

# THE HIGH COURT

[2024] IEHC 276

[2021/4235P]

**BETWEEN**

**EVERYDAY FINANCE DAC AND KEN TYRRELL**

**PLAINTIFFS**

**AND**

**SEAN GORMLEY**

**DEFENDANT**

**JUDGMENT of Mr. Justice Brian O'Moore delivered on the 10th day of May 2024**

1. This is my judgment on a motion brought by the plaintiffs (Everyday and Mr. Tyrrell) against the defendant (Mr. Gormley) seeking interlocutory reliefs. The orders sought on the motion are: -

- “(1) An order restraining the defendant, whether by himself or by his servants and/or agents, and any other person having notice of this order, from trespassing on, entering upon, attending at, or otherwise interfering with a property;
- (2) An order prohibiting the defendant, his servants and/or agents, and any other person having notice of the said order, from impeding and/or obstructing the

first named plaintiff from taking possession of the property, as described in the schedule hereto...;

- (3) An order directing the defendant, his servants and/or agents, and any other person having notice of the said order, to forthwith deliver up to the first named plaintiff herein all keys or access devices in his/their possession, power and/or procurement in respect of the property within 24 hours or such further time as this Honourable Court shall direct;
- (4) An order pursuant to s. 123 of the Land and Conveyancing Law Reform Act, 2009, or alternatively, pursuant to the inherent jurisdiction of this Honourable Court, vacating the lis pendens which the defendant lodged with the Property Registration Authority for registration as a burden on the lands comprised in Folio 17337F Register of Freeholders of County Leitrim.”

Other adjectival orders are also sought.

2. At the hearing of the motion, counsel for the plaintiffs indicated that the relief sought at para. (4) of the notice of motion was no longer being pursued. In separate proceedings, Mr. Gormley had made claims in respect of other properties (in County Donegal) and apparently registered a lis pendens in respect of those properties. In the belief that the same had happened with regard to the properties which are the subject matter of the current proceedings (“the Leitrim property”) the plaintiffs had sought an order vacating any lis pendens registered in respect of those lands. As it happens, no such a lis pendens exists.

3. This judgment is arranged under three parts: -

- (1) The evidence.
- (2) The submissions of the parties.
- (3) Decision.

## **The evidence**

4. The application was grounded upon an affidavit of Andrew McCudden who is the head of compliance at Everyday. He avers that there are four houses on the Leitrim property. He states, unequivocally, that Mr. Gormley is residing in number 1, but that numbers 2, 3 and 4 are in “*various states of incompletion*”; para. 2 of the affidavit of Mr. McCudden.

5. Mr. McCudden gives further evidence about the indebtedness of Mr. Gormley to Everyday. It is averred that by order of this court dated the 28<sup>th</sup> July, 2010 judgment was secured against Mr. Gormley in the sum of €926,136.79 (together with interest thereon pursuant to the Courts Act, 1981 from the 28<sup>th</sup> July, 2010 onwards). The judgment was obtained by Allied Irish Banks plc. (“AIB”). That judgment, which appears not to have been appealed, remains unsatisfied.

6. The debt owed to AIB by Mr. Gormley was secured by a mortgage over the Leitrim property. Clause 3.2 of the mortgage provides as follows: -

*“3.2 Notwithstanding the terms of the Mortgage Deed, the Total Debt owing to a Lender shall for the time being remain unpaid shall immediately become due and payable on demand to the relevant Lender on the happening of any Event of Default.”*

7. A lender’s power can only be exercised in certain circumstances. Clause 8.1(b) provides that one of these events is: -

*“8.1 ... (b) If the Mortgagor fails to pay or discharge within three months of the due date any money payable by him or any obligations or liability payable by him from time to time to a Lender; ...”*

8. The lender’s powers include (at Clause 7.1 of the mortgage): -

*“7.1 At any time after the execution of the Mortgage, a Lender may without any further consent from or notice to the Mortgagor or any other person enter into*

*possession of the Mortgaged Property or any part thereof or into receipt of the rents or profits of the Mortgaged Property or any part thereof.”*

**9.** Clause 7.2(b) of the mortgage reads: -

*“7.2 Each Lender shall have the statutory powers conferred on mortgages by the Conveyancing Acts as varied and extended by the Mortgage and in particular subject to the following variations and extensions that is to say: ...*

*(b) the power of sale shall be exercisable without the restrictions on its exercise imposed by section 20 of the Act of 1881.”*

**10.** By deed dated the 23<sup>rd</sup> July, 2020, Everyday appointed Mr. Tyrrell to act as receiver over the Leitrim properties, though this is of limited importance given the nature of the application made to the court. I will return to the precise basis of that application shortly. However, while Mr. Tyrrell is a party to the proceedings and a party to the motion it is now solely Everyday’s motion to enforce its claimed entitlement under the mortgage documents to possession of the Leitrim property.

