

THE HIGH COURT

[2021] IEHC 498
[2017/42 S]

BETWEEN

**ALLIED IRISH BANKS PLC
AND
EVERYDAY FINANCE DAC**

PLAINTIFFS

**AND
PADDY MCKEOWN
AND
ADELAIDE MCCARTHY**

DEFENDANTS

JUDGMENT of Mr. Justice Brian O'Moore delivered on the 16th day of July, 2021.

1. By Notice of Motion dated the 23rd of October 2020, the Defendants sought the following reliefs:-

- "1. An Order pursuant to Order 40, Rule 12 of the Rules of the Superior Courts, or in the alternative pursuant to the inherent jurisdiction of the Court to strike out without leave to re-enter/dismiss both the affidavit of Andrew McCudden of 6th August 2020 and Notice of Motion of the same date since Everyday Finance DAC ("Everyday") had to be struck through from the title to said instruments by the Central office, whereby they were not entered as co-Plaintiff to the title of the case on that date for those instruments to now legally stand.
2. An Order pursuant to Order 19, Rule 28 of the Rules of the Superior Courts, or in the alternative pursuant to the inherent jurisdiction of the Court, disposing of the motion of Everyday with prejudice; said motion before the Court for determination on 30th October 2020 as Everyday have deceived the Court by seeking to amend the Order of Costello J. 12 May 2017 while at the same time spending said Order prior to the hearing and determination of their Motion by the Court thereby prejudging the outcome of their motion in their own favour which is entirely prejudicial to the Defendants and whereby the following facts stand;
 - 2.1 that Everyday engaged in a knowing, willing and intentional abuse of Court process in issuing said motion, by spending said Court Order of the 18th May 2017, while concealing their intent to sell the private properties of the Defendants, with no rights to do so, prior to the determination of said motion with a view to then registering those sales fraudulently all in the face of a Statutory Demand for Lawful Redemption.
 - 2.2 that the Directors of Everyday, their servants and agents, are in criminal contempt of the Order of Barniville J. of 21 April 2020 by spending said Order and their intent to now persuade this Honourable Court to retrospectively give legitimacy to their unlawful actions, which would prejudice the Defendants rights irreparably and would be repugnant to their rights as Irish Nationals under Bunreacht na hEireann 1937, Article 1 of Protocol 1 of the European Convention on Human Rights,

European Fundamental Rights, The Laws of Natural Justice all while in breach of the Criminal Justice Anti-Money laundering Acts, Statute of Frauds, Conveyancing Acts 1881 and the Registration of Title Act 1964 and the Data Protection Acts.

3. An Order directing the entire motion booklet of 6th August 2020 and all paperwork that Everyday have relied on to be joined as co-plaintiff, all before the Civil Courts, to be sent to the Office of the Director of Public Prosecutions for the following matters;
 - 3.1 Circa 850,000 Euros of rental income of the Defendants is missing, procured by Ned Murphy, or Moore, or both, and not accounted for nor has it been claimed to be offset from any purported debt claim of Everyday.
 - 3.2 Everyday, a Moneylender licenced only to deal with consumer loans of limited value, has laid false claim to the Commercial Court Order of Ms Justice Costello from 2017 and endeavoured to sell the valuable private properties of the Defendants at significant undervaluation, thereby engaging In theft of the lawful equity of the Defendants to the tune of Circa €1.5M in excess of the value of the Commercial Order. Everyday and their agents have withheld all information surrounding the purported sales of the private properties from the Defendants and the Courts, while in parallel receiver Ned Murphy has further prejudged the outcome of his Plenary proceedings record number 2017/5993P in which he seeks "possession" and has further failed to progress same since issuance of his statement of claim in August 2017 in excess of 3 years.
 - 3.3. Everyday attempted to deceive the Defendants and the Property Registration Authority by lodging fraudulent sale paperwork, with a view to fraudulent removal of property ownership and redemption rights of the Defendants.
 - 3.4 Everyday and Ned Murphy failed for one year to facilitate mortgage redemption to the Defendants to thus be paid in full for the purported claim of Everyday, all while having no lawful powers of sale.
 - 3.5 Allied Irish Banks PLC and Everyday, each failed through their non-acceptance to facilitate the Defendants formal demands to meet the face of the Perfected Order of 18th May 2017 in full since 3rd April 2020, thus rendering the standing of Order of Ms. Justice Costello to be irredeemable and thus unenforceable as a result of being irredeemable.
 - 3.6 Everyday have engaged in acts of maintenance, champerty and/or litigation trafficking, whereby from London an English trustee company Apex Corporate Trustees (UK) Limited have accepted they were the true purported claimant in the matter, not Everyday.

