

THE HIGH COURT

[2017/4898 P]

BETWEEN

TOM KAVANAGH

PLAINTIFF

AND

TOM MORRIN

DEFENDANT

JUDGMENT of Ms. Justice Reynolds delivered on the 13th day of December, 2018**Background**

1. This is an application by Notice of Motion for an order pursuant to O. 44, r. 3 of the Rules of the Superior Courts and the inherent jurisdiction of the Court granting liberty to the plaintiff to issue an Order of Attachment of the defendant by reason of his failure to comply with an order of the High Court (Twomey J.) made on 28th July, 2018.

2. Pursuant to the said Order, the defendant, his servants or agents and any other persons having notice of the said Order, were directed to:

"(a) Immediately surrender vacant possession of the property described in the Schedule to the Plenary Summons herein ("The Property") to the Plaintiff;

(b) Remove all vehicles, machinery and other chattels from the Property;

(c) Remove all livestock and other animals from the Property;"

3. The Order further provided that the defendant, his servants and/or agents and all other persons having notice of the said Order, were prohibited from:

"(a) Impeding and/or obstructing the Plaintiff, his servants and/or agents in their efforts to take possession of the Property;

(b) Impeding and/or obstructing the Plaintiff, his servants and/or agents in their efforts to secure the Property;

(c) Impeding and/or obstructing the Plaintiff, his servants and/or agents in their efforts to sell the Property;

(d) Trespassing or entering upon, or otherwise interfering with, the Property without the prior written consent of the Plaintiff;

(e) Collecting or attempting to collect any payments or income in respect of the Property;

(f) Holding themselves out as having any entitlement to sell, rent, or otherwise grant any entitlement to possession of, the Property;

(g) Making contact with any prospective tenant or purchaser of the Property, without the prior written consent of the Plaintiff;"

4. Finally, the Order directed the defendant, his servants and/or agents and all other persons having notice of the said Order to:

"(a) Deliver up to the Plaintiff all keys and/or other security and access devices pertaining to the Property;

(b) Provide details to the Plaintiff, including all relevant documentation, of all purported leases, licenses or other arrangements providing for occupation of the Property by any party in the period since 21 April 2006;

(c) Provide details to the Plaintiff, including all relevant documentation, of all payments received or receivable in respect of the Property in the period since 30 September 2013;"

5. The receivership property described in the Schedule to the Order is:

"ALL THAT AND THOSE the lands, hereditaments and premises contained and comprised within Land Registry Folio 15669F of County Kildare"

6. The Court granted a stay for a period of one month on the said Order.

The appeal

7. Whilst the defendant filed a Notice of Expedited Appeal against the Order on 25th August, 2017, no application for a stay has been made. The Order therefore remains effective from the date of expiry of the stay, i.e., some fifteen months ago.

8. The plaintiff asserts that the purported grounds for appeal are unmeritorious and filed a Notice opposing all orders sought.

9. Since the appeal was first listed before the Court of Appeal for directions on 12th January, 2018, the defendant has defaulted on numerous occasions to file his submissions. The submissions were finally lodged on 27th July, 2018, some six months after they had been initially due.

