

**THE HIGH COURT**

**[No. 2019/3789 P]**

**BETWEEN**

**KBC BANK IRELAND PLC**

**PLAINTIFF**

**AND**

**MICHAEL ANTHONY MCGANN, DAVID MCGANN, GERALDINE MCGANN AND PERSONS  
UNKNOWN OCCUPYING PREMISES AT  
FALSK, STROKESTOWN, CO. ROSCOMMON**

**DEFENDANTS**

**EX TEMPORE JUDGMENT of Ms. Justice Reynolds delivered on the 2nd day of  
December, 2020**

**Introduction**

1. This is an application on behalf of KBC Bank Ireland plc (hereinafter referred to as 'the Bank') for the attachment and committal of Michael Anthony McGann, Kevin Taylor and Colm Granahan for failure to comply with the Order of Mr. Justice Allen dated the 11th of October, 2019.
2. Pursuant to that Order, Allen J. directed the defendants to the within proceedings, together with their servants and/or agents and all persons having notice of the making of the Order to vacate the premises at Falsk, Strokestown, Co. Roscommon and comprised in folio no. 32752 of the Register of Freeholders in the County of Roscommon (hereinafter referred to as 'the property') no later than noon on Tuesday the 12th November, 2019.
3. Further, it was ordered that the defendants, their servants and/or agents and all persons having notice of the making of the Order be restrained pending the trial of the action from preventing, impeding and/or obstructing the Bank, its servants and/or agents, from taking possession of the property.
4. Finally, it was ordered that the defendants, whether by themselves, their servants and/or agents and all other persons having notice of the making of the Order, be restrained pending the trial of the action from trespassing upon, entering upon or otherwise attending the property.
5. There was no appearance by or on behalf of Michael Anthony McGann before Mr. Justice Allen but he was duly satisfied that Mr. McGann had been served with the plenary summons and the motion papers.
6. Both the second and third defendants were legally represented by solicitor and counsel. An application was made on their behalf for a stay on the Order pending an appeal. That application was refused and the defendants were further ordered to pay the plaintiff's costs.
7. No appeal was pursued thereafter by any of the defendants.
8. There is a protracted history to these proceedings which were commenced by way of special summons in May 2009. That history is set out in considerable detail by Mr. Justice

Allen in his judgment delivered on the 11th of October, 2019, and for that reason I do not propose to rehearse same.

9. In his judgment, Allen J. set out in very clear and cogent terms the reasons why he was directing the defendants to vacate the property pending the trial of the proceedings herein.

**Application for leave to issue an order for attachment**

10. By Order of this Court dated the 24th of February, 2020, the Bank was granted liberty to issue and serve a motion for attachment of the three defendants in these proceedings namely, Michael Anthony McGann, David McGann and Geraldine McGann, in circumstances where they were in breach of the Order dated 11th of October, 2019, in that they:
  - (a) failed to vacate the property by noon on the 12th day of November, 2019, and
  - (b) continued to trespass upon, enter upon and attend at the property subsequent to noon on the 27th day of November, 2019.
11. On the return date for the hearing of the application, there was no appearance by or on behalf of the first, second and third defendants but the affidavit evidence was sufficient to show that they had been duly and properly served.
12. The Court directed the issue of orders of attachment against the three defendants to have them brought before the court to answer the contempt of court alleged against them in failing to comply with the Order of Mr. Justice Allen dated the 11th of October, 2019, and to show cause why each of them should not be committed to prison for such contempt.

**Hearing of Contempt Motion**

13. The defendants were arrested and brought before the Court on the 23rd of October, 2020. At the hearing, each of the defendants were legally represented by solicitor and counsel. Having obtained legal advice, each of the defendants gave undertakings to the Court, pending the hearing of the motion, in the following terms:
  - (a) To vacate the property and remove all personal belongings within the agreed timetable;
  - (b) to request any persons in occupation of the property to leave the property, and
  - (c) to remove all animals and livestock within the agreed timetable.

On the basis of those undertakings the defendants were allowed to leave court and the motion was adjourned for mention to the 28th of October, 2020.

14. On the return date counsel for each of the defendants indicated that their respective solicitors had not been in a position to obtain any instructions and they were left with no option but to withdraw from the proceedings.

15. Evidence was adduced on affidavit by the Bank showing that the defendants had complied with their undertakings to the court and that all livestock had been removed from the lands. The property appeared to be vacant and efforts were being made to secure it. A copy of the Order of Mr. Justice Allen dated the 11th of October, 2019, endorsed with the usual penal endorsement had been attached to the front gates of the property.
16. Further affidavit evidence of Danny Noone, a bank official with KBC Bank, revealed that while it appeared initially that the undertakings had been complied with, a number of persons had taken up occupation of the property by lunchtime on the 28th October, 2020.