- 3.6 Everyday spent a Court Order in the name of another party while maintaining a motion before the Court to amend the Court Order to enable them to collect on same, thus criminal contempt of court for the purposes of unjust enrichment.
 - 3.7 Everyday attempted to make the Defendants a party to said fraudulent actions by seeking their consent to adjourn generally the motion of 6th August 2020 with liberty to re-enter, thus maintaining the pretence of them being able to retrospectively correct the paperwork, when they cannot.
 4. An Order the entire motion booklet of 6th August 2020 and all the paperwork pertaining to Everyday's motion to be joined as co-plaintiff be sent to the offices of Interpol in Phoenix Park, Dublin whereby as against the actions of Apex Corporate Trustees (UK) Limited confirm they are standing behind this claim in the Superior Courts of Ireland, while using Everyday as a front for same and whereby two Directors of Everyday are British residents and whereby Moore are an International financial organisation.
 5. An Order to formally set aside the Perfected Order of Costello J. of 18th May 2017 as to having been made unpayable and irredeemable for the Defendants to meet same in full, all from 2nd August 2018 onwards. Said non-acceptance of payment demands thus rendering the Order irredeemable and thus unenforceable and/or a clog on the equity of redemption.
 6. An Order directing Everyday to return the private properties of the Defendants forthwith, whereby Apex Corporate Trustees (UK) Limited are satisfied no debt is lawfully owed to any party by the Defendants.
 7. An Order to be made to the Property Registration Authority directing that the applications for registrations of the fraudulent sales as effected for the benefit of Everyday not be registered.
 8. An Order to be made to the Property Registration Authority directing that all paperwork comprising the attempted registrations for the private properties of the Defendants be delivered to the Defendants.
 9. An Order be made to the Property Registration Authority to remove/vacate all charges/Judgment mortgage/burdens/mere charges on the registers in the name of Everyday from the records of all the private properties of the Defendants.
 10. Any other Order which the honourable Court deems appropriate
 11. Summary compensation in lieu of costs"
2. It will be apparent that (1) and (2) of the Notice of Motion seek the striking out or dismissal of a motion brought by Everyday on the 6th of August 2020. That motion has been the subject of a separate judgment by me. There is a very significant overlap

between the two motions. This judgment should therefore be read in conjunction with my judgment on the Everyday motion.

3. As I have granted Everyday an Order in the terms of the motion which it brought, it follows that I am not going to make an Order striking out or dismissing that motion. That fact alone deals with paragraphs (1) and (2) of the Defendants motion.
4. At paragraphs (3) and (4) of the Notice of Motion, the Defendants ask me to make an Order directing that the papers in the Everyday motion "*and all paperwork that Everyday have relied on to be joined as co-Plaintiff*" be sent to the Office of the Director of Public Prosecutions and to the Offices of Interpol in Phoenix Park, Dublin. I am not going to do either of these things. In the first place, it is not necessary for the Court to do so in order to have these matters be subject to a criminal enquiry, as Mr. McKeown has stated in an Affidavit sworn on the 23rd of November 2020 that he will be referring these matters to the "*relevant national and international authorities [...]*" As all of the paperwork which the Defendants want me to refer to the DPP or to Interpol are already in the hands of the Defendants, they are a position to provide exactly the same material to these entities.
5. It may be thought that the reference of papers to the DPP or to Interpol by the Court (as opposed to by the Defendants) may give the reference a greater heft. I am not at all convinced that is so. However, I am not prepared to refer these papers to either Interpol or the DPP as I am not satisfied that the Defendants have made out a sufficient basis for me to do so. In my judgment in the Everyday motion, I have indicated instances where completely groundless allegations were made by the Defendants against named or unnamed people (notably persons operating in the Courts Service and in the Property Registration Authority). I have, however, refrained in that decision from expressing any view (except where necessary) about the fundamental truth or otherwise of the allegations against the persons named at paragraphs (3) and (4) of this Notice of Motion so as not to influence in any way steps which the Defendants (or the authorities) may choose to take in the future, in as much as those persons are involved. I am going to adopt the same self-restraint in respect of these aspects of the Defendants motion.
6. Even if I am wrong in the reasons I have given as to why I will not make the Order sought at paragraphs (3) and (4) of the Defendants motion, there remains the inescapable fact that almost all the persons mentioned in these paragraphs who are alleged to have behaved improperly (and who, it is said, should therefore be the subject of a reference to the DPP and to Interpol) are parties which are not before the Court in this motion. The only other party on notice of this motion is Everyday. It would be quite wrong, except possibly in circumstances of overwhelming urgency, for this Court to make an Order which could have a profound effect on the fortunes of companies and individuals without those persons being properly and formally before the Court and given an opportunity to provide evidence and submissions about why such an Order should not be made.

