

Neutral Citation: [2017] NICH 21

Ref: MOR10369

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

Delivered: 14/07/2017

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

BETWEEN:

COLIN RICHARD JENNINGS AND MICHAEL SKINNER, RECEIVERS

Plaintiffs;

-and-

DECLAN QUINN

Defendant.

MORGAN LCJ

[1] This is an application for an interlocutory injunction restraining the defendant from carrying out any further work to agricultural property situated and known as 60 Rockdale Road, Cookstown ("the subject lands") and from trespassing or entering onto the said lands. Mr Gibson appeared on behalf of the plaintiff and Mr Morgan on behalf of the defendant. I am grateful to both counsel for their careful and helpful oral and written submissions.

**Background**

[2] In 2012 the defendant purchased the subject lands comprised in Folios 13054 County Tyrone, 13055 County Tyrone and TY7443. On 19 July 2013 he granted Barclays Bank Plc (the bank) a charge over those lands and also over premises at 414, Ormeau Road, Belfast owned by him. In September and October 2015 the bank formally requested payment of those liabilities under various accounts by issuing

demands for full payment. By letter dated 10 November 2015 the bank indicated that the current debt was £652,761 before accrued interest. The debt was not at that stage being serviced by the defendant.

[3] On 28 January 2016 a Restraint Order was made on the application of the Director of Public Prosecutions in Northern Ireland prohibiting the defendant from disposing of his assets. The subject lands and the property at Ormeau Road, Belfast were specifically included in the order. On 10 February 2016 the bank appointed the plaintiffs as receivers under the mortgage charge deed. There was no dispute at the hearing that the bank were entitled to do so by virtue of clause 6 of the said deed and that by virtue of the said clause the receivers were entitled to enter into possession of the property and sell same.

[4] The receivers entered into discussions with the owner of neighbouring property, Mr Kelso, as a result of which they agreed to sell the subject lands for the sum of £600,000. On 10 June 2006 they applied to the High Court to vary the Restraint Order and on 28 September 2016 the court varied the Order allowing and permitting the receivers to receive the sum of £600,000 following the sale of the subject lands which would be used to partially satisfy the debt owed by the defendant to the bank.

[5] On 27 October 2016 the receivers were informed by the PSNI that the defendant had commenced laying a lane and services to a derelict building on the land. Further enquiries were made by the receivers to verify that such activities were taking place. They contacted their estate agents who took photographs of the works. The receivers monitored the position and on 25 January 2017 were informed that there was considerable construction work being conducted on the subject lands including the presence of a digger, two vehicles and four or five men. An old derelict property which comprised a farmhouse had been knocked down and new foundations laid.

[6] Solicitors on behalf of the receivers wrote to the defendant on 30 January 2017 telling him to immediately desist from works on the site. In the absence of any reply the plaintiff issued proceedings on 1 February 2017 claiming damages for trespass and unlawful interference with the plaintiffs' property and an injunction to prevent further such trespass. On the same day an application for an interlocutory injunction was issued seeking an injunction pending the trial of the action to restrain the defendant, whether by himself or by his servants and agents or by anyone whomsoever, from

(a) Carrying out any further works to property situate and known as 60 Rockdale Road Cookstown being all the land and premises comprised in Folio 13054 County Tyrone, 13055 County Tyrone and TY7443 County Tyrone,

(b) Trespassing or entering onto the lands contained in 60 Rockdale Road, Cookstown being all the land of premises comprised in Folio 13054 County Tyrone, 13055 County Tyrone and TY7443 County Tyrone.

[7] The interlocutory injunction application was listed for hearing before Burgess J on 7 March 2017. On the defendant's application he adjourned the case to enable him to explore alternative means of funding and to investigate the possibility of obtaining an offer at a higher price than the £600,000 agreed with Mr Kelso. The matter came before me on 12 May 2017 and in the course of the hearing I gave leave for certain further written material and submissions to be made by 2 June 2017.

### **The evidence**

[8] The defendant filed an affidavit on 10 February 2017 in which he accepts that he owes the bank £652,761 and that he must repay it. The bank claims interest in addition. He asserted in his affidavit that he sought a short delay to allow him to make arrangements to repay the bank and he did not believe that the short delay would cause the bank any disadvantage. He explained that he had farmed these lands and there was approximately £30,000 worth of silage on the lands which he needed to sell for income between February and April 2017. The bank indicated that they had no objection to his removal of the silage. He said that in January 2016 he had been told by the receiver that they had no objection to him being on the lands and farming them. The receiver denied that he made any such arrangement. He wanted to use the lands to store cattle which needed to be tested for tuberculosis. There was no explanation as to why this was the only location to which the cattle could be moved. He said that he had spent approximately £20,000 since January 2016 repairing, maintaining and improving the land but did not exhibit any receipts in respect of such expenditure.

[9] In his affidavit of 10 February 2017 the defendant indicated that he wanted a delay of about eight weeks in order to make arrangements to pay the bank and he stated that if he had not made arrangements within that time he would undertake voluntarily to remove himself from the land so that the bank could sell them. He asserted that his net assets greatly exceeded the amount owing to the bank and that the sale of the lands at £600,000 represented an undervalue. He said that he had missed loan payments because he was suffering from depression and that he was also in arrears on the mortgage payments for his home at Castlecaulfield. He exhibited an eight line valuation by an estate agent suggesting the lands had a value in excess of £800,000. He also indicated that he had met a named prospective purchaser in December 2006 who was prepared to pay £1 million for the lands. He was also offered a sum of £800,000 in November 2016 by another proposed

purchaser. The bank took steps to follow up these offers after their mention in the replying affidavit but none turned out to be of substance. The bank exhibited a detailed professional valuation suggesting that as of 24 May 2016 the value of the subject lands was £360,000. The defendant maintained that he had offers in respect of his property at 414 Ormeau Road, Belfast which he claimed would be sufficient to extinguish the debt. He complained that the bank had not allowed him to expend further monies on the premises thereby adding to their value or enabling them to be rented out. These proceedings are not concerned with those premises.

### **The submissions**

[10] Mr Gibson submitted that the defendant had introduced limited evidence in support of his submission that the injunction should not be granted. Although he complained that he was prevented from earning his living as a farmer he had not exhibited any accounts to show what that income was. I subsequently gave leave for the defendant to introduce those accounts which showed that in the years 2012-2014 his income ranged between £18,000 and £30,000 from his farming activity.

[11] The plaintiff criticised the valuation provided by Mr Fitzpatrick on which the defendant relied as it did not refer to any comparables. Subsequent to the hearing and without seeking the permission of the court the defendant submitted a more detailed report from Mr Fitzpatrick dated 21 March 2017 in which he referred to four comparables although he recognised that it had been quite difficult to source comparable sales. Two of the comparables involved lands which were considerably smaller than the subject lands and, in the view of the plaintiff's valuer, superior. The remaining two comparables were apparently provided by Mr Quinn and there is no indication as to how these were validated by Mr Fitzpatrick.

[12] The defendant contended that the property at 414 Ormeau Road, Belfast was sufficient to discharge his indebtedness but that property was ready to complete a sale at a price of £530,000. The overall indebtedness of the defendant to the bank was £750,000. The bank had first become aware of the defendant's activity on 27 October 2016 and sent a letter of claim. The writ of summons was issued expeditiously on 1 February 2017 when it appeared that the defendant had expanded the work that he was carrying out. Mr Gibson submitted that there was clearly plain evidence of trespass and that damages were not an adequate remedy because of the plaintiffs' proprietary interest in the property.

[13] In a skeleton argument filed on 24 February 2017 the defendant invited the court to stay any relief thought appropriate for eight weeks to allow the defendant to obtain finance and to seek court consent to an alteration of his arrangements covered by the restraint order. It was in that context that Burgess J adjourned the matter in

March 2017. When the hearing came before me on 12 May 2017 it was accepted that the investigations into the proposed finance had taken too long and that there was no active proposal for financing before the court. Similarly there was no indication that any steps had been taken in relation to the restraint order and there is no indication as to when the issues arising from that might be resolved.

[14] Mr Morgan submitted that there was no evidence that the property had been properly marketed by the plaintiff in order to obtain a proper valuation. There was no evidence of discussions with other purchasers. It is the case, however, that subsequent to the lodging of the skeleton argument discussions had taken place with at least one of those indicated by the defendant as a potential purchaser. In light of Mr Fitzpatrick's valuation it was submitted that the proposed sale at £600,000 was at an undervalue.

[15] Further it was submitted that it would be unconscionable to impose the injunction having regard to the £20,000 expenditure undertaken by the defendant. As previously indicated, however, there were no receipts in relation to any of that expenditure. The injunction would result in the prohibition of the defendant's farming activity until the trial. Although he only purchased the lands in 2012 he had an emotional attachment to them and plans for their development. Mr Morgan accepted that there was no challenge to the powers of the receiver. He also drew attention to the points made in the defendant's affidavit about the dependency of his father and his present difficulties in relation to his dwelling house.