**11.** Having set out the facilities provided to Mr. Gormley by AIB, the judgment obtained by AIB, and the mortgage document dated the 21<sup>st</sup> December, 2006 between Mr. Gormley of the one part and AIB and AIB Mortgage Bank of the other part, Mr. McCudden goes on to give evidence that the charges in favour of AIB Mortgage Bank and AIB were transferred to Everyday, which became the registered owner of the charges on the 27<sup>th</sup> August, 2019.

**12.** The transfer of the charges to Everyday, according to Mr. McCudden, took place on foot of a global deed of transfer dated the 14<sup>th</sup> June, 2019 between AIB and AIB Mortgage Bank (as transferors) and Everyday (as transferee). Mr. McCudden gives evidence about this transfer from para. 17 onwards of his affidavit. He also exhibits a copy of the global deed of transfer. As is often the case, this deed of transfer is heavily redacted. However, notwithstanding the redactions it is possible to see from the documentation the following: -

- (a) By the agreement of the 14<sup>th</sup> June, 2019, AIB Mortgage Bank and AIB transferred all ancillary rights and claims which those companies had against certain individuals. *“Ancillary rights and claims”* are defined as follows: -  
*“Ancillary rights and claims means (to the extent that the same are capable of being or permitted to be assigned by each Seller) all claims, suits, causes of action (in contract, tort or otherwise), and any other right of any Seller whether known or unknown, against any Obliger, or any of their respective affiliates, agents, representatives, contractors, advisors, or any other person that is (in each case exclusively and explicitly) based upon, arises out of or is related to assets referenced to the definition of Mortgage Assets... including all claims (in contract, tort or otherwise), suits, causes of action, and any other right of the sellers against any insurer, auditor, valuer, legal, tax, financial or other professional advisor, or other person arising under or in connection with a Finance Document. ...”*
- (b) Finance Documents are defined as: -  
*“... The Security Documents and the Underlying Loan Agreements (including all schedules and appendices thereto), and the ancillary documents, including but not limited to the title deeds, certificates of title and solicitors undertakings in respect of the Properties, as more particularly described in Schedule 1 and each Finance Document...”*
- (c) *“Mortgage Assets”* are defined as including *“any and all of the Seller’s rights, title and interest ... in and to the Security and the Security Documents, and the Finance Documents together with any and all corresponding rights and benefits under any ancillary guarantee or security relating thereto...”*
- (d) *“Obligors”* are the persons listed in Schedule 1 to the document.

- (e) Schedule 1 includes four references to Mr. Gormley, and four references to the mortgage of the 21<sup>st</sup> December 2006 between Mr. Gormley and the AIB interests. There are four references because there are four separate houses on the relevant Folio. The document further lists the four separate houses (no. 1 to no. 4) by reference to Mr. Gormley as the bank's customer.

**13.** Notwithstanding the significant level of redaction, about which Mr. Gormley complains, the documentation supports Mr. McCudden's averment that the relevant loans taken out by Mr. Gormley with AIB, together with the attached securities, were transferred to Everyday on foot of the agreement of June 2019.

**14.** Mr. McCudden's affidavit goes on to describe engagement with Mr. Gormley. On the 20<sup>th</sup> June, 2019, AIB wrote to Mr. Gormley to advise him that his facilities and the mortgage had been acquired by Everyday. On the 28<sup>th</sup> June, 2019 Everyday wrote to Mr. Gormley to advise him that it had acquired the facilities and the security. On the 3<sup>rd</sup> October, 2019 Everyday's service provider ("Link") wrote to Mr. Gormley asking him to complete a statement of affairs. On the 24<sup>th</sup> October, 2019 an auctioneering firm (Conlon and Barrett) on behalf of Mr. Gormley wrote to Everyday offering a payment of €180,000 in full and final settlement of Mr. Gormley's liabilities to Everyday. This was rejected by letter of the 6<sup>th</sup> January, 2020, in which Link cited "*the significant gap*" between the €180,000 offered and Mr. Gormley's indebtedness in connection with the facilities (which Mr. Andrew McCudden averred was €1,371,037.65 as of the 6<sup>th</sup> January, 2020). Further negotiations were conducted through correspondence over the following months. Ultimately, on the 25<sup>th</sup> May, 2020, an offer was made on behalf of Mr. Gormley of the sum of €250,000 in full and final settlement of the outstanding debt. By then, however, Link had demanded payment (on the 16<sup>th</sup> March, 2020) of the sum of €1,371,037.65 within seven days from the date of that letter, and reserved

the rights of Everyday to enforce the security and appoint a receiver in the event that the monies due to Everyday were not repaid.

15. The offer of €250,000, made on the 25<sup>th</sup> May, 2020, was rejected the following day.

16. Mr. McCudden's affidavit covers two further topics. In the first place, he avers that Mr. Gormley had raised no issue at the date of Mr. McCudden's affidavit, either in correspondence or otherwise, capable of constituting a full or complete defence to Everyday's claim. Secondly, Mr. McCudden states that the balance of convenience favours the grant of the interlocutory injunction in the following terms: -

*"30. In relation to the balance of convenience, I say that this favours granting an injunction to restrain the defendant's ongoing interference with the Property. The plaintiff's objective is to realise the security given by the defendant for the defendant's indebtedness with a view to reducing the liability of same to the first named plaintiff. I say and believe that the orders sought on this application will aid the orderly progress of this process with a view to reducing the defendant's level of indebtedness.*

*31. I say and believe that [Everyday] is unable to solicit interest in the property, or to market the property anyway, whether matters complained of persist, and that this is a loss of opportunity which is justifiable of which the defendant will not be able to account to the first named plaintiff."*

17. Mr. McCudden goes on to say that damages would not be an adequate remedy, for the reasons just set out. Mr. McCudden goes on to offer an undertaking as to damages in Mr. Gormley's favour.

18. Mr. McCudden's affidavit was supplemented by an affidavit of the receiver, Mr. Tyrrell. Having set out his appointment, he says that on the 23<sup>rd</sup> July, 2020 he wrote to Mr. Gormley notifying the latter that he had been appointed as receiver. Mr. Tyrrell goes on: -

*“7. By letter dated 3<sup>rd</sup> August 2020, John Gormley responded to my letter dated 23<sup>rd</sup> July 2020. The letter is written in a style I am familiar with from my professional practice. It is in a style that petitioners refer to as ‘Free Man of the Land’, and it is used as a pseudo legal term, refers to human persons and their ‘private unlimited capacity’, refers to ‘the soil of the land’ and to the ‘truth and honour’ of the writer. From my experience, these letters mean that the person in question will seek to obstruct and delay me in carrying out my role.”*

I will return to documentation employing this sort of language later in the judgment.

**19.** Mr. Tyrrell gave evidence that on the 24<sup>th</sup> August, 2020 he repeated his requests contained in his initial letter, and received a response using *“various pseudo legal terms...”*.

**20.** As receiver, Mr. Tyrrell engaged Ktech Security and Property Services (Ktech) to report on the property in September 2020. Mr. Tyrrell exhibits Property Status Reports for the Leitrim property, and states that arising from them it appears that the ESB meter in relation to no. 1 has been bypassed. This is hotly denied by Mr. Gormley and, as it happens, is not really an issue in the case. In any event, the dispute about the ESB meter is an evidential one which cannot be decided on an application such as this.

**21.** Arising from Ktech’s attendance at the Leitrim properties on the 23<sup>rd</sup> October, 2020, Mr. Tyrrell was informed that: -

*“... The locks had been changed in relation to houses two, three and four; the windows of those houses have been totally blacked out with polythene and different materials to prevent anyone looking inside; there appeared to be work being carried out on number two...”*

The reference to the locks being changed was significant. This meant that Ktech, on behalf of the receiver, was no longer able to access houses two, three and four. This is not



addressed by Mr. Gormley in his affidavit evidence, and is not denied in any precise or meaningful way.

**22.** On the 7<sup>th</sup> December, 2020, two sets of letters were sent to the four houses. The first, from Matheson (then acting on behalf of the plaintiffs) asked Mr. Gormley to confirm within a specified period that he would vacate the Leitrim property. The second set was sent from Mr. Tyrrell's office, asking any occupants of the four houses to provide copies of any tenancy agreements in place in relation to each or any of them. Contact details for any occupants were also sought. Mr. Tyrrell received no response. Matheson, however, received a letter of the 8<sup>th</sup> January, 2021 from Mr. Gormley querying the transfer of his loan to Everyday and the appointment of Mr. Tyrrell as receiver. This was responded to by Matheson on the 3<sup>rd</sup> February, 2021. Notwithstanding further correspondence, the current proceedings then commenced.

**23.** The penultimate paragraph in Mr. Tyrrell's affidavit is an unusual one. Under the heading "*The Defendant's Address*" he avers: -

*"15. I have written on a number of occasions to the defendant at the address which I have for him in County Tyrone, which is 15 Kilcan Road, Beragh, Sixmilecross, Omagh, County Tyrone ... Since learning in September 2020 that he is residing on the property at 1 Tullaghan Close, Tullaghan, County Leitrim, I have written to him at both addresses out of an abundance of caution (I instructed my solicitors to do the same). I do not know whether the defendant is dividing his time between the two properties, but I do believe - owing to the Ktech report - that he resides in the 1 Tullaghan Close property at least some of the time, but I note that he wrote to my solicitors from that address on 8<sup>th</sup> January, 2021."*

**24.** This evidence suggests that Mr. Gormley may have two residential properties available to him. However, given the lack of certainty about this I have not taken it into

account as a factor in deciding this application. The precise address in Sixmilecross was of potential significance, given the further affidavit evidence to which I will now turn.

**25.** On the 21<sup>st</sup> September, 2021 the plaintiffs applied to Allen J. for an order for substituted service. This application was grounded upon an affidavit of Dylan Gannon, a solicitor in the firm of Matheson.

**26.** On the 5<sup>th</sup> October, 2021 Mr. Gannon arranged for the papers set out in the order to be served on Mr. Gormley in the manner provided for by the order. On the 18<sup>th</sup> November, 2021 a document was received by Matheson and passed on to Mr. Gannon.

**27.** The document employs much of the language which Mr. Tyrrell had described in his affidavit. Mr. Gannon, in an affidavit sworn by him on the 25<sup>th</sup> November, 2021, describes the contents of the document as alarming. He is correct about this.

**28.** The document is headed: -

*“We the people and the common law court Eire 29-10-2021*

*The living man Sean Gormley*

*v*

*Matheson Solicitors, Kenn Tyrrell Receiver, Everyday Finance DAC High Court*

*Record Number 2021/4235; EFDAC the Receiver.”*

The document is stated to be *“in relation to one to four number of houses Tullaghan Close, Tullaghan, Leitrim.”*

**29.** It includes the following statements: -

*“Make no mistake rest assured international warrants are out for arrests, international military will find you in bed in your sleep in your bedrooms, take remove you for a fair hearing, trial before the people and twelve of your equals sitting in judgment in a court of record.”*

30. It then describes as “*fraud*” a number of documents, including the order of Mr. Justice Allen of the 21<sup>st</sup> September, 2021. The document continues: -

*“All held liable before an international military and international common law court.”*

31. Later, the document says: -

*“Coming for all involved who have caused loss, harm, injury and fraud, make no mistake this is in military hands as I write. I man Edward O’Sullivan will not tolerate this behaviour against my clients. I am now seeking damages of €10,000,000 up front payment without delay. Matheson indemnify insurance details within five days of receiving Court Services of Ireland, Law Society all names mentioned in private capacity produce same insurance details less insurance companies doth(?) claim is in for €10,000,000.”*

32. The document also states: -

*“All men named liable for crimes to damage my client the living man Sean Gormley. This is true and a fact in truth, what it states here is in motion and a big operation from overseas is arriving to make arrests without prior warning in bursting kicking your doors in and taking you from your beds and homes.*

*This is true no buts, no ifs, no excuses, are accepted at this time and moment it’s too late.*

*Corporal Punishment awaits all of the above if found guilty, after a fair court hearing.”*

33. The document is signed by an E. O’Sullivan, on the 10<sup>th</sup> November, 2021. Mr. O’Sullivan, who describes himself as “**COMMON LAW LAWYER**”, refers to an office. The office is almost an identical address to the Omagh address of Mr. Gormley. The only

difference is that Mr. Gormley's address is No. 15 Kilcan Road, whereas Mr. O'Sullivan's office address is stated to be 15A Kilcan Road.

