

THE HIGH COURT

CHANCERY

[2006 No. 245SP]

BETWEEN:

CARLISLE MORTGAGES LIMITED

PLAINTIFF

-AND-

EUGENE COSTELLO

DEFENDANT

EX TEMPORE JUDGMENT of Mr. Justice Twomey delivered on the 12th January, 2018.

1. The background to this matter is that there has been a long running dispute between Mr. Costello and Carlisle Mortgages Limited ("Carlisle") regarding a farm in Coolfree, Taughmaconnell, Ballinasloe, County Roscommon which was formerly owned by Mr. Costello (the "Farm"). The Farm is now owned by Carlisle as a result of Mr. Costello's failure to repay borrowings secured on the Farm. Carlisle has agreed to sell those lands to a third party for €225,000 but Mr. Costello has sought to obstruct the sale of the Farm and as a result an application has been brought by Carlisle to have Mr. Costello imprisoned for contempt for his breach of court orders.

2. The motion before this Court is for the attachment and committal of Mr. Costello arising from his failure to comply with the orders of the High Court given the 5th July, 2017, the order for possession of the 20th November, 2006 and the order of 11th October 2010 (although the Notice of Motion incorrectly refers to the 10th October, 2010) and breach of an undertaking given to the High Court when Mr. Costello was purging his previous contempt on the 17th July, 2014.

3. To say simply that this is a '*long running dispute*' fails to accurately portray the attempts that Mr. Costello has made to frustrate Carlisle in its efforts to realise its security over his former Farm. The first order of possession of the Farm in favour of Carlisle was made by Dunne J. over 11 years ago on 20th November, 2006.

4. Since the hearing before this Court is a contempt hearing, it is also relevant to note that the first application to attach and commit Mr. Costello for breach of a court order (to remove his cattle from the Farm) was over 7 years ago on the 11th October, 2010.

5. In this context, it is also significant to note that Mr. Costello was imprisoned for a number of days for contempt (with a coercive objective, and therefore coercive contempt) by McGovern J. for breach of the court order of possession, over 3 years ago on the 15th July, 2014. This coercive attempt was initially successful in achieving its objective of getting Mr. Costello to remove his animals from the Farm and he purged his contempt by doing so. Sworn uncontroverted evidence was provided at this hearing by Mr. Eoin Martin of Lyons that at the hearing before McGovern J. at which Mr. Costello purged his contempt, he gave an undertaking to the Court that no further cattle would be allowed on the Farm.

6. It almost beggars belief therefore that after all this, Mr. Costello is again before this Court for contempt of court in relation to his attempts to frustrate Carlisle in realising their security. In this instance it is in connection with Mr. Costello's alleged contempt of court arising, *inter alia*, from his breach of this Court's order of the 5th July, 2017. That court order relates to Mr. Costello's attempts to frustrate the sale of the Farm by putting his cattle yet again on that Farm. Mr. Costello gave sworn evidence to this Court on the 12th December, 2017, confirming that he had put his cattle on the Farm in July of 2017. This was why this Court had on the 5th July, 2017, ordered him to remove his cattle and to not do anything which would obstruct the sale of the Farm.

7. The Court order of the 5th July, 2017, provides, *inter alia*, for:

"An Interlocutory Order to restrain the Defendant [Mr. Costello] his servants and/or agents and/or anyone having Notice of the Order or anyone acting in consort with him from obstructing the sale of the lands by the Plaintiffs [Carlisle]

An Order to effectively forthwith remove his animals from the lands."

To summarise therefore, some three years after Mr. Costello purged his contempt and was released from prison by removing his animals from the Farm, in order to comply with the court order of McGovern J. dated 11th October, 2010, and after he gave a court undertaking not to put any cattle again on the Farm, he was in July of 2017 once again allowing his animals on the Farm in breach of that court order and this Court's order of the 5th July, 2017.

