

Neutral Citation No: [2021] NICH 23

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

Delivered: 17/12/2021

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

ULSTER BANK / NATIONAL WESTMINSTER BANK PLC

Plaintiff

v

RICHARD POLLOCK
SYLVIA POLLOCK
THOMAS POLLOCK
PAULINE POLLOCK
RAMSEY POLLOCK
SAMUEL POLLOCK
RHODA POLLOCK

Defendants

Mr Stephen Shaw QC with Mr Peter Hopkins of counsel (instructed by Arthur Cox,
Solicitors) for the Plaintiff

Mr Thomas Pollock and Mr Richard Pollock appeared as litigants in person

McBRIDE J

Introduction

[1] The present proceedings are brought by Ulster Bank/ National Westminster Bank Plc (“the bank”) against the defendants (“the Pollock family”). The bank seeks orders for possession in respect of certain lands owned by the Pollock family and money judgments in respect of monies loaned to the Pollock family personally and monies secured by way of personal guarantees provided by the Pollock family for monies loaned by the bank to a building company.

[2] Mr Richard Pollock and Mr Thomas Pollock appeared as litigants in person and requested that Mr Eamon Scullion be appointed as their McKenzie Friend. The other defendants did not appear and were not represented.

[3] Mr Shaw QC with Mr Hopkins appeared on behalf of the bank. The bank objected to Mr Scullion acting as a McKenzie Friend. The bank did not object to Mr Richard and Mr Thomas Pollock having a McKenzie Friend in principle but objected to Mr Scullion acting in that capacity.

[4] Before hearing the application I requested that Mr Scullion complete the application form entitled "Individual who wishes to provide assistance to a litigant as a McKenzie Friend." In this application form Mr Scullion asked to provide assistance to "the Pollock connection, Samuel Thomas Pollock, Richard Carson Pollock." He requested that he act as a McKenzie Friend and in addition requested that he be granted a right of audience "as I have been appointed as a Special Trustee in five number Trust evidenced by affidavits - see attached."

[5] In the attached documents entitled as follows:-

"Bannview 762006tp" (Private Trust);
"PD13762007 plk (Private Trust);"
"Ballylaggan 5762007sr (Private Trust);"
"Rosebank 5762007rs (Private Trust);" and
"Cabra 4762007jr (Private Trust);"

Mr Eamon Scullion is appointed as a "Special Trustee" to "compel specific performance of the delinquent Trustee". The Trustee in each Trust is identified as "peter; kearney (dba), Peter Kearney, Company Director, BCM Global Limited and "howard john; davies; (dba), Howard John Davies, Director, Ulster Bank Limited."

[6] The settler of:

- (a) "Bannview 762006tp Private Trust" is Samuel Thomas and Pauline Sarah Pollock;
- (b) "PD13762007plk (Private Trust)" is Richard and Rhoda Pollock;
- (c) "Ballylaggan 5762007sr (Private Trust)" is Rhoda Pollock and Richard Carson Pollock;
- (d) "Rosebank 5762007rs (Private Trust)" is Richard Carson Pollock and Sylvia Anne Pollock; and
- (e) "Cabra 4762007jr (Private Trust)" is John Ramsey Pollock.

[7] Mr Shaw objected to Mr Scullion acting as a McKenzie Friend on the following basis:

- (a) His appointment would undermine the efficient administration of justice;
- (b) He is directly or indirectly conducting the litigation;
- (c) He has a personal interest in the case; and
- (d) He is using the case to promote his or her own cause or interest or those of some other person, groups or organisation and not the interests of the personal litigant.

[8] In reply Mr Pollock indicated that Mr Scullion was a friend who had assisted him with drafting paperwork and he stated he wished to have Mr Scullion act as a McKenzie Friend as he was well placed to answer questions or queries raised during the proceedings.

[9] I also gave Mr Scullion an opportunity to address the court in respect of this application, and to address the court in particular details of his previous appearances before the court when he acted as a litigant in person and when he acted as a McKenzie Friend. Mr Scullion stated that he never claimed to be a "Freeman" or "Sovereign man" and indicated that he was seeking to pursue equitable claims on behalf of the Pollocks and further indicated to the court that he had not and would not receive any payment for acting as a McKenzie Friend.

Relevant Legal Principles

[10] The Practice Note 3/2012 entitled "McKenzie Friends (Civil and Family Court)" was issued as guidance by the Lord Chief Justice and applies to the current proceedings. I consider the following principles emerging from the jurisprudence and the Practice Note can be conveniently summarised as follows:

- (i) There is a presumption in favour of permitting a personal litigant to have a McKenzie Friend.
- (ii) A McKenzie Friend's role is to provide moral support for personal litigants; take notes with the permission of the judge; help with the case papers; and quietly give advice on any aspect of the conduct of the case which is being heard. A McKenzie Friend does not have a right to conduct the litigation or to manage the personal litigant's cases outside court for example by signing court documents; and a McKenzie Friend does not have a right of audience.
- (iii) The court, in the exercise of its discretion can grant to a personal litigant the right to receive reasonable assistance from a McKenzie Friend and this right can be granted upon an initial application or at any time during the hearing.