**34.** Understandably, Mr. Gannon reported this communication to the Gardaí.

**35.** When this document was brought to Mr. Gormley's attention at the hearing of the motion, he said on three occasions that he had never seen it before. This is peculiar, as Mr. Gannon's affidavit (and the document exhibited with it) had presumably been served on Mr. Gormley some considerable time before the hearing of the motion. Undoubtedly, it appeared in the Book of Motion Papers which was before the court for the hearing of the motion. Notwithstanding this, the fact that the language used in the document is similar to the correspondence sent by Mr. Gormley to the receiver, and the fact that Mr. Gormley is described as the "*client*" of the person sending the document, I am prepared to proceed on the basis that Mr. Gormley knows nothing about the document. Had I formed a different view, I would have paid serious consideration to this communication in assessing whether or not equitable relief should be granted against Mr. Gormley. To be blunt about it, in deciding whether or not equitable relief should be granted I think it quite appropriate for the court to take into account whether either side has been involved in making the sorts of threats set out in the document sent to Matheson. If a party is so involved, it should count against them significantly in deciding whether an equitable order should be made.

**36.** One of the unusual features of the evidence in this application is that the affidavit of Mr. McCudden and the affidavit of Mr. Tyrrell (to which I have already referred in some detail) were sworn before the proceedings were issued. Because of the obvious procedural difficulty which this potentially created, in March 2022 both Mr. McCudden and Mr. Tyrrell swore fresh affidavits in virtually identical terms to the original affidavits.

**37.** In response to the motion three affidavits were sworn by Mr. Gormley. In the first of these, dated the 9<sup>th</sup> March, 2022, Mr. Gormley states (at para. 4) that: -

“4. I say and believe that I do not owe a debt to [Everyday]... no matter what their guise.”

Nowhere in this affidavit, or in the subsequent two affidavits, does Mr. Gormley comment upon the order of this court on the 28<sup>th</sup> July, 2010, in favour of AIB.

**38.** Mr. Gormley states (at para. 7 of his first affidavit) in the context of the assertion by Mr. McCudden that Mr. Gormley had obstructed Everyday from taking possession of the property, that Mr. Gormley is entitled to the proofs set out in the judgment of Allen J. in *Charleton v Hassett* [2021] IEHC 746 and s. 91 of the Land and Conveyancing Law Reform Act, 2009. He states that “*provided they were in order, I would cooperate fully with [Everyday].*”

**39.** Mr. Gormley complains about the contents of Mr. McCudden’s affidavit in as much as it relates to the activities of Link and the activities of AIB, as he says that this evidence is hearsay.

**40.** Mr. Gormley also complains about the documents exhibited by Mr. McCudden showing the transfer between the AIB interests and Everyday on the grounds of the heavy level of redaction and on the grounds that “*it is notable that Mr. McCudden has not attested this document as a true copy of the original.*”

**41.** In his second affidavit, sworn on the 15<sup>th</sup> April, 2022, Mr. Gormley takes issue with the affidavit of Mr. Tyrrell “*as he is relying completely on the bone fides of the information provided to him by [Everyday] and in particular the affidavit of Andrew McCudden who have not yet proven their claim and to which I believe I do not owe a debt.*”

**42.** Mr. Gormley specifically denies that he had bypassed the ESB meter at 1 Tullaghan Close. He repeats his entitlements, as he asserts them, under s. 91 of the Land and Conveyancing Law Reform Act, 2009.

43. Mr. Gormley then makes a number of legal arguments. He says, firstly, that Mr. Tyrrell must prove the validity of his appointment as set out in the judgment of this court in *McCleary v Phillips* [2015] IEHC 59. (*McCleary v McPhillips* [2015] IEHC 591) He says that the reliefs claimed in this motion constitute “*a means of obtaining summary judgment*”, as (Mr. Gormley says) is disapproved of by Clarke CJ in *Charleton v Scriven* [2019] IESC 28. Mr. Gormley states that Everyday has “*not to this day issued a demand for any alleged debt*”; para. 13 of the second affidavit of Mr. Gormley.

44. In his third affidavit, sworn on the 1<sup>st</sup> July, 2022, much of the contents of Mr. Gormley’s second affidavit are repeated by him. It shall be noted that in both affidavits Mr. Gormley avers that No. 1 Tullaghan Close is his “*Family Home*”.

#### **The submissions of the parties**

45. In his careful submission, counsel for the plaintiffs argued that the reliefs sought in the motion were sought solely by Everyday, on foot of his entitlements under the mortgage deed executed by Mr. Gormley, and transferred to it on foot of the 2019 assignment. There was no application for relief by Mr. Tyrrell. For that reason, he submitted, the validity of the appointment of Mr. Tyrrell was of no relevance to the current motion. Clearly, that submission is correct as Mr. Tyrrell is seeking no relief from the court. A number of the issues raised by Mr. Gormley, therefore, fall away.

46. On foot of the mortgage documents, counsel for Everyday submits that there is a clear entitlement to possession of the secured premises. While it is not stated that the entitlement of Everyday to obtain possession of the premises is dependent upon an act of default on the part of the borrower, counsel accepts that this must be the case. For this reason, he relies upon the fact that this court has already established a debt due by Mr. Gormley to AIB, that that debt remains unsatisfied, and that the debt was transferred to Everyday on foot of the 2019 assignment. He also relies upon the demand made by Link for repayment of the debt by

Mr. Gormley. Notwithstanding Mr. Gormley's denial that Everyday ever sought repayment of the debt, the documentation plainly establishes that this evidence is mistaken and I so find.

47. On the basis of these facts, counsel submits that the orders sought are ones to which Everyday is entitled *ex debito justitiae*. In making his submission, he relies upon the judgment of the Court of Appeal in *Larkin v Gaynor* [2022] IECA 224. In delivering the judgment of the Court of Appeal Faherty J. referred to the dictum of Keane J. in *Keating and Co. Limited v. Jervis Street Shopping Centre Limited* [1997] 1 IR 512. In that case, Keane J. held: -

“It is clear that a landowner, whose title is not in issue, is *prima facie* entitled to an injunction to restrain a trespass and that this is also the case where the claim is for an interlocutory injunction only. However, that principle is subject to the following qualification explained by Balcombe LJ in the English Court of Appeal in *Patel & Ors. v WH Smith (Eziot) Limited* [1987] 1 WLR 853 at page 859:

*‘However, the defendant may put in evidence to seek to establish that he is right to do what would otherwise be a trespass. Then the court must consider the application on the principle set out in American Cyanamid v Ethicon [1975] AC 396 in relation to the grant or refusal of an interlocutory injunction’*”.

48. At paragraph 55 of her judgment, Faherty J. stated that she was satisfied that this was the correct test to apply in the circumstances of *Larkin v Gaynor*. Faherty J. summarised the position as follows: -

“55. I am satisfied that in making the Order he did, the Judge applied the correct principle, as stated in *Keating*, namely that an owner of lands whose title is not in issue is entitled to injunctive relief subject to the defendant establishing that he had a right to do what would otherwise be a trespass. Nothing Mr. Gaynor has said

persuades me that the judge erred when he found that Mr. Gaynor had not pointed to evidence that established he had a right to interfere with the lands in question.”

**49.** Counsel submitted that the entitlements of Everyday under the mortgage, and in particular the entitlement to possess the lands and to sell them, means that Everyday should be treated as enjoying the position of owner of the land or, at the very least, a status analogous to that of owner.

**50.** Counsel further submitted that, if it was not accepted that this is a case governed by the rule in *Keating*, Everyday is entitled to the orders sought applying the principles set out in *Merck Sharpe and Dohme* [2019] IESC 65, even if the application was of a type that could properly be characterised as one seeking a mandatory order or alternately “*was undoubtedly transformative*” as described by Butler J. in *Tyrrell and Everyday v Mulligan* [2022] IEHC 311 at paras. 15 and 16. This was, however, very much a secondary argument. The primary submission was that Everyday is entitled, as a matter of right, to possession of the Leitrim property.

**51.** Counsel also relied upon the judgment of Costello J. in *Tyrrell v Wright* [2017] IEHC 92.

**52.** In considering the position of Mr. Gormley, counsel referred to the various arguments raised by Mr. Gormley in his affidavits. I will go through each of these submissions in turn.

**53.** Firstly, counsel submits that Mr. Gormley’s complaints about hearsay evidence are met in a number of ways. With regard to Mr. Gormley’s debt to Everyday, counsel submits the debt is established by the High Court order of the 28<sup>th</sup> July, 2010. Inasmuch as this involves a debt to the AIB interests, I find that this is undoubtedly the case. Counsel for Everyday also relies upon s. 14 of the Civil and Criminal Law (Miscellaneous Provisions) Act, 2020 which reads: -



“14(1) Subject to this Chapter, information contained in the document shall be admissible in any civil proceedings as evidence of any fact in the document on which direct oral evidence will be admissible if the information -

- (a) was compiled in the ordinary course of a business,
- (b) was supplied by a person (whether or not he or she so compiled it and identifiable) who had, or may reasonably be supposed to have had, a personal knowledge of the matters dealt with, and
- (c) in the case of information in non-legible form that has been reproduced in permanent legible form, was reproduced in the course of the normal operation of the reproduction system concerned.”

Counsel submits that the requirements of s. 14(1)(a) and (b) are met, and that Clause (c) does not apply. I agree. On the basis of the role in Everyday occupied by Mr. McCudden, the evidence which he gives and the documentation which he exhibits, Mr. Gormley’s hearsay objections cannot succeed with regard to the issue of the transfer of the AIB debt and security to Everyday, and the fact of Mr. Gormley’s indebtedness. In addition, Mr. Gormley has (as already noted in the judgment) not addressed in any way whatsoever the judgment of July 2010; in particular he has not given any evidence that the judgment was satisfied or paid down to any extent. Finally, Mr. Gormley has offered to pay a significant sum to Everyday in satisfaction of its claim. While the sum offered was rejected by Everyday, and while the fact of the offer is by no means determinative, the fact that Mr. Gormley was prepared to pay Everyday 250,000 euro is not consistent with his position that he owes Everyday nothing; it is also nowhere explained by Mr. Gormley.

**54.** With regard to the reports from Ktech to Mr. Tyrrell, these are reports authored by Ktech and made available to the receiver who commissioned them. For the purpose of the application as presented to me, however, I do not intend to take account of the Ktech reports

as (a) there is no application by the receiver for any relief and (b) the basis upon which the application as made by Everyday renders the Ktech reports of marginal relevance, if any.

Inasmuch as the Ktech reports support the proposition that Mr. Gormley is frustrating Everyday taking possession of the Leitrim property, that is something that does not require proof. Mr. Gormley's fundamental position, taken by him in his affidavits and his resistance to this motion, is that he does not accept that Everyday has any right to possess the secured property.

**55.** The next point made by Mr. Gormley is that there has been no demand for repayment. As already noted, that is incorrect. Mr. Gormley does not in any way engage with the correspondence from Link exhibited by Mr. McCudden in his affidavit.

**56.** Counsel then went on to address Mr. Gormley's evidence, if it can be so described, to the effect that the injunctions sought should not be granted because of the dicta of Clarke C.J. in *Charleton v Scriven* [2019] IESC 28. Counsel submitted that this decision did not govern an application such as the present. I agree. The current motion is advanced on the basis that Everyday is entitled to possess and sell the Leitrim properties as a matter of right and that, in accordance with the authorities relied upon by Everyday, such an order should be granted as a matter of course. That was not the situation in *Charleton v Scriven*. In any event, I will be making directions to have this action listed before the judge in charge of the Chancery list in order to ensure that all parties are in a position to have the action brought on for hearing.

**57.** In his submissions, Mr. Gormley stated that No. 1 Tullaghan Close is his family home. As noted earlier, this was also the evidence of Mr. McCudden. Mr. Gormley repeated his objections as to hearsay (which is how he characterised all the evidence relied upon by the plaintiffs) and the redaction of documents. At no time did he engage with the submissions of counsel on these points. That does not, of course, in itself mean that the submissions made on

behalf of the plaintiffs are correct. However, as set out earlier in this judgment, for the reasons advanced by counsel I have decided in favour of the plaintiffs on these two issues.

**58.** Mr. Gormley went on to complain about the behaviour of the plaintiffs in other proceedings involving a *lis pendens*. No evidence was provided about these events, which appear in any event to relate to separate actions; the relevance of these other proceedings, and the complaints of Mr. Gormley, were not expanded upon by him. Mr. Gormley also complained about the actions of the receiver, the alleged “busting in of doors”, and the fear which he says was engendered in his partner and children. While Mr. Gormley gave some evidence about this – notably in his third affidavit – he gives no specifics about the property which he says was damaged by Ktech, and in particular whether this was the house which he occupies. In addition, no evidence is given about the distress of his partner or children.

#### DECISION

**59.** I accept the evidence of Mr. McCudden, as set out in this judgment. I also reject the objections of Mr. Gormley to the relevant portions of the evidence of Mr. McCudden, for the reasons which I have described. On the legal issues, I accept the submission of Everyday that it is in a position analogous to owner of the Leitrim properties. It has a clear, and undisputed, entitlement under the mortgage to possession of the land, and power to sell the Leitrim property. It is the registered owner of the mortgage. No attempt has been made to oust Everyday as registered owner of the charge, nor has any basis been suggested for such an order to be made. The entitlements of Everyday align so closely to the rights attaching to the owner of property that it is appropriate, for the purpose of this application, to apply the principles set out by Faherty J in *Larkin v Gaynor*, themselves reflective of the judgments in *Keating v Jervis Street Shopping Centre* and in *Patel v W.H. Smith*. In deciding that these authorities apply, I should stress some unusual aspects of this case. Everyday is not the registered owner of the Leitrim property. However, the debt owed by Mr. Gormley is

established authoritatively by the order of this court. The transfer of the debt and security is made out by clear evidence. The entitlement to possession under the mortgage is undisputed by Mr. Gormley. Finally, Everyday is registered as the owner of the charge. It is for these reasons that I have come to the view that Everyday's rights are analogous to those of an owner of the land. That will not be so in every case in which orders such as these are sought. I have also proceeded on the basis that all relevant authorities have been fully opened to me by counsel. This is something that one would expect in any event, but is particularly important in a case where the defendant is unrepresented.

**60.** Adopting this approach, and given that Mr. Gormley has not attempted to establish any right to be on the Leitrim properties (or, to put it another way, "to do what would otherwise be a trespass") Everyday is entitled to the orders it seeks. The orders sought at paragraphs 1 and 2 of the notice of motion flow from its entitlements under the mortgage. The order sought at paragraph 3 will also be granted, as it is necessary in order to give practical effect to the earlier orders.

**61.** There are three outstanding matters.

**62.** Firstly, as one of the houses built on the relevant lands is the family home of Mr. Gormley, there will be a stay on the coming into effect of this order. However, the stay will be limited. Mr. Gormley has given no evidence about the difficulties which may be caused to him by the making of these orders, though it is likely that he will need some time to relocate from his home. With regard to the other semi constructed houses on the Leitrim properties, there is nothing about their current use or occupation (at least, as made known to the court) that suggests that there should be any lengthy stay placed on the orders which will now be made. I will therefore place a stay of five months from today's date on the coming into effect of the interlocutory orders. This allows time for Mr. Gormley, as the unsuccessful party, to lodge a notice of appeal against this judgment and provides him with ample time to seek any

enhanced stay on these orders. The stay will therefore expire at 11 am on the 10<sup>th</sup> of October 2024.

**63.** Secondly, there is the question of costs. As Everyday has succeeded in the motion, my provisional view is that it is entitled to its costs. As is the practice in the Chancery list, my provisional view is that there should be a stay on the order for costs until there is a final order in these proceedings at the level of the High Court.

**64.** If either side wants to argue for a different order on the stay or on costs, they should notify the Chancery Registrar of this before 5 pm on Friday the 24<sup>th</sup> of May 2024. If such notification is received, then directions will be given for an exchange of submissions on the relevant issue.

**65.** Thirdly, this is a judgment on an interlocutory motion. It is not desirable that the proceedings be left in abeyance. I will therefore list the action for mention at 11.00 am on the 13<sup>th</sup> of June before the judge in charge of the Chancery list. This is for the purpose of directions being made to move the action on to trial.

**66.** For the sake of completeness, I should record that the order will note the undertaking as to damages provided by Everyday.