7. Paragraph (5) of the motion seeks a setting aside of the Order of Costello J. of the 18th of May 2017 as it is "irredeemable [...]". By that, I take it that the Defendants mean that they have attempted to pay off loans but have not been permitted to do so.
8. In the Affidavits filed in respect of the Everyday motion, a similar allegation was made by Mr. McKeown (presumably on behalf of both Defendants). In his first Affidavit (which contain this assertion) he exhibited correspondence with the servicing agents for Everyday who set out the sums due in respect of the relevant facilities (as of the 24th of April 2020). In his second Affidavit, Mr McCudden (the deponent for Everyday in both motions) refer to the letters sent by Link Assets Services Ireland Ltd and say; the following:-

"The Defendants did not respond by paying the sums identified in the said letters. The Defendants returned the said letters under cover of letter dated 29th of April 2020 to Everyday's Brendan Keogh purporting to identify defects in the 24th of April 2020 letters."

9. It is worth setting out the text of the letter from the Defendants:-

"Dear Mr. Keogh,

We acknowledge receipt of the enclosed letters which are then duly returned to you. As you know Everyday Finance DAC ("Everyday") are in continued default from us for a Demand for full Redemption on all mortgages that company are relying upon to have registered charges over our private properties.

The enclosed letters of 24th April 2020 in no way cures that delimit. Firstly they define us at to being the 'Borrower/Borrowers' but to whom the alleged borrowed money is from is not stated. Second, no proofs whatsoever are enclosed that indeed this Link ASI Limited are authorised by Everyday even though it is slated to be the case, Thirdly, we are not customers of either Everyday or this Link ASI Limited. Fourth, all such figures as enumerated therein are hearsay, but most especially in a scenario where typical accounting practices of 'Credit/Debit' are now replaced by a minus as follows;

`-' whatever that is deemed to mean.

In any event as you know if this is an attempt to offer redemption it is no such thing as Redemption is not even mentioned. Redemption is a detailed process on the mortgages in question. You could not even enumerate the originating documentation you would rely upon to commence such a process.

It still stands that Everyday cannot offer us redemption as per our registered correspondence to you of 24th April 2020 whereby therein we have now then offered you 14 days as a Director of Everyday to confirm that you are commencing the process of voluntarily removing said charges for Everyday. Evidently, as always,

our Demand for Redemption of mortgages remains in place up to and past that 14 day timeline offer.

Yours Sincerely,

[...]"

None of these assertions can do away with the fact that redemption figures were provided.

10. A further issue arises on redemption figures. In his second Affidavit, and having referred to the letter of the 29th of April 2020 (exhibited in his first Affidavit) Mr McCudden goes on to say:-

"The nature of joint and several liability has been explained to the Defendants on a number of occasions [...]."

11. Again in the Everyday motion, Mr. McKeown replied to Mr McCudden's averments on this topic by swearing (at paragraph 47):-

"I say at para 46 Supp McCudden the important bits to rebut are those of the matter joint and several liability and that they do not seek to recover €2,936,354.39. These statements become plausible deniability and/or lack of legal training justifying our alleged ignorance of such matter."