**Further Contempt**

17. Additional evidence by way of affidavits of Tom Ryan, Aidan Devlin and Danny Noone dated the 30th October, 2020 revealed that Kevin Taylor, who holds himself out as a friend and supporter of the McGann family, was present on the property on the 29th October, 2020 in breach of Mr. Justice Allen's Order. Mr. Devlin had sought to engage in conversation with Mr. Taylor by requesting him to leave the property to enable the Bank's agents to secure it but was advised by Mr. Taylor that he would only leave if he was provided with what was considered by him to be a "decent order". Mr. Taylor is well known to the Bank's agents as he was previously embroiled in these matters when the Bank sought to take possession of the property. Photographic evidence of Mr. Taylor on the property on that date was also provided to the Court.
18. Indeed, the affidavit evidence of Aidan Devlin is to the effect that as he left the property, Mr. Taylor threw the order of Mr. Justice Allen on the ground at his feet.
19. Whilst it had been the Bank's intention to secure the property on the 29th October, it became readily apparent that it would not be possible to do so.
20. Further, there was evidence of an ongoing social media campaign orchestrated solely for the purposes of undermining the authority of the Court, calling into question the Court's integrity and inviting people to attend at the property for the sole purpose of frustrating the Order of Mr. Justice Allen.
21. Additional affidavit evidence of Aidan Devlin revealed that Colm Granahan was also present on the property in breach of the said Order. Mr. Devlin avers that aside from Kevin Taylor and Colm Granahan, he had observed other persons occupying the property, either continuously or from time - to - time. In addition, he refers to social media activity on the part of Michael Anthony McGann wherein Mr. McGann identifies himself as being in occupation of the property and states the following: -

"I want to disperse any suggestion that I have abandoned this property or have left the jurisdiction. For and on the record I have not abandoned this property and I never will".

It appears that the comments were made by Mr. McGann during the course of an interview by an independent freelance journalist who confirmed that the video was filmed on Sunday 1st November 2020 outside the Property.

### **Further Orders of Attachment**

22. By Orders dated the 6th November 2020, the Court directed the attachment of Michael Anthony McGann, Kevin Taylor, Colm Granahan and all other persons in occupation of the property to have them brought before the court to answer the contempt of court alleged against them in failing to comply with the Order of Mr. Justice Allen dated the 11th October 2019 in that they came upon and remained upon the property without permission, authority or lawful excuse and/or that they had and continue to trespass upon and/or attend at the property and/or that they had either by themselves or in concert with one another prevented, impeded and/or obstructed the plaintiff, its servants or agents from securing the property.
23. Upon being produced before this Court, each of the respondents to the application was advised of the very serious nature and consequences of the proceedings they were facing and further advised to get independent legal advice. It was made abundantly clear to each of them that their fate rested in their own hands insofar as the Bank indicated that the sole purpose of its application was to seek compliance with the Order of Mr. Justice Allen.

### **The Law**

24. It is well settled law that punishment of contempt of court by way of committal should only be engaged in as a last resort and in circumstances where it is necessary to vindicate the authority of the court and to procure obedience with an order of the court.
25. In *Adebayo v. Commissioner of An Garda Síochána* [2004] IEHC 359 (Unreported, High Court, 27th October 2004), Peart J., in considering the issue of contempt for breach of court orders stated as follows: -
- “In my view, the deliberate disobedience of a Court Order is a matter of the utmost gravity, and in an appropriate case where that element of deliberateness or culpability is present, the Court must not hesitate to exercise its undoubted jurisdiction to penalise severely the contempt, including in an appropriate case, by imprisonment either for a specified period, or until such time as the contempt is appropriately purged. It is probably trite law to state that it is the affront to the Court itself as an institution of the State - an institution the obedience to whose orders is a foundation stone of this and any democracy - and not any personal affront to the particular judge who made the order in question, which gives rise to the invocation of the Court's jurisdiction to punish the contempt”.
26. In the within application, the contempt of court is manifestly clear from the actions of the respondents, Michael Anthony McGann, Kevin Taylor and Colm Granahan in circumstances where their misconduct amounts to a flagrant, deliberate and contrived breach of Mr. Justice Allen's Order by trespassing upon and entering the property solely for the purposes of preventing, impeding and/or obstructing the Bank from taking possession of the property.
27. All of the respondents have been afforded an opportunity to purge their contempt before this Court and have demonstrated an unwillingness to do so. This Court cannot and will

not allow the relitigation of issues already concluded in the courts. The defendants in these proceedings, including Mr. McGann, chose not to appeal the Order granted by Mr. Justice Allen granted over twelve months ago.

28. It is clear that the Court has the power of sending to prison, indefinitely, a person who wilfully refuses to comply with an order of the court.
29. In *IBRC v. Quinn* [2012] IESC 51, at p. 10 of the judgment, Mr. Justice Hardiman, dealing with the issue, stated as follows: -

“It is well established in the authorities set out below that punitive imprisonment imposed for a criminal contempt of court must be for a finite, fixed period of time. On the other hand, coercive imprisonment in order to enforce compliance in the future with a court order is imposed for civil contempt and can be indefinite in duration”.

30. In the circumstances, I propose to make an order for the indefinite detention of Michael Anthony McGann, Kevin Taylor and Colm Granahan until such time as the respondents purge their contempt where the Court is mindful of its obligation to ensure that orders of the Court are complied with. It is an essential aspect of the rule of law.
31. I propose to review the matter in due course in line with the guidance provided by Mr. Justice Hedigan in *Sherry v. Gunning* [2014] 8 JIC 1201 as follows: -

“As a matter of practice, I consider that the better course is to impose a coercive detention of indefinite length until a contempt is purged, but to review that detention after a fixed period. I think it is best practice after making the order for committal to have the contempt proceedings adjourned for such fixed period as the judge with seisin of the case thinks appropriate. A period fixed of three months may be an appropriate time”.

32. In the circumstances , I will adjourn the matter and direct that it be relisted again before me on the 22nd January, 2021.
33. Finally, and lest there be any ambiguity on these matters, it is at all times open to the parties to come back before the Court to purge their contempt and to undertake not to trespass upon, enter upon or otherwise attend the property and to refrain from preventing, impeding and/or obstructing the Bank, its servants and/or agents from taking possession of the property.