#### **The defendants further submissions**

[16] Shortly after the hearing on 12 May 2017 the defendant decided to dismiss his previous legal team. He then submitted a letter dated 25 May 2017 indicating that the sale of 414 Ormeau Road Belfast had completed in the sum of £530,000 despite a letter from his previous solicitors dated 18 May 2017 seeking confirmation that the plaintiff would desist from proceeding with the sale. It appears that the sale may already have completed by this time. He enclosed correspondence to the PPS in which he proposed the sale of 2 properties owned by him in Castlecaulfield in respect of which there were outstanding borrowings.

[17] On 9 June 2017 he lodged an affidavit referring to other properties which he was proposing to sell in respect of which there were outstanding borrowings. There was no indication as to how any net equity was to become available in light of the restraining order. He appeared to take issue with the entitlement of the receivers to take possession of the subject lands upon their appointment in accordance with the mortgage charge deed executed by him.

[18] The defendant lodged a further affidavit on 14 June 2017. He introduced evidence that development on foot of a planning permission granted in 2005 for a replacement dwelling had been commenced prior to its expiry period and was, therefore, still current. Mr Fitzpatrick valued that lands and 3 acres comprised in the permission at £150,000 whereas Savills valued the site at £40,000. Neither appears to have relied upon any comparable. The defendant exhibited a further note from Peter Fitzpatrick & Sons indicating additional properties upon which they had based their comparable evidence for the subject lands but there was no indication as to where the evidence of these comparables had come from. The defendant further complained that the plaintiffs' valuation had not taken into account the value of agricultural structures on the land.

### **Consideration**

[19] The parties were agreed in the submissions before me that the leading case on the grant of an interlocutory injunction is American Cyanamid v Ethicon Ltd [1975] AC 396. The first question is to ask whether there is a serious issue to be tried in respect of the plaintiff's entitlement to possession of the premises. When the defendant was represented no issue was taken with the entitlement of the receiver to enter the property and if appropriate to exercise the power of sale. In his latest affidavit the defendant takes issue with that proposition on the basis that the receivers were not entitled to take possession of the premises without an order of the court. Given that there was no challenge to the appointment of receivers or the validity of the deed under which they were appointed there is in my view no serious issue to be tried concerning the entitlement of the plaintiff to possession of the subject lands.

[20] The next question concerns the claim by the defendant that he was assured that he could continue his farming activity and on foot of that assurance he expended money in farm improvements. Accordingly he maintains that the plaintiff is now estopped from withdrawing its assurance. On foot of the defendant's affidavit there is sufficient to raise an arguable case. I am satisfied, however, that it is one in respect of which the defendant is unable to satisfy the plaintiff in damages. The purpose of securing possession of the premises and the removal of the defendant is to make the property marketable. The solicitor's letter from the proposed purchaser indicates how vacant possession is important to the prospect of sale. If the sale does not proceed the defendant has not demonstrated that he has the assets to compensate the bank even without the complication of the Restraint Order. The defendant, on the other hand, if he succeeds at trial can pursue a remedy by way of damages calculated on his previous profitability. The plaintiff is a good mark for such damages.

[21] In those circumstances I consider that the plaintiff is entitled to the interlocutory injunction sought subject to the final submission of the defendant that the conduct of the plaintiff is unconscionable. Part of the material on which the defendant relies concerns the submission that the subject lands will be sold at an undervalue. The plaintiff's retort is that it has relied upon an independent professional valuer. That valuer has taken issue with the appropriateness of the comparables upon which the defendant's valuer has relied, particularly those comparables which apparently were provided by the defendant.

[22] In my view it is important to identify the limited scope of the proceedings in this case. The proceedings are solely concerned with an alleged trespass. There has been no application to the court in respect of the proposed exercise of the power of sale by the receivers. It would not be appropriate to come to any determination concerning the power of sale in the absence of any challenge unless it was immediately apparent that the proposed behaviour was unconscionable and I find no basis for such a conclusion in this case.

[23] The defendant relied upon other personal circumstances in respect of his home and his father but there was limited evidence to indicate how those should be factored into this case. He did exhibit evidence of his own poor health but that did not suggest any pressing reason to override those factors supporting the granting of the interlocutory injunction.

### **Conclusion**

[24] For the reasons given I grant an interlocutory injunction as sought in the summons. I direct that the case be put in the list for mention before the Chancery Judge on 6 September 2017.