- (iv) The court may deny to a personal litigant the assistance of a McKenzie Friend or may deny that a particular person can act as a McKenzie Friend on the basis the provision of a McKenzie Friend or a particular person acting as a McKenzie Friend might undermine or has undermined the efficient administration of justice. Illustrations of circumstances where this might arise, which are not exhaustive, are:
- Where the assistance is being provided for an improper purpose;
 - The assistance is unreasonable in nature or degree;
 - The McKenzie Friend is subject to an order such as a civil proceedings order or a civil restraint order or has been declared to be a vexatious litigant; by a court in Northern Ireland or in another jurisdiction of the United Kingdom;
 - The McKenzie Friend is using the case to promote his or her own cause or interests or those of some other person, group or organisation, and not the interests of the personal litigant;
 - The McKenzie Friend is directly or indirectly conducting the litigation;
 - The court is not satisfied that the McKenzie Friend fully understands and/or will comply with the duty of confidentiality.
- (v) Rights of audience are not part of the function of a McKenzie Friend. Rights of audience will ordinarily be exercised only by persons who are properly trained or under professional discipline (including an obligation to ensure against liability for negligence) and be subject to an overriding duty to the court. Such requirements are necessary for the protection of all parties to litigation and are essential to the proper administration of justice.
- (vi) The Judicature (Northern Ireland) Act 1978 sets out the persons who have a right of audience in the High Court. As appears from this legislation the Parliamentary intention is that rights of audience are normally reserved to those persons who are properly trained and under professional discipline. Accordingly, grants of rights of audience to other persons including McKenzie Friends are granted only in exceptional circumstances as to do otherwise would be to “drive a coach and horses” through the Parliamentary intention. The grant of a right of audience to a lay person who seeks to exercise such rights on a regular basis, whether for reward or not, will only be granted in very exceptional circumstances as to do otherwise would tend to subvert the will of Parliament.

Consideration

[11] In the exercise of my discretion I refused the application to appoint Mr Scullion as a McKenzie Friend for Mr Thomas and Richard Pollock. I made this decision at the commencement of the litigation and I indicated that I would set out my reasons in writing at a later stage. I now set out the reasons for my decision.

[12] The Pollock family, the defendants in the present proceedings, were originally legally represented and formal pleadings were submitted on their behalf. Subsequently, they became litigants in person and participated in a number of review hearings. In particular, Mr Thomas Pollock engaged in these proceedings and spoke on behalf of himself and the family members. At all times he conducted himself with courtesy and politeness.

[13] Since 31 August 2021 there appears to have been a change in approach and thereafter the defendants sent voluminous correspondence to the plaintiff, all of which was in the style of claims raised by “Freemen-on-the land” or more commonly referred to as “Sovereign men”. Mr Thomas Pollock indicated to the court that Mr Scullion had assisted him in the drafting of all of this documentation. The documentation included a number of documents headed “Private Notices”, “Memo of Trust”, “Equitable Asset”, “Notice of Intention to express a Trust”, “Notice of Fault and opportunity to cure” and “Notice of Action.”

[14] Although Mr Scullion advised the court that he has never claimed to be a Freeman or Sovereign man a transcript of a hearing before me dated 21 May 2019 shows that he adopted many of the claims made by a Freeman. It further appears from this transcript that Mr Scullion was brought to court on foot of a warrant for his arrest after failing to appear at a contempt hearing in which it was alleged he had refused to abide by a court order. It was only after he was brought to court on foot of the arrest warrant that Mr Scullion thereafter complied with the terms of the court order.

[15] In *Ulster Bank Limited v Dace* [2017] NICH 10 Horner J found that the claims raised in that case bore resemblance to those raised by Freeman and he held such arguments to be “devoid of legal or factual merit and were unarguable.” Similarly, in *Santander v Scullion* [2020] NICH 1 I found the “equitable asset” document which was relied upon as evidence of repayment of the debt to consist of “legal mumbo jumbo.” In addition, in *Swift First Limited v Quinn* [2018] NICH 23 in which Mr Scullion acted as a McKenzie Friend and in which a Memorandum of Trust and Private Trust documentation was relied upon as defence to a repossession claim, the court held that these documents were “legally meaningless” and did not constitute payment and therefore did not ground a defence to the plaintiff’s claim for possession.

[16] In the present case the introduction of these Freeman style claims coincides with Mr Scullion's engagement to assist the Pollock family in drafting documentation.

[17] Such Freeman claims have been before the court on a number of occasions and have never found favour with the courts. I therefore consider that the introduction of these claims will serve to unnecessarily lengthen the proceedings as time will be taken up dealing with arguments which have already been adjudicated upon by the court and which are of no benefit to the parties.

[18] I am satisfied that Mr Scullion is a person who has raised and pursued these arguments as they were not raised prior to his involvement in the proceedings.

[19] Accordingly, I consider that Mr Scullion's appointment would not assist in the efficient administration of justice.

[20] Secondly, I note that Mr Scullion avers that he was appointed as a Special Trustee under the Private Trust documents. According to this document his role is "to compel specific performance of the delinquent trustees". The trustees are defined as Peter Kearney who is a Co-Director of the BCM Global and Sir Howard John Davies who is a Director of the Ulster Bank. Therefore, by his own assertion Mr Scullion has a personal interest in the proceedings.

[21] Thirdly, the change in approach by the defendants since the summer of 2021 coincides with Mr Scullion's assistance in drafting the documentation and correspondence and accordingly I consider that he is directly conducting the litigation.

[22] Fourthly, Mr Scullion has either acted or requested to act as a McKenzie Friend in a number of cases of a similar nature, namely claims brought by banks or lending institutions and/or administrators and this therefore gives rise to a concern that he is using this case to promote the interests of Freeman and not the interests of the personal litigants.

[23] For all these reasons I refused the application for Mr Scullion to act as a McKenzie Friend. I did not however refuse the application for the defendants to have the assistance of a suitable McKenzie Friend. I therefore adjourned the proceedings to allow the defendants to make an application for another person to be appointed as a McKenzie Friend. In the circumstances Mr Thomas Pollock proposed that Mr Ian Thompson act. After Mr Thompson submitted his application form I appointed him to act in the role of McKenzie Friend.