12. As is plain from my judgment in the Everyday motion, the Order made by Costello J. in favour of AIB directs each of the Defendants to repay loans taken out on a joint and several basis. This is described by Mr McKeown in the Everyday motion as "*double dipping*" or as fraud. It is no such thing. It is simply that each of the Defendants owes the money, but because these sums are owed on a joint and several basis a repayment by one Defendant benefits the other Defendant in the same amount. Notwithstanding this, in his Affidavit grounding this motion, Mr. McKeown persists in misunderstanding the situation. At paragraph 4, and in making assertions of "*both revealed and concealed fraud [...]*" on the part of Everyday, the first upon which he relies is:-

"Court Order of 18th of May 2017 is for the enforcement as against the Defendants to the value of €2,936,354.39, twice the debt due and owing to Allied Irish Banks, plc of €1,469,714.82 prior to issuance of Summary Summons."

13. This is simply, and obviously, utterly wrong. It is facile, but unfortunately necessary, to point out that this contention by Mr. McKeown is not evidence of any impropriety, wrongdoing, concealed fraud or revealed fraud on the part of Everyday.
14. On the basis of the evidence before me, therefore, Everyday (through its agents) notified the Defendants of the sums due on the relevant facilities in April 2020. It is therefore untrue to say, as Mr. McKeown does, at paragraph 4(f) that the Defendants have been trying to discharge the Court Orders since the 3rd of April 2020 and that Everyday could

not state how much is owed. The basis for setting aside the Order of Costello J. as described at paragraph (5) of the Notice of Motion is not made out and, indeed, is unsustainable on the evidence provided to me.

15. There are two other things to say about the relief sought at (5). Firstly, in the written submissions of the Defendants the basis for the setting aside of the Order of Costello J. is expanded out (significantly and inappropriately) so that I am asked to set it aside on the basis of
 - “(a) Fraud on its face whereby the Court was misled and deceived into making a form of Order on same in a cumulative manner as to liability,
 - (b) On the basis that since Allied Irish Banks plc could not finalise their VAT standing the Order is not safe,
 - (c) On the basis that even if Everyday are successful in their motion it is not exhaustive as to corrections and would also require Allied Irish Banks plc to take separate motion to insert a comma to reflect their subsequent pleadings,
 - (d) On the basis of the constitutional rights of the Defendants to be protected from such unlawful and unjust attack were not protected by said Expedited Summary Claim where they were not even in arrears on issuance date for example,
 - (e) Whereby Everyday were not entitled at law to have sued in such a manner as per “Byrnes” and provisions of the particularisation of debt and claim for example, as laid out in *Bank of Ireland Mortgage Bank v. O'Malley* [2019] IESC 84, and equally could not facility discharge of said Order throughout 2020, all while under extant Demand from the Defendants to do so and
 - (f) Whereby the English trustee cannot be sustaining such equitable claim from foreign jurisdiction of the High Court in Ireland.”
16. It will be immediately clear that, of this plethora of different submissions, only one of them, namely (e), bears any relationship to the grounds set out in the Notice of Motion. However, I can deal with them fairly briefly.
17. The first ground is yet another manifestation of the continued refusal of the Defendants to recognise that the Order reflects the joint and several liability for their debts that they agreed to assume. It is unfortunate that the Defendants appear incapable of understanding this basic fact of their borrowings, and of the Court process that followed their failure to repay their debts. It is, however, not a fraud on them that the Order of Costello J. reflects this joint and several liability.
18. In my judgment on the Everyday motion I have dealt with the question of AIB's VAT status. This is no reason to set aside the Order of May 2017.

19. In my judgment on the Everyday motion, and the judgment of Barniville J. on Everyday's application to be joined as a co-Plaintiff, the conclusion has been reached that the complaint made by the Defendants about the lack of a comma in the title of the original Plaintiff is without merit and has no legal effect whatsoever.
20. The fourth and fifth arguments involve a clear attempt to revisit and re-argue the judgment of Costello J. giving rise to her Order of May 2017. That is not permissible. If these arguments were raised before Costello J. they have been disposed of. If they were not raised, then they should have been. The fact that an argument about the particularisation of a claim might have been subsequently found to be a winner (as occurred in the *O'Malley* decision) does not mean that all previous summary judgments can be revisited in order to allow Defendants raise an argument which they failed to do at the time.
21. The sixth argument is quite groundless. The judgment of Costello J. in favour of AIB cannot be impeached by the fact that an assignee of the interests of AIB has separated the legal ownership in the Defendants facilities and security from the beneficial ownership in those assets. That is a matter for the Everyday motion, and has been addressed in the context of that motion.
22. With regard to paragraph (5) of the Notice of Motion, in summary, the stated reason why I should set aside the Order of Costello J. is not sustained by the evidence. The other reasons are not deployed in support of the reliefs sought in the motion. Even if they were, they are also without merit. There is, of course, a third reason which in itself means that the Order sought at paragraph (5) should not be granted. As things stand, the person entitled to the benefit of the Order of Costello J. is AIB. It has not been notified of the application to set aside that Order. The only notice party is Everyday. It would be a remarkable violation of fair procedures if an Order of this Court in favour of AIB were to be set aside without notice to that Bank. The matter would have been somewhat different (though not entirely different, given that on the face of the Order AIB continues to have an entitlement to costs as against the Defendants) if the interests in the Order had been transferred to Everyday as Everyday sought in its motion. However, that is not the case at the time of hearing this motion precisely because the Defendants have resisted the Everyday motion.
23. Paragraph 6 seeks an Order directing Everyday to return properties to the Defendants. The basis on which this Order is sought is that Apex UK (whose role is set out in my judgment on the Everyday motion) had "*irrevocably and unconditionally accepted no monies were lawfully due by the Defendants to any party [...]*" : see paragraph 10 of Mr. McKeown's grounding Affidavit.
24. However, there is no persuasive evidence that Apex UK had accepted that no monies were lawfully due by the Defendants to any party. Even if that was the position taken by Apex UK, that in itself does not justify the "*return*" to the Defendants of their properties. On the evidence before me, the reduction of the debts of the Defendants has been achieved by the realisation of funds from the sale of their properties. The evidence

of Mr. McCudden, on the Defendants motion, is that Everyday has applied "*income released on the encumbered properties in reduction of the Defendants liabilities [...]*" (paragraph 6 of Mr. McCudden's second Affidavit). Returning to the Defendant's properties sold to reduce their debt, this does not arise.

25. Everyday says that there is still a small residual sum due by the Defendants to it. Whatever about the sum currently due, the evidence before me goes nowhere near the level required for me to consider making an Order in terms of paragraph (6) of the Notice of Motion. In addition, I agree with the submissions of Everyday that such an Order is not appropriate in proceedings such as this, which are summary proceedings where the substantive Order against the Defendants was made by this Court in May 2017, and where the only outstanding matter in these proceedings is the simple procedural one of an application under Order 17 rule 4.
26. The reliefs sought at paragraphs (7) to (9) inclusive require Orders to be made against the Property Registration Authority. Firstly, for the reason I just given I do not think these are appropriate Orders to seek in summary proceedings which have already been determined. Secondly, the evidence justifying making such Orders is simply absent, even considering (as I do) both this motion and Everyday's motion in the round. Thirdly, the Defendants have consciously not put the Property Registration Authority on notice of this application. The lack of notice to the PRA was highlighted by Mr. McCudden at paragraph 5 of his first Affidavit. It would not have been impossible, even at that late stage, to put the PRA on notice of the application. However, the response of Mr. McKeown (on behalf of the Defendants) was robust. In his second Affidavit, and by way of direct reply to Mr. McCudden, Mr. McKeown swore – at paragraph 4 (e):-

"We are alleging criminality and so the conventional rules and procedure as to notifying third parties in civil cases are moot."
27. I would have thought that, given that criminality has been alleged, it was all the more important that third parties drawn into these allegations are notified of them as a matter of basic fairness. The Defendants who consistently in their Affidavit stress their entitlement to rights under the Constitution, are not entitled to Orders against third parties who have no notice of the possibility that such Orders may be made.
28. Relief (11) asks me to direct the payment to the Defendants of "*summary compensation in lieu of costs*". Given that I am refusing all reliefs sought by the Defendants, it is by no means certain that an Order for costs (or compensation in lieu) will be made in their favour.
29. I should say that while I have approached the Defendants' motion by reference to the reliefs claimed, it will be plain from the contents of this judgment that I have considered at length, not only the Notice of Motion but also the Affidavits filed in respect of it, the written submissions, and the oral submissions made to me by both parties.

30. I will list the matter for mention at 10:30am on the 29th of July 2021 to deal with costs and any other matters outstanding from this motion.