8. However, this is not all. Despite this Court's order of the 5th July, 2017, Mr. Costello through his solicitor, Mr. Paul Kelly, in or around 6th October, 2017, sent a letter to the solicitors for Carlisle which states, insofar as relevant, that:

"Your client has no entitlement to advertise *my client's lands* for sale or to sell the lands. [...] Your client or its agents have no right to enter *my client's lands* without his permission. However, in the circumstances, *my client will facilitate an inspection of the lands* at 5.00pm today, so your client can see for itself there are no cattle on the lands. Kindly confirm by return if you wish to attend *my client's property* at 5.00pm today to carry out this inspection, and who will be attending on behalf of your client." [emphasis added]

9. It is important to remember that this letter was sent to Carlisle, the owner and seller of the Farm, by Mr. Costello, a person who has no interest in the Farm and who is under a court order not to obstruct the sale by Carlisle of the Farm. Yet Mr. Costello is purporting to not only own the Farm but is also requiring Carlisle, the owner and seller of the Farm, to make an appointment with Mr. Costello to see the lands that it is selling. To say that this is surreal is an understatement.

10. When one reads this letter, one might think that Mr. Costello is operating in world where court orders do not apply to him.

11. This letter is just another example of the brazen disregard for court orders which Mr. Costello has exhibited since 2006, culminating in his being imprisoned for contempt in 2014. It appears that Mr. Costello will stop at nothing to prevent the sale of his

former farm.

12. If this letter does not constitute conclusive evidence of Mr. Costello's breach of this Court's order of 5th July, 2017, by obstructing the seller of the Farm from selling the lands, nothing does in this Court's opinion. It is also the case that Mr. Costello gave sworn testimony to this Court that he only removed his cattle from the Farm after this Court's order of the 5th July, 2017. This represents further evidence, if any was needed, that in and around July of 2017 he breached the court order that he remove his cattle from the Farm, which court order dates from as long ago as 11th October, 2010, as well as the court undertaking given on the 17th July, 2014 to McGovern J.

13. Thus, this Court has little hesitation in finding that Mr. Costello is in clear breach of the court order of 5th July, 2017 as well as the court undertaking of the 17th July, 2014, and that this amounts to contempt of court.

14. Furthermore, in the course of a hearing before this Court on the 12th December, 2017, the affidavit of Mr. Costello dated 4th December, 2017, was opened to this Court in which he seeks to answer the claims against him regarding his breach of court orders by averring:

"I wish to enter into without prejudice negotiations with [Carlisle] in full and final settlement, and to resolve the dispute in relation to interest. I want to get on with my life and rearing my two young children, who are aged 5 and 7. The family farm is our means of livelihood. I wish to resolve matters with [Carlisle] in full and final settlement.

I say and believe that any proposal to sell any land is difficult to realise without the cooperation of [Carlisle] and unless [Carlisle] agrees to a figure in full and final settlement and agrees to vacate and remove the charges it has registered on the lands in the Land Registry."

These averments show Mr. Costello continuing to labour under the misapprehension that he has some kind of rights in relation to the Farm which merit without prejudice negotiations and that he has some kind of role in the sale of the Farm.

15. Similarly, Mr. Costello gave sworn oral testimony to this Court on the 12th December, 2017, in which he made it clear that he was not going to facilitate the sale of the Farm for the price of €225,000 agreed by Carlisle.

16. Therefore, although not determinative of this Court's decision as to whether to make an order of punitive contempt (as distinct from coercive contempt) against Mr. Costello for his past actions, it is relevant to note that this most recent evidence from Mr. Costello makes it clear that as regards his future actions, he has no intention of complying with this Court's order of 5th July, 2017.

17. In all of the circumstances, this Court concludes that it has no option but to reluctantly imprison Mr. Costello for punitive, as distinct from coercive, contempt of court for his breach of the Court order of 5th July, 2017 as well as the court order of the 11th October, 2017 and his court undertaking of 17th July, 2014, for a period of seven days, particularly when one considers that his previous imprisonment for contempt, in that case coercive contempt which was purged by his removal of the cattle, has not lead to any change in his respect for court orders. Failure by this Court to make an order of punitive contempt would, in this Court's view, simply bring the judicial system and the very rule of law into disrepute since it would mean that litigants would not suffer any consequences from their failure to comply with court orders.

18. If upon his release from prison, Mr. Costello continues to breach the court orders, the plaintiff has liberty to apply to commit Mr. Costello to prison for a further period, if his future actions warrant such an application.