THE HIGH COURT

[2021] IEHC 559

[Record No. 2020/6888 P]

BETWEEN

PEPPER FINANCE CORPORATION (IRELAND) DAC

PLAINTIFF

AND

PERSONS UNKNOWN IN OCCUPATION OF THE PROPERTY KNOWN AS 21 LITTLE MARY STREET, DUBLIN 7

DEFENDANTS

AND

THE HIGH COURT

[Record No. 2020/6889 P]

BETWEEN

PEPPER FINANCE CORPORATION (IRELAND) DAC

PLAINTIFF

AND

PERSONS UNKNOWN IN OCCUPATION OF THE PROPERTY KNOWN AS 31 RICHMOND AVENUE, FAIRVIEW, DUBLIN 3

DEFENDANTS

JUDGMENT of Mr. Justice Mark Sanfey delivered on the 13th day of August, 2021.

Introduction

1. This judgment concerns applications in each of these proceedings for attachment and committal of certain individuals who the plaintiff alleges are in occupation of the properties to which reference is made in the designation of the defendants in the respective titles of the proceedings, *i.e.* 21 Little Mary Street, Dublin 7 and 31 Richmond Avenue, Fairview, Dublin 3 ('the properties', or 'Little Mary Street' and 'Richmond Avenue' respectively).

2. At the time of the issue of the proceedings, and indeed as of 12th February, 2021 when the motions presently under consideration were issued, the plaintiff's position was that it was not aware of the identity of the majority of the occupants of the premises, notwithstanding having delivered correspondence to the properties prior to the commencement of the proceedings requiring the occupants to identify themselves and engage with the plaintiff ('Pepper').

3. As I will set out in more detail below, applications were made to this Court on 25th November, 2020 by the plaintiff, who has succeeded to the mortgagees' interest in each of the properties, for various injunctive reliefs in respect of the properties intended to facilitate the unimpeded taking of possession of the properties by the plaintiff. On 23rd November, 2020, appearances were delivered to the solicitors for Pepper by Mr. Gabriel Petrut, described on the appearance as a "defendant in person"

and Ms. Margareth [sic] Hanrahan, described as "an unnamed defendant", residents of 31 Richmond Avenue and 21 Little Mary Street respectively.

4. An appearance was also delivered on that date by Mr. Jerry Beades, who was the original mortgagor of the property. There is no evidence that Mr. Beades was ever an occupant of either of the properties, and, as far as the plaintiff is concerned, he is not a defendant in either proceedings or a person to whom the applications for injunctive reliefs or the present applications for attachment and committal are addressed, and has no standing in either proceedings, notwithstanding repeated attempts by him to intervene in the applications for the injunctions, a subsequent application to the Court of Appeal for a stay on the High Court order of 25th November, 2020, and indeed the present applications.

5. On 22nd February, 2021, appearances were filed by a firm of solicitors, F.H. O'Reilly & Co, in both of the proceedings on behalf of twenty named occupants of the properties to whom I will refer collectively hereafter as "the occupants" or "the respondents". The appearances give rise to confusion, because it is evident that the persons named in the appearances do not in all instances occupy the properties to which the appearances are intended to refer: for instance, an appearance for Ms. Hanrahan, who resides in 21 Little Mary Street, is included in the notice of appearance filed in respect of the proceedings with record no. 2020/6889 P, which relate to 31 Richmond Avenue. Likewise, Mr. Petrut, who lives in the Richmond Avenue property, is referenced in the notice of appearance to the proceedings dealing with the Little Mary Street property. Both of these persons had in fact already lodged appearances on 23rd November, 2020 which correctly reflected their respective addresses.

6. However, the confusion was alleviated by Mr. Eoghan O'Reilly, a solicitor in F.H. O'Reilly & Co, who swore affidavits on 22nd February, 2021 in each of the proceedings, in which he identified the "tenants/occupants" of the properties as follows: -

Tenant Register 31 Richmond Ave

Flat	Name	Years in occupation	Location	Children
A	Firuca Puscas	11	Basement	
A	Gavrila Puscas	11	Basement	
B	Dorina Brat	17	Ground	
B	Ioan Brat	17	Ground	
C	Gabriel Petrut	1	Ground	
D	Doina Bortas	16	First	Cosmina Circu (6), Annabell Circu (9)
D	Vasile Circu	16	First	
E	Mihai Bataraga	12	First	Alex Constantin Bataraga (16)
F	Danut Vlad		First	
G	Irina Ucaciu	10	Basement	
G	Ion Mihali	10	Basement	
G	Nicolae Mihali	10	Basement	

