspapers and an arrest warrant was obtained based on flaky evidence and affidavits.

It is Mr Gilroy's belief that the plaintiffs' deponents colluded and conspired to cause him harm and defame him. He reviewed the camera footage of the alleged service and submits that he was not served properly, duly or at all.

5. Plaintiff's Submissions

The plaintiffs submitted that the standard of proof required in this case is that of beyond reasonable doubt, which they argued, has been met. In *Stancomb v. Trowbridge UDC* [1910] 2 Ch. 190, Warrington J. outlined the law on this standard of proof at p. 194:

"In my judgment, if a person or corporation is restrained by injunction from doing a particular act, that person or corporation commits a breach of the injunction, and is liable for process for contempt, if he or it in fact does the act, and it is no answer to say that the act was not contumacious in the sense that in doing it, there was no direct intention to disobey the order."

The plaintiff submits that this standard is essentially one of strict liability and the absence of an intention to disobey will not excuse a breach of an order.

Although Mr Gilroy claims that he was not served and did not know the terms of the order, the plaintiff submits that having been

served with a copy of the order, which was penally endorsed, it is no defence to say that he did not read it, as per *Re Witten* (1887) 4 T.L.R. 36:

> "If a man did not choose to see the term of the order made against him, and chose to act without seeing the terms of the order, he must take the consequences. Carelessness in failing to make himself acquainted with the terms of the order was as gross as contempt as if he had disobeyed the order."

The plaintiffs submit that the order was served on Mr Gilroy in line with the RSC requirements. This application is taken pursuant to O. 44 RSC. Rules 3,4 and 6 provide:

> "3. Save in respect of committal for contempt in the face of the Court or committal under rule 4 no order of attachment or committal shall be issued except by leave of the Court to be applied for by motion on notice to the party against whom the attachment or committal is to be directed.
>
> 4. When the person against whom an order of attachment is directed is brought before the Court on his arrest, the Court may either discharge him on such terms and conditions as to costs or otherwise as it thinks fit or commit him to prison for his contempt either for a definite period to be specified in the order, or until he shall purge his contempt and be discharged by further order of the Court.
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> 6. The Court may make an order of attachment where the application is for an order of committal, and vice versa."

Order 41, r. 8 makes the requirement for service of an order explicit in the case of every judgment or order requiring a person to "do any act thereby ordered".

As the order in this case is prohibitory and does not require any person to do any act ordered, the provisions of O. 41, r. 8 do not apply as per *Murphy v. Willcocks [*1911] 1 I.R. 402. The evidence is that the order and penal endorsement were served on Mr Gilroy. He had sufficient notice of the order which makes him subject to the jurisdiction of the court under O. 44 RSC. Mr Michael Howard SC, for the plaintiffs, submitted that Aidan Devlin, Superintendent Lackey, Joseph Moran and Kieran Sands gave evidence that Mr Gilroy was served with the order. Mr Gilroy did not initially claim that service of the order had not been effected. In his first substantive affidavit of 18th November, 2013, he made no reference to his claim that service was not properly effected. The video clip evidencing the service is also before the Court.

In addition to the order, the motion has to be served on the respondent as per *Laois County Council v. Scully* [2009] 4 I.R. 488. In that case Peart J disagreed that personal service of a motion was required at p. 504:

> "There is no perceivable injustice in my view in a situation where an order made is served upon a person's solicitor at a time when that solicitor is still acting for the person....
>
> ....the Rules themselves have not required service to be personal service"

As to the notice of the proceedings, counsel submitted that motion papers were served on Mr Gilroy by leaving them at his residential address and notice of this application was published in the national press on foot of an order of the High Court of 10th September, 2013. An arrest order for the second defendant was made on 13th September, 2013 and executed on 1st November, 2013. Mr Gilroy was arrested because he did not appear before the court, despite knowing that the application was progressing. Despite Mr Gilroy's protestations about these proceedings, the plaintiff submits that:

> 1. Mr Gilroy claims he was not served with the motion papers yet he swore an affidavit with the correct title and record number of the proceedings.
>
> 2. The exhibit to the affidavit was a newspaper clipping from the Cork Examiner outlining the events in court on 10th September, 2013. The article states the return date for the motion.
>
> 3. Mr Gilroy did not attend court on 13th September, despite the Examiner article.
>
> 4. Catherine O'Callaghan exhibits two advertisements from the Irish Times and Irish Independent with her affidavit which were published on the 12th September, 2013.
>
> 5. Ms. O'Callaghan posted a notice of the application on Mr Gilroy's Facebook page on the 12th September, 2013.

The plaintiff submits that having regard to the above, it is clear that Mr Gilroy chose to wholly disregard the court order.

They submit that from all of the evidence submitted, it is clear that Mr Gilroy, with the third respondent, was involved in a concerted effort to frustrate the receiver's work. All of the affidavits and evidence given to the Court show that Mr Gilroy breached the terms of the court order by interfering and frustrating the efforts of the receivers. The respondents occupied the property after the receivers were excluded. They trespassed and refused admittance to the receivers in further breach of the order.

It is submitted that the elements necessary for establishing contempt have been proven. The plaintiffs do not accept that it is necessary to show that Mr Gilroy intended to breach the order but say that the evidence submitted clearly shows that he knew he was acting in breach of it.

> 1. Mark Reynolds gave evidence that Mr Gilroy knew that he was interfering with the receivers' possession of the property.
>
> 2. Mr Gilroy had been advising the defendant, long before the incident in August 2013.
>
> 3. Mr Gilroy was advised that he was trespassing. He was an active participant in the events of 31st August, 2013. The court can be satisfied beyond a reasonable doubt that he knew that his actions on the 28th and 31st August were in breach of the order of the court.

In relation to Mr Gilroy's submission that the order of the 5th March, 2012, was *void ab initio*, the plaintiff argues that is incorrect. The order remains binding and valid until set aside by a court with jurisdiction to do so if required as outlined in *Isaacs v. Robertson*

[1985] A.C. 97, at pp. 102- 103 and confirmed in *M v. Home Office* [1992] 1 Q.B. 270:

> "An order which is made by a court with unlimited jurisdiction is binding unless and until it is set aside. Common sense suggests that this must be so. Were it otherwise court orders would be consistently ignored in the belief, sometimes justified, that at some time in the future they would be set aside. This would be a recipe for chaos."

In his affidavit of 5th February, 2014, Mr Gilroy contended for the first time that he was not properly served with a copy of the court order of 51h March, 2012. While Mr Gilroy claims he did not read the order served on him and is not therefore bound by it, the plaintiff submits that this should be disregarded. No person can be permitted to avoid the consequence of a court order because of their failure to read it.

As to a possible sanction, in *Shell E & P (Ireland) Ltd v. McGrath* [2007] 1 I.R. 671, Finnegan P, having considered the judgment of O'Dalaigh CJ in *Keegan v. DeBurca* [1973] I.R. 223 at p. 227, concluded at p. 687:

> "On a review of the cases I am satisfied that committal for contempt is primarily coercive, its object being to ensure that court orders are complied with. However in cases of serious misconduct the court has jurisdiction to punish the contemnor. If the punishment is to take the form of imprisonment then that imprisonment should be for a definite term. Insofar as O'Dalaigh J. in *Keegan v. De Burca* [1973] I.R. 223 and in In *Re Haughey* [1971] I.R. 217 held that the objective in imposing imprisonment for civil contempt was coercive and not punitive, I have regard to the facts of each of those cases. In each case he was concerned with criminal contempt and for that reason I regard his definition of civil contempt to be obiter; while the definition was sufficient for his purposes, it is not completely accurate. More accurate is the proposition in *Flood v. Lawlor* [2002] 3 I.R. 67 which left open the question as to whether civil contempt is exclusively, as distinct from primarily, coercive in nature. In *Ross Co. Ltd. v. Swan* [1981] I.L.R.M. 416, O'Hanlon J. was of the view that in an appropriate case the court must exercise its jurisdiction to commit for contempt not merely for the primary coercive purpose but in order to vindicate the authority of the court and in which case the court has jurisdiction to make a punitive order."

This reasoning was recently cited by Fennelly J. in *Dublin City Council v. McFeely & Ors* [2012] IESC 45.

The plaintiffs submit that the evidence establishes that Mr Gilroy, having been served with a copy of the order of 5th March, 2012, continued to act in breach of its terms and is guilty of contempt of court.

6. Contempt

An allegation of contempt of court must be proved beyond reasonable doubt. The court's jurisdiction is usually employed to enforce a court order which is actually being breached at the time of the motion. A defendant or another person who is aware of the terms of the court order, very often an injunction, is required to obey according to the court's direction or prohibition. Where there is a proven breach, the court acts to ensure that its order is complied with and that may give rise to the imprisonment of the party refusing to comply.

Contempt jurisdiction also arises in respect of past behaviour by a person who is not at the time of application in breach of the order but who is proven to have been in contempt on a past occasion by defying the terms of the order made by the court. In that situation, which is the one that arises in the present application, the court imposes a sanction to mark its disapproval of the respondent's conduct in defiance of the order. In such a case the sanction is not primarily coercive and is essentially punitive Its rationale and justification are to uphold the rule of law and the administration of justice, to demand respect for the court's orders, to indicate the seriousness of the defiant conduct, to deter the respondent from repetitious behaviour and to discourage others from disobeying orders of the court.

As Finnegan P said above in *Shell E & P (Ireland) Ltd v. McGrath*:

> ".. .in cases of serious misconduct, the court has jurisdiction to punish the contemnor. If the punishment is to take the form of imprisonment then that imprisonment should be for a definite term."

7. Discussion

The plaintiffs confine the allegation of contempt of court by way of breach of the order of the 5th March, 2012 to Mr Gilroy's participation in the events of Saturday 31st August, 2013, at Kennycourt Stud. Their case is that he was served on Wednesday 28th, but nevertheless acted in flagrant breach of the order on the 31st.

On the question of service, the evidence is overwhelming and it is established beyond reasonable doubt that Mr Gilroy was served. Mr Devlin's evidence and the other witnesses' evidence are not contradicted by Mr Gilroy in any material respect. There is the video evidence of Mr Devlin approaching Mr Gilroy and saying "this is for you Mr Gilroy" and "you've been served". Then there is Mr Gilroy's still from the video, a photograph of Mr Devlin showing the document to Mr Gilroy with the handwriting on it.

The reason why Mr Devlin approached Mr Gilroy on this occasion was in order to serve him with the court order and the evidence is that Mr Devlin and Mr Reynolds sat into the back of the unmarked Garda car with the consent of the Superintendent where they wrote the penal endorsement as it was dictated over the phone from the plaintiffs' solicitors. Taking all the evidence into account, it would be perverse to decide that the evidence of service was deficient or that it admitted of any reasonable doubt. It is practically confirmed by the assertions in court, the video and the photo still from it, produced by Mr Gilroy himself.

Mr Gilroy says that he has demonstrated irregularities, inaccuracies and lies in the affidavits, as a result of which the affidavits must be dismissed without further consideration and the whole application must therefore be disallowed. He draws attention to averments concerning the time and place of the swearing of the affidavits and internal references to particular paragraphs, which he says are impossible and demonstrate untruthfulness and/or inaccuracy. However, it is clear to me that much of this line of questioning was based on a misunderstanding of the process of production of affidavits and gives little basis for demonstrating that there is any uncertainty in regard to the central issues in the case. I do not accept that the witnesses were untruthful or that Mr Gilroy went anywhere close to demonstrating the conspiracy that he was alleging.

By demonstrating that a witness is wrong about the time or place of the swearing of an affidavit filed on behalf of an opposing party, a person does not therefore become entitled to have the whole of the contents of the affidavit dismissed out of hand. I am afraid that much of Mr Gilroy's exploration of these issues was of an extremely technical and unmeritorious nature, although it did demonstrate some considerable ingenuity at times. And it was essentially irrelevant having regard to the nature of the issues arising

on the motion, the limited nature of the matters that did arise for consideration and the extensive undisputed evidence that was available in respect thereof. In particular, the video evidence that was not in dispute represented objective confirmation in significant, and indeed impressive, detail of the averments made by the plaintiffs' deponents, whose affidavits were prepared without having the benefit of this video material.