10. A hearing date for the appeal has now been assigned in December 2019.

The plaintiff's application

11. The plaintiff's motion was first returnable before the Court on 9th July, 2018 at which the time the defendant was legally represented. Unfortunately, due to lack of judicial resources, the matter was not reached and was adjourned to the 28th November.
12. The factual position grounding the plaintiff's application is set out in the plaintiff's affidavit dated 25th April, 2018, wherein the plaintiff avers that the defendant remains in occupation of and continues to farm the lands, in breach of the said Order. It further highlights the difficulties incurred by security firms engaged by the plaintiff with a view to securing vacant possession of the property.
13. Supporting affidavits were also sworn by servants or agents of K-Tech Security and Animal Security Limited at that time outlining the obstructive behaviour of the defendant when they attended at the property in an effort to secure same.
14. In January 2018, the defendant had written to the plaintiff disputing the validity of the said Order and making allegations against various state bodies. A draft Statement of Claim in proceedings that he proposed to issue against *"The Irish Government, The Irish Judiciary, the Irish Central Bank and The Irish Garda"* in the European Courts of Human Rights was enclosed.
15. The defendant was advised by letter dated 22nd February, 2018, that due to the ongoing breach of the said Order proceedings to attach and commit would issue unless there was compliance with the Order within a period of seven days. No response to that letter was received.
16. Thereafter, the defendant delivered a replying affidavit to the plaintiff's application on 27th July, 2018, asserting that he had a meritorious appeal pending and further taking issue with the fact that he could not recall being served with an original copy of the said Order. It is clear, however, from the Affidavit of Service that the plaintiff was served personally with a certified true copy of the Order with the penal endorsement noted thereon.
17. He further disputes other matters averred to in the plaintiff's affidavits but does not dispute the fact that he remains in occupation of the lands, in breach of the Order.
18. In circumstances where the application was not heard in July, a further affidavit was sworn by the plaintiff dated 17th October, 2018, together with a supportive affidavit of Ian McGarry of K-Tech Security of the same date outlining the defendant's ongoing breach of the Order and exhibiting photographs of his animals on the said lands.

The defendant's cross motion

19. The defendant issued a cross motion returnable for 1st November, 2018, seeking orders, *inter alia*, as follows:-
- (a) preventing the plaintiff, his servants or agents from trespassing upon the property of the plaintiff, and
 - (b) striking out the Plenary Summons of the plaintiff as it displays no cause of action and/or is frivolous/vexatious and/or is an abuse of process.
20. The defendant's grounding affidavit sets out how he has now discharged his legal team in circumstances where he asserts that his best interests had not been served by his legal representation at the hearing in July 2017. These assertions clearly fly in the face of the fact that his legal representation had been in place for the hearing of this application in July 2018, albeit that it had not been reached. He has now discharged them some sixteen months after the original hearing and almost on the eve of the hearing of the within application.
21. This Court afforded an adjournment to the defendant to seek further legal representation but on the date of the hearing a further application on his behalf was made to seek an additional adjournment. The defendant himself failed to attend court on that date and whilst counsel made the application on his behalf, no solicitors had come on record and counsel therefore had no right of audience. Having regard to the history of the proceedings to date, the Court was satisfied that this was a further delaying tactic on the part of the defendant and proceeded to hear the application.
22. The factual position grounding the defendant's cross application is set out in his affidavit dated 1st November, 2018, wherein he avers to alleged shortcomings in his legal representation before the Court at the hearing in July 2017. He seeks to reopen issues that have already been determined by Twomey J. and are now the subject matter of the impending appeal.
23. Further, he does not take issue with the plaintiff's evidence that he remains on the property and in fact indicates his intention to continue in occupation.

The law

24. In *Reynolds v. McDermott* [2014] IEHC 219, Ryan J. provided a statement of the law in relation to contempt as follows:-

"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."

25. There is no dispute on the facts that the plaintiff remains in occupation of the lands, in breach of the said Order. An appeal is pending but the stay on the High Court Order has lapsed and no further application has been made to the Court of Appeal.

Conclusions

26. In circumstances where there is uncontroverted evidence on affidavit grounding the plaintiff's application, I am satisfied beyond reasonable doubt that the defendant is in breach of the High Court Order by failing to:-
- (a) surrender vacant possession of the property to the plaintiff;
 - (b) remove all livestock and other animals from the property;
 - (c) impeding and/or obstructing the plaintiff, his servants and/or agents in their efforts to take possession of the property;

- (d) impeding and/or obstructing the plaintiff, his servants and/or agents in their efforts to secure the property;
- (e) impeding and/or obstructing the plaintiff, his servants and/or agents in their efforts to sell the property; and
- (f) trespassing or entering upon, or otherwise interfering with, the property without prior written consent of the plaintiff.

27. I will therefore direct that the plaintiff be at liberty to issue an Order of Attachment directed to the Commissioner and members of An Garda Síochána against the defendant.

28. In respect of the defendant's motion, I refuse the relief sought therein.