Tenant Register 21 Little Mary Street

Flat	Name	Years in occupation
1	Margaret Hanrahan	10
3	Iuliu Putina	8
3	Svetlana Gannokha	8
4	Vasile Ivanov	6

4	Augustin Gabor	15
5	Vasile Rus	2
5	Mihai-Romica Striblea	2
5	Iosua Striblea	2

7. As these tables make clear, there are three children living in 31 Richmond Avenue, two of whom have lived there for all of their lives. The plaintiff has repeatedly asserted that it seeks no reliefs against the minor occupants of the property, deprecating characterisations of the motions such as that of Mr. O'Reilly at para. 5 of the aforesaid affidavit as an "application to imprison children". At the hearing of the applications however, I was urged by counsel for the defendants to give particular consideration to the effect on these children if the court were to accede to the plaintiff's application.

8. In any event, it appears that all adult occupants of the properties have had appearances filed for them in one or other of the proceedings, and they have had appropriate legal representation from the outset of these applications. There was an extensive exchange of affidavits, and extremely lengthy and comprehensive written submissions were filed in court ahead of the hearing of the applications, which took place before me on 4th and 5th May, 2021, at the conclusion of which I reserved judgment.

9. In their submissions, counsel for the defendants were insistent that, where attachment and committal is sought, strict observance of all appropriate formalities and procedures is necessary, and that failure in this regard in any respect is fatal to the plaintiff's applications. It will therefore be necessary to examine in detail how the applications have come about, and the particular steps taken by the plaintiffs in pursuance of them.

Background

10. On 29th November, 2006, IIB Homeloans Limited ('IIB') initiated proceedings by way of special summons in respect of each of the properties against Mr. Jerry Beades, and on foot of each of these proceedings ('the possession proceedings'), orders for possession were made by this Court in respect of both properties on 23rd June, 2008 by Ms. Justice Dunne ('the possession orders'). The execution on foot of the possession orders was stayed for a period of six months from the date of the orders. Mr. Beades appealed these orders, and the appeals were heard on 29th April, 2014. On 12th November, 2014, the Supreme Court made orders dismissing the appeals and confirming the possession orders.

11. The history of the proceedings thereafter, and in particular the attempts to execute on foot of the possession orders, becomes somewhat convoluted. The chronology of events up to the initiation of the present applications – with which the defendants do not take any material issue – is set out in detail at para. 35 of the grounding affidavit in support of the present application regarding the Richmond Avenue property of Gerard McHugh, a Senior Portfolio Manager employed by the plaintiff, and I do not propose to reproduce its detail here, other than to summarise the salient facts as briefly as possible.

12. In May 2015, IIB was granted leave to issue execution pursuant to the possession orders. It appears that the legal and beneficial interest in the loan facility, facility letter and mortgage in respect of each of the properties was subsequently sold to KBC Bank Ireland plc ('KBC'), which in October 2017 issued a notice of motion for substitution of KBC for IIB in the possession proceedings in each case, also

seeking leave to execute on foot of the possession orders. In July 2018, following a contested application, these orders were granted by the High Court. However, KBC's rights in the loans and securities were subsequently sold to Beltany Property Finance DAC ('Beltany'), and by order of this Court of 14th October, 2019, Beltany was substituted as plaintiff in each of the possession proceedings, with leave to issue execution on foot of the possession orders.

13. Beltany subsequently nominated Gerard Hughes of Grant Thornton as the duly authorised person for the purpose of taking possession of the properties. Mr. Hughes attended each of the properties on 14th November, 2019, following requests by letters of 12th November, 2019 from Beltany's solicitors to the solicitors for Mr. Beades enclosing the possession orders and the orders substituting Beltany as a plaintiff, each bearing a penal endorsement and requiring delivery up of possession on 14th November, 2019. These attendances at the properties did not progress the matters, and in February 2020, Beltany's solicitors issued letters to "the occupants" of each of the properties, setting out Beltany's view that the occupants were not in lawful occupation of the properties, but indicating a preference that the matter be resolved consensually. The letters suggested that the occupants seek "urgent legal advice" in relation to the matters.

14. Beltany's solicitors subsequently received three emails, which were exhibited to Mr. McHugh's affidavit of 8th October, 2020 in support of the injunction application ultimately determined by Reynolds J. They purported to be sent by "Tenants Richmond Road", although they did not identify any individuals. The first email of March 4th 2020 acknowledges receipt of the letter of 25th February, 2020 from the plaintiff's solicitors in respect of the Richmond Avenue property. The

emails made reference to certain matters relating to Mr. Beades and his relationship to the property, and the fact that further "tenants" were being admitted to the property.

