

Neutral Citation No: [2021] NICA 24

Ref: MOR11502

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 30/04/2021

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

BETWEEN:

COLM McAULEY

Appellant;

-and-

OFFICIAL RECEIVER

Respondent

and

COLM McAULEY

Appellant

and

NORTHERN BANK LTD

Respondent

The appellant did not appear
Mr Gowdy QC for Northern Bank (instructed by King and Gowdy Solicitors)

Before: Morgan LCJ and Huddleston J

MORGAN LCJ

[1] The appellant is a bankrupt. The first appeal concerns an order made on 7 January 2019 by Stephens LJ. The appellant refused to be examined by the Official Receiver. Stephens LJ invited him to avail of legal aid funding in order to secure representation but Mr McAuley indicated that he did not wish to do so. At the hearing he again confirmed that he was not willing to undergo public examination. Stephens LJ explained to him that if he did not agree to undergo public examination he would be left with no option but to commit him to prison. He gave the appellant an opportunity to reflect. The position did not change. The judge made an Order committing him to prison for six months. The appellant served the entirety of the period.

[2] On 21 January 2019 the appellant lodged a notice of appeal. The notice did not indicate the order that he was appealing against and in particular whether he was appealing the conviction for contempt made in 2018 as well as the sentence passed on 7 January 2019. The grounds of appeal were stated to be:

- (i) Fraud;
- (ii) Misrepresentation;
- (iii) Mistake; and
- (iv) False imprisonment.

No particulars indicating how these matters were material to the decision being appealed were provided. There was no further communication from the appellant during the period that he was serving his sentence.

[3] On 27 September 2019 Stephens LJ found the appellant in contempt of court on the application of Northern Bank Ltd by reason of his failure to comply with an Order with a penal notice attached for possession of certain lands in Armagh. The appellant was sentenced to a period of three months' imprisonment. The notice of appeal was lodged on 10 January 2020, well outside the period prescribed by Order 59 Rule 4 RCJ. The relevant part of the notice was in the following terms:

“For an Order That:

- (1) Fraud
- (2) Misrepresentation
- (3) Mistake

AND further take notice that the grounds of this appeal are that:

- (4) False Imprisonment”

[4] By letter dated 30 June 2020 the appellant was asked to comply with Order 59 Rule 3(2) by setting out proper grounds of appeal within 28 days in respect of both notices of appeal. A review of the appeals was fixed for 6 August 2020. The appellant did not attend the review. By letter dated 19 August 2020 it was indicated that both notices of appeal should be struck out unless within 14 days the appellant complied with the Rules in respect of grounds of appeal and providing reasons to extend time in respect of the 2020 appeal.

[5] He has not provided any response. There has been no application to extend time. For the avoidance of doubt we make clear that these appeals were and remain struck out.