Mr Gilroy's general submissions are no more material than his quibbles about service. It was not open to him to question the entitlement of the plaintiffs to bring their action in this court. That is the same as arguing that the order is or might be void. Neither is there any substance in the point about the caretaker's agreement, which is of course just what it says and which does not confer any interest or title in land. The order of this court was binding on him. He was unable to advance any basis for thinking that the order was void, as he asserted, but even if there was some ground for challenging the court order, that would not excuse defiance of the injunctions.

It is unnecessary to give detailed discussion to other points made by Mr Gilroy and they may be disposed of by way of brief comment. His claim that the witnesses conspired to do him harm is unfounded. There is no evidence of any malice directed at Mr Gilroy and in fact, it seems clear to me that the witnesses were doing their jobs in a professional manner. The mode of advertising the proceedings was adopted in an attempt to effect service on Mr Gilroy and was not an abuse of process. He was under no misapprehension in my view, as to the area of the land under the control of the receivers and the purpose of the invasion was to retake possession from the plaintiffs' security personnel.

Since Mr Gilroy was served with an endorsed court order on the previous Wednesday, his presence on the land on Saturday 31st August, 2013, was in breach of the order. His presence is not disputed and it follows that he was in contempt of the order by disregarding its injunction against trespassing. It is irrelevant that he claims to have been there only as an observer. The question therefore as to the nature of Mr Gilroy's presence on the site concerns the extent of the breaches of the injunctions in regard to how many of the specific injunctions he breached and as to the character of the breaches, *i.e.*, whether active or passive, whether he was encouraging others, whether he was in fact an organiser of the whole event and of the various modes of breaching the order. Was he doing this himself or was he inciting others also?

On Mr Gilroy's own account of his involvement in the radio interview, he was very much more than an observer, he was directly engaged in organising the attendance of a large number of protesters with the intention of interfering with the lawful activities of the receivers. He was a prime mover in the events on this account and was in contempt under the various headings of conduct that were enjoined by the court.

Mr Gilroy submitted that his radio interview should be interpreted as being analogous to how a supporter might speak of his team and use the words "we" and "our" without having any closer connection than being a fan. This, however, is not credible on any objective reading of the text. There is also the other evidence of events on the Wednesday and the Saturday that confirm and themselves establish independently the central role played by Mr Gilroy in the protest. His previous advisory function with the defendant in dealing with the receivers is relevant. His address to the crowd was consistent with such a role. The fact is that all the evidence before the court on this motion, except that of Mr Gilroy, demonstrates his central and important role in the breaches of the court's injunctions. Against the background of the evidence of the plaintiff's witnesses and the video material as to the Wednesday 28th August, 2013, events, Mr Gilroy's radio interview is wholly consistent.

The conclusion follows as proven beyond reasonable doubt that Mr Gilroy's behaviour on Saturday, 31st August, 2013, amounted to breaches of all the injunctions in the court's order of the 5th March, 2012.

The contempt of court committed by the respondent was flagrant and serious. The situation that Mr Gilroy was instrumental in bringing about on the Saturday was tense and dangerous. Mr Corr, the security man on duty, was assaulted and he and his colleague were threatened and harassed. Having said that, it has to be acknowledged that the situation could have been a lot more violent and the fact that it did not develop in that way is a result of the prudent and sensitive response by the Gardaí and the security company and it is also, one would hope, an indication of some degree of restraint on the part of the organisers and participants and not just a matter of lucky chance.

There is other ground of mitigation. The sale of the land did proceed to a successful conclusion. Although Mr Gilroy was a prime mover in the disruptive events, other parties played leading roles in the resistance to the receivers. They included Mr McDermott, the mortgagor whom Mr Gilroy was advising, and Mr Allen, who claimed entitlement to the property under a trust that was utterly meaningless in law but whose purpose was not to impress a court or a lawyer. Those men appeared in court and purged their contempt and were not further sanctioned.

At the conclusion of the evidence in this matter, I said that I would rule on the liability issue, so to speak, and if I found as I have now done, I would then give Mr Gilroy an opportunity of making submissions as to the sanction to be imposed. Before inviting him to do that, I notify him that in all the circumstances of the case and having regard to the mitigating features, I am considering punishments up to and including a suspended sentence of imprisonment but not actual imprisonment. Obviously, the penalty will only be decided after hearing what Mr Gilroy submits but I think it right to let him know the range of punishments that he is facing.