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(subject to editorial corrections)*

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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IN THE MATTER OF THOMAS ANTHONY CARLIN

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IN THE MATTER OF ORDER 52 OF THE RULES OF THE COURT OF JUDICATURE (NORTHERN IRELAND) 1980

AND IN THE MATTER OF AN APPLICATION BY THE ATTORNEY GENERAL

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Before: Morgan LCJ and Horner J

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MORGAN LCJ (delivering the judgment of the court)

[1] This is an application by the Attorney General, pursuant to Order 52 of the Rules of the Court of Judicature ("RCJ"), seeking committal of the respondent, Mr Carlin, for contempt of court. It is alleged that, on 12 January 2016, while being present in a courtroom in the Royal Courts of Justice, Belfast, the respondent conducted himself in such a manner as was intended or calculated to seriously interfere with the administration of justice, in that he:

(a) disruptively approached the bench without invitation or lawful excuse;

(b) wilfully interrupted the proceedings of the court and prevented the court from dealing with the business before it;

(c) purported, without lawful excuse, to place the presiding judge, The Rt Hon Lord Justice Gillen, under arrest; and

(d) disruptively approached Lord Justice Gillen in a manner which caused the Judge to leave the courtroom without having disposed of all matters in issue in the case before the court.

Background

[2] Santander UK Plc brought proceedings in the High Court against the respondent and another person seeking an order for the possession of property, on foot of a mortgage secured against the property in the sum of £192,099, alleging that he had failed to make payments under the mortgage since 1 October 2013 ("the repossession proceedings"). The respondent, acting as a litigant in person, applied to the High Court for an order striking out the repossession proceedings on the grounds, *inter alia*, that the proceedings disclosed no reasonable cause of action; the bank had not suffered any loss; the bank was acting as a servicing agent and, therefore, was not the correct plaintiff to bring the proceedings; the bank had consistently misled the court; and the proceedings were scandalous, frivolous or vexatious.

[3] On 12 January 2016 at 9:30am in Queen's Bench courtroom 1 in the Royal Courts of Justice, Belfast, Gillen LJ gave judgment dismissing the respondent's application. As he was approaching the end of his judgment the respondent began packing away his belongings in an angry fashion. At the conclusion of the judgment, the barrister for the bank submitted that his client was entitled to his costs. When the judge asked the respondent to reply to this, he rose to his feet, held what appeared to be a PSNI warrant card aloft in his right hand and stated he was a police officer in the PSNI.

[4] He then indicated that he was arresting the judge for misconduct in public office. In the hearing before us he added allegations of malfeasance, fraud and aiding and abetting the theft of his house. Gillen LJ attempted many times to address the respondent, but he continued to speak over the judge. The respondent then moved to the right hand side of the courtroom and appeared to be attempting to get to the judge's bench. At this stage, the G4S Court Security Officer made his way forward and blocked him at the foot of the stairs leading to the witness box. Both the judge and the G4S official asked the respondent to return to his seat, but he did not do so. He then moved towards the left side of the courtroom. When he reached the closed wooden partition he insisted that he was going to arrest the judge and then purported to caution him. Gillen LJ then rose and left the courtroom. The court proceedings were plainly seriously disrupted and the remaining matters in the case could not be resumed at all that day.

[5] At the direction of Gillen LJ, the respondent was produced in court at 1:30pm on the same date. At this hearing, the judge indicated that the respondent's conduct that morning was, *prima facie*, contempt in the face of the court. He, therefore, granted him legal aid for the purpose of contempt proceedings and adjourned the contempt hearing until 14 January 2016. Due to the nature of the alleged contempt, including an attack on Gillen LJ personally, he directed that the contempt proceedings be heard by a judge of the High Court.

[6] On 14 January 2016, the contempt hearing was listed before Horner J. At the hearing the respondent again represented himself and refused an offer of legal representation from the Police Federation. The respondent demanded trial by jury. In order to give him time to prepare his defence, the learned judge adjourned the hearing to 18 January 2016. On that date, having considered the papers in the case further, Horner J directed that in order to ensure that the respondent's Article 6 ECHR rights to a fair trial were fully protected, the matter should be referred to the Attorney General, as the guardian of the public interest, to act as an independent prosecuting authority.

[7] On 28 January 2016 the Attorney General lodged proceedings, pursuant to Order 52 RCJ, seeking leave to issue contempt proceedings against the respondent. On 1 February 2016 Horner J granted the Attorney General leave to bring the contempt proceedings. The respondent challenged that decision on the basis that Horner J was not sitting in chambers but he clearly did not understand that a judge may sit in chambers while dealing with a matter in open court. The Attorney General lodged a Notice of Motion on 2 February 2016. Thereafter the respondent was served by letter of 2 February 2016 with the Notice of Motion, the Statement pursuant to Order 52 Rule 2 and copies of four affidavits upon which the Attorney relies.

Preliminary matters

[8] At the commencement of the hearing on 15 February 2016 we enquired whether the respondent had taken the opportunity to obtain legal representation in light of the fact that he had been granted legal aid. He said that he had the very best of legal advice but did not think that those who were professionally qualified were generally best placed to give him legal advice. Throughout the hearing, however, he was assisted by a number of individuals who provided him with notes.

[9] Before the Attorney introduced the evidence the respondent questioned the jurisdiction of the court to entertain the proceedings. He relied, in particular, upon the definition of a court of record contained in Black's Law Dictionary (Fourth Edition) where it was stated that a court of record is a judicial tribunal having

attributes and exercising functions independently of the person of the magistrate designated generally to hold it. He submitted that the court was not an independent tribunal. No judge could satisfy that definition. He claimed that he was entitled to a jury trial.

[10] We do not accept that submission. The historical basis for the development of the law of criminal contempt is helpfully considered at paragraph 13.6 of Borrie and Lowe: The Law of Contempt (fourth edition) which notes that it is a unique distinction of the law of criminal contempt that it is triable summarily without a jury. This court constitutes a superior court of record but is required to ensure the procedural protections identified in Kyprianou v Cyprus (2007) 44 EHRR 27 and Robertson v McFadyen [2007] HCJAC 63. It was because of those procedural protections that Gillen LJ concluded that he should not deal with the matter.

[11] There were a number of specific matters raised by the respondent. He noted that on an earlier occasion Horner J stated that he had listened to the audio of the subject proceedings before making a decision to bring in the Attorney General. The respondent considered that this decision constituted a predetermination. In fact the said audio was played to us as part of the evidence and there was no material advanced to suggest how the hearing of the audio in advance could constitute any impediment to hearing these proceedings.

[12] Two further matters were raised in respect of Horner J. First, it was contended that he had displayed bias in favour of the banks by accepting hearsay evidence over sworn testimony in the case of Foster v Foster. There was no evidence as to whether this decision was ever appealed, never mind any criticism of the judgment. It was further submitted that on 11 June 2015 "seven good men removed him from office and he was recused from duty that day because of his behaviour". This apparently is a reference to 7 men standing up in the gallery of the court and walking out.

[13] In respect of Morgan LCJ it was contended that a letter was sent by the respondent to the office of the Lord Chief Justice complaining that repossession proceedings were held in private chambers. The reply suggested that if the respondent had any difficulty with the hearing he should utilise the appeal process. He apparently did so but clearly did not successfully persuade the appeal judge. His argument about the privacy of chambers is wrong (See In re A Solicitor [2003] NICh 5). Because of his misunderstanding of the term "in chambers" he labours under the misapprehension that all repossession cases in Northern Ireland have been determined unlawfully. That seems to be a product of reliance on out-of-date text books.

[14] The final preliminary point raised by the respondent was that there is a difference between his natural self and the fiction to which reference is made in his birth certificate and in the proceedings as issued. This is a nonsense apparently developed in other common law jurisdictions which has made its way here and misled a number of personal litigants into thinking that it provides a defensive cloak behind which they can hide. There is nothing to it. It is a legal nonsense. There is only one Thomas Anthony Carlin and there is no fictional alternative. Nor is there anything to the suggestion that the respondent should have been referred to by way of his police number and name. None of these preliminary matters are of any substance.

The hearing

[15] At the hearing before us on 15 February 2016 the Attorney played the audio of what happened on 12 January 2016 after Gillen LJ delivered judgment. He then opened the affidavits which had been served along with the Notice of Motion. The respondent objected to the affidavit of Gillen LJ's tipstaff. He made two points. The first was that in his statement to police the tipstaff had used more descriptive language about the respondent's behaviour. That statement was not before us in evidence.

[16] The second point was a suggestion that the tipstaff had perjured himself by saying in his final paragraph that the actions of the respondent caused the court proceedings to be seriously disrupted and that they could not be resumed at all that day. The respondent pointed to the fact that the court had in fact been used an hour later in relation to other proceedings. He suggested that this contradicted the averment of the tipstaff. In our view, that submission is plainly wrong. The reference in the affidavit from the tipstaff is to the resumption of the proceedings in which the respondent had been involved. The fact that other proceedings were capable of going on in that courtroom thereafter is not in any way inconsistent with that averment.

[17] The respondent indicated that apart from those matters he had no further issue to take with the content of the affidavits. Despite having no issue with the contents of the affidavits he asserted that he wanted to cross-examine the deponents. He was unable to indicate any way in which such cross-examination was relevant to the issues before the court and accordingly leave to cross-examine was not given.

[18] At that point the respondent asserted that he was not getting a fair trial. He then turned to the body of the court and said "If anyone believes I'm not getting a fair trial please stand up". At that point approximately 7 people, including those who

had been providing notes to the respondent, stood up and were then removed from the court.

[19] The Attorney then introduced an affidavit from Mr Morrow, an officer of the Police Ombudsman for Northern Ireland, dealing with an interview conducted with the respondent on the afternoon of 12 January 2016. The respondent objected to the admission of this material since the investigation by the Ombudsman was not yet complete. We did not consider that that should prevent the admission of the evidence. After the admission of the interview evidence the respondent applied for a 28 day adjournment. He did not, however, indicate with any precision what purpose the adjournment would serve. It appeared, however, that the Ombudsman's material and some disclosure had only been provided to him on 12 February. In those circumstances we granted an adjournment until 17 February.

[20] On 17 February 2016 the respondent renewed his application for an adjournment. It became clear in his submissions that he viewed this case as an opportunity to complain about the general practice of the banks in repossession cases in Northern Ireland. He had no respect for the Housing Rights Service whose conduct on occasions he described as criminal. He rejected the authority of the court to deal with him. He viewed this as an important case in which the contrast between the powers of a constable and the powers of the court was at issue. He was plainly mistaken in that submission. This case is based on its own facts. It does not engage any such alleged conflicts. He sought leave to introduce further affidavits but was unable to indicate how they would be relevant. He wanted a 90 day adjournment and an opportunity to cross -examine Gillen LJ who was not a deponent in this case. He asserted that he did not now agree the underlying facts and wanted to cross-examine the deponents but could not explain what was in issue. We did not see any basis for changing our earlier view. He produced no satisfactory basis for an application to adjourn any further but rather declaimed that the entire process was unfair and that he should be entitled to a jury trial.

[21] De-bene-esse we considered the materials which were before Gillen LJ in the strike-out application but they added nothing to the case. The respondent clearly took issue with the accuracy and honesty of the affidavits filed on behalf of the bank. He contended that he had never received money, which he contended was comprised only of notes and coins, when he obtained his mortgage. He raised issues around securitisation, contract law and the validity of some terms. He considered the proceedings an abuse of process. These issues will have to be addressed in the hearing on the merits of the bank's claim. A strike-out application is not the place for a determination of credit or credibility. The respondent has not been deprived of a hearing.

[22] There are a number of passages in the Ombudsman's interview which are of some assistance. At an early stage of the interview the respondent said:

> "I was 99% sure that today that I was going to win the case. And I was really preparing myself for that side of things going is going to be you know it's obviously going its public interest, it's going to be in the newspapers…"

This theme of his perception of the importance of the case and the attention it would receive was also demonstrated in the course of his submissions on 15 February 2016, when he referred to the fact that the public were watching and that this was a very big, a very massive point. That was again repeated in the hearing on 17 February.

[23] Secondly, it is clear that despite his optimism about winning the case he had reflected on how he should respond if he lost it. At one stage of the interview he said that he was certain of the fact that the judge was committing a criminal offence. When asked when he had come to the conclusion he said:

> "I've been studying this stuff for a long time and again as a police officer when you're going out on the street you prepare for the worst and hope that that doesn't happen. So I have looked at it, I'm very aware of where I am at but never did I believe that he would find against me today because of the amount of evidence."

Of itself that does not indicate an intention to take action in court in the way that he did but on the following page this matter is pursued in the following exchange:

> "Answer: I looked through what would I do… If I ever came to that position what position would I be in.
>
> Question: So is this prior to the case today?
>
> Answer: Yes
>
> Question: Right okay
>
> Answer: I'd look through things and figured out where I'd be but I never dreamt that this would actually happen."

A fair reading of those answers indicates that the respondent had formed a plan to respond to a dismissal of his application by taking the broad action that he took on the day in question. That is reinforced by what he says he said to the constable who arrested him:

> "And I basically said to him look I'm sorry basically what's transpired here today has forced your hand, you have to arrest me, but all I did was what I have to do in the circumstances."

We are satisfied, therefore, beyond reasonable doubt that the respondent came to court intending to take action of the sort that he took in the event that his claim was dismissed.

[24] It has been a feature of his involvement in these proceedings that he has steadfastly declined to seek any professional advice on the legal issues involved in these proceedings. He was also asked in interview about whether he had made any reports to the police in connection with any of these matters. He explained that if you go to the police they say that it's a civil matter. It must, therefore, have been patently obvious to him when he was reflecting on what action he should take that if he had sought advice from police colleagues the action that he took would never have been approved. That demonstrates not just premeditation but determination.

[25] We have already referred to aspects of self-importance and attention seeking in his perception of the litigation before Gillen LJ. That was also apparent from his presentation in court. He addressed his remarks both to the court and to the public audience. As previously indicated, at one stage he called upon those in the audience who considered that he was not getting a fair trial to stand up. His supporters did so. Conduct of that sort reinforces the view that it was his intention to abuse the subject proceedings with a view to gaining publicity. How he believed that would assist him it is difficult to know but it is clear that throughout this process he has revelled in being in the spotlight. It also appears that he has been encouraged by others who have stayed in the background but used his foolish vanity for their own ends.

Consideration

[26] The proceedings in which the judgment was given by Gillen LJ were an application to strike out the bank's claim without a full hearing on the merits. Such an application requires the defendant to establish in effect that there is no triable issue. The respondent, in his Ombudsman interview, placed considerable emphasis on the fact that the bank's accounts showed a nil balance on his mortgage account on various occasions. There was an affidavit from the bank stating that this was an internal accounting practice. The respondent does not seem to have comprehended that this raised an issue which would have to be tried at the full hearing. Secondly, he maintained that he was entitled to an Order requiring disclosure of the bank's books pursuant to the Bankers' Books Evidence Act 1879. He relied upon case law and the Interpretation Act in support of that submission. In his judgment Gillen LJ

indicated that that was a matter which the trial judge would have to deal with in due course. The respondent also relied upon various criticisms of the bank which clearly would have to be litigated at the full hearing. The respondent's criticisms of the judgment were totally misconceived. In any event, if he had points to make about the decision he had a right to seek leave to appeal to the Court of Appeal in order to make them.

[27] A constable's power of arrest is contained in Article 26 of the Police and Criminal Evidence (Northern Ireland) Order 1989:

> "26. — (1) A constable may arrest without a warrant—
>
> (a) anyone who is about to commit an offence;
>
> (b) anyone who is in the act of committing an offence;
>
> (c) anyone whom he has reasonable grounds for suspecting to be about to commit an offence;
>
> (d) anyone whom he has reasonable grounds for suspecting to be committing an offence.
>
> (2) If a constable has reasonable grounds for suspecting that an offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds to suspect of being guilty of it.
>
> (3) If an offence has been committed, a constable may arrest without a warrant—
>
> (a) anyone who is guilty of the offence;
>
> (b) anyone whom he has reasonable grounds for suspecting to be guilty of it.
>
> (4) But the power of summary arrest conferred by paragraph (1), (2) or (3) is exercisable only if the constable has reasonable grounds for believing that for any of the reasons mentioned in paragraph (5) it is necessary to arrest the person in question.
>
> (5) The reasons are—
>
> (a) to enable the name of the person in question to be ascertained (in the case where the constable does not know, and cannot readily ascertain, the person's name, or

has reasonable grounds for doubting whether a name given by the person as his name is his real name);

(b) correspondingly as regards the person's address;

(c) to prevent the person in question—

(i) causing physical injury to himself or any other person;

(ii) suffering physical injury;

(iii) causing loss of or damage to property;

(iv) committing an offence against public decency (subject to paragraph (6)); or

(v) causing an unlawful obstruction on a road (within the meaning of the Road Traffic (Northern Ireland) Order 1995 (NI 18);

(d) to protect a child or other vulnerable person from the person in question;

(e) to allow the prompt and effective investigation of the offence or of the conduct of the person in question;

(f) to prevent any prosecution for the offence from being hindered by the disappearance of the person in question."

In this case there is no evidence that an offence was committed nor any reasonable grounds for suspicion about the commission of an offence. The respondent had no lawful power of arrest and his purported use of the powers of a constable was an abuse. Similarly he had no reasonable grounds for believing that any of the matters set out in Article 26(5) were satisfied and accordingly no power of summary arrest.

[28] The purpose of the contempt of court jurisdiction is sometimes misunderstood. It is not directed towards the dignity of individual judges but rather the prevention of an interference with the due administration of justice. The rule of law depends upon the court being able to provide an independent and impartial tribunal for the hearing of cases without disruption.

[29] The contempt powers should be used sparingly. They should only be exercised as a last resort where other less drastic remedies are not available. The court should recognise that those who misbehave are often driven to do so when suddenly overwhelmed by emotion. Where, however, it is necessary to act in order

to protect the processes of the court an element of deterrence is a proper consideration.

[30] We are satisfied beyond reasonable doubt that the respondent was a man driven by self-importance and attention seeking. We are also similarly satisfied that there was premeditation in the planning of his reaction should he lose and determination to carry it out. We are similarly satisfied that he deliberately avoided seeking any form of assistance or advice from professional lawyers or police because either would have cautioned him that his actions were misconceived and without legal substance.

Conclusion

[31] For the reasons given we consider that the custody threshold has clearly been crossed. There was no apology for his conduct. We have no reason to treat him as other than a person of otherwise good character. He is sentenced to a period of imprisonment of 3 months. If he applies to this court after 28 days to apologise for his conduct we will remit the remainder of the term.