15. By notices of motion of 8th October, 2020, applications were made to this Court for the substitution of Pepper for Beltany in the possession proceedings in respect of both properties, and seeking leave to execute on foot of the possession orders, Beltany having transferred its interest in the loan facility, facility letter and mortgage to Pepper on 7th August, 2020. Orders acceding to these applications were made by Twomey J on 18th November, 2020.

16. Also on 8th October, 2020, the present proceedings were issued in respect of both properties, and applications were made by notice of motion of that date for injunctive relief, which culminated in the orders made by Reynolds J on 25th November, 2020.

The injunction applications

17. The application by Pepper for injunctive relief came before Reynolds J on 25th November, 2020. As we have seen, Mr. Petrut and Ms. Hanrahan had served appearances in respect of the Richmond Avenue and Little Mary Street properties respectively on 23rd November 2020. However, there was no attendance at the motions by or on behalf of any occupants of either property. Mr. Beades did appear, and addressed the court. However, Reynolds J indicated that she was satisfied that Mr. Beades was not a party to the applications and had no right of audience in respect of them: see transcript of the hearing, p.16 lines 2 to 4.

18. In the event, having heard the submissions of counsel for Pepper, the court made – in each of the proceedings – orders that "…the Defendants and each of them their servants and/or agents and all other persons having notice of the said order…

(1) immediately surrender possession and control of the property described in the schedule to the Plenary Summons (the 'Property') to the plaintiff;

(2) immediately deliver up to the Plaintiff all keys alarm codes and/or security and access devices in respect of the Property…"

19. The court also made a range of orders designed to prevent any impeding or obstructing of the plaintiff in gaining possession or control of the properties. The orders were stayed until 5pm on Thursday 14th January, 2021, and the matters were listed before the court on 20th January, 2021.

20. Each of the orders also provided that "…the Plaintiff's solicitors be at liberty to notify the making of this Order to the Defendants their servants and/or agents and all other persons by hand delivery and Ordinary Pre-Paid Post…".

Events leading to the present application

21. On 4th December, 2020, Mr. Beades lodged a notice of appeal in the possession proceedings against the order of Twomey J of 18th November, 2020, which had substituted Pepper for Beltany and granted liberty to issue execution on foot of the order of Dunne J of 23rd June, 2008. By a separate application, Mr. Beades also sought a stay on the order pending determination of the appeal. This latter application was subsequently refused by the Court of Appeal on 22nd January, 2021.

22. On 15th December, 2020, Mr. Petrut lodged a notice of appeal against the order of Reynolds J relating to 31 Richmond Avenue, together with a notice of motion seeking a stay on the order pending determination of this appeal. Mr. Beades purported to make similar applications in respect of the 31 Richmond Avenue order. On 15th January, 2021, the Court of Appeal (Noonan J) refused the applications of Mr. Petrut and Mr. Beades for a stay, but extended the existing stay to 5pm on 5th

February, 2021. The transcript of the court's judgment makes it clear that the stay applied only to Mr. Petrut and Ms. Hanrahan – who had attended court on that occasion and sought a stay also – and not any other party: See transcript of the hearing, p.61 lines 23 to 29.

23. Mr. Gerard Hughes, who had been nominated by Beltany as the duly authorised person for the purpose of taking possession of the properties, was nominated for this purpose by Pepper by letter of 11th January, 2021. He swore affidavits in each of the proceedings outlining his efforts to take possession of the properties, attending on 14th November, 2019, 14th January, 2021, 8th February, 2021 and 11th February, 2021. These efforts however were unsuccessful.

Applications to the Court of Appeal

24. On 18th May, 2021, applications were made to the Court of Appeal on behalf of the persons in respect of whom an appearance had been entered in each of the proceedings for an extension of time in which to lodge an appeal against the orders of Reynolds J, for liberty to adduce new evidence, and for a stay pending determination of those applications and appeals on behalf of Ms. Hanrahan and Mr. Petrut against the injunction orders, which were due to be heard by the Court of Appeal on 13th July, 2021.

25. In a lengthy *ex tempore* judgment delivered by Donnelly J on 24th June, 2021 on behalf of the court, the applications were refused. I also understand that the appeals by Ms. Hanrahan and Mr. Petrut against the injunction orders were heard by the Court of Appeal on 13th July, 2021, and that judgment was reserved by that court.

The present applications

26. In identical notices of motion in each of the proceedings, the plaintiffs sought an order pursuant to O.44, r.3 of the Rules of the Superior Courts and/or pursuant to

the inherent jurisdiction of the High Court granting the plaintiff liberty to issue orders of attachment and committal of all persons in each of the properties by reason of "…their failure to abide by the Order of the High Court (Ms. Justice Reynolds) dated 25th November, 2020 (the 'Order') in:

(i) Failing and/or refusing immediately to surrender possession and control of the property to the plaintiff, contrary to paragraph 1 on page 1 of the Order;

(ii) Failing and/or refusing to deliver up to the Plaintiff all keys, alarm codes and/or other security and access devices in respect of the property, contrary to paragraph 2 on page1 of the Order;

(iii) Impeding and/or obstructing the Plaintiff, its servants and/or agents in their efforts to take possession of the property, contrary to paragraph 1 on page 2 of the Order;

(iv) Impeding and/or obstructing the Plaintiff, its servants and/or agents in their efforts to secure the Property, contrary to paragraph 2 on page 2 of the Order;

(v) Impeding and/or obstructing the Plaintiff, its servants and/or agents in their efforts to sell or rent the Property, contrary to paragraph 3 on page 2 of the order;

(vi) Trespassing or entering upon, or otherwise interfering with, the property without the prior written consent of the Plaintiff, contrary to paragraph 4 on page 2 of the order;

(vii) Collecting or attempting to collect rent or other payments in respect of the Property, contrary to paragraph 5 on page 2 of the Order;

(viii) Holding themselves out as having an entitlement to sell, rent or otherwise grant an entitlement to possession of the property, contrary to paragraph 6 on page 2 of the order;

(ix) Making contact with current or prospective tenant [sic] or purchasers of the Property, contrary to paragraph 7 on page 2 of the Order.

27. A very substantial number of affidavits were sworn in respect of the matters:

(a) Two affidavits of Mr. Gerard McHugh, sworn on behalf of the plaintiff on 11th February, 2021;

(b) two affidavits of Mr. Gerard Hughes, sworn on behalf of the plaintiff on 11th February, 2021;

(c) two affidavits of Mr. Eoghan O'Reilly, sworn on behalf of the occupants on 22nd February, 2021;

(d) the affidavit of Mr. Mihai Bataraga, sworn on 22nd February, 2021;

(e) the affidavit of Mr. Ioan Brat, sworn on 22nd February, 2021;

(f) the third affidavit of Mr. Gerard McHugh, sworn on behalf of the plaintiff on 26th February, 2021;

(g) the affidavit of Mr. Augustin Gabor, sworn on 19th March, 2021;

(h) the affidavit of Mr. Iosua Striblea, sworn on 19th March, 2021;

(i) the second affidavit of Mr. Ioan Brat, sworn on 20th March, 2021;

(j) the affidavit of Mr. Ion Mihali, sworn on 20th March, 2021;

(k) the affidavit of Ms. Irina Ucaciu, sworn on 20th March, 2021;

(l) the affidavit of Mr. Nicolae Mihali, sworn on 20th March, 2021;

(m) the affidavit of Ms. Doina Bortas, sworn on 19th March, 2021;

(n) the affidavit of Mr. Vasile Circu, sworn on 19th March, 2021;

(o) the second affidavit of Mr. Gabriel Petrut, sworn on 19th March, 2021.

28. In addition, a very large number of affidavits of service were sworn in relation to the attempts to serve the respondents with relevant documents between August 2019 and February 2021.

29. At the hearing, submissions were made on behalf of the plaintiff by Rossa Fanning SC, instructed by Maples & Calder LLP. A number of counsel, instructed by F.H. O'Reilly & Co, made submissions on behalf of the occupants. John Kennedy SC represented Danut Vlad, Irina Ucaciu, Dorina Brat, Ioan Brat, Vasile Circu and Firuca Puscas, occupants of Richmond Avenue, and Vasile Ivanov, Svetlana Gannokha, Vasile Rus, and Iosua Striblea, occupants of Little Mary Street. Rory Kennedy BL made submissions on behalf of Gabriel Petrut, Doina Bortas, Mihai Bataraga, Ion Mihali and Nicolae Mihali, occupants of Richmond Avenue, and Margaret Hanrahan, Augustin Gabor and Mihai Romica Striblea, occupants of Little Mary Street. George Burns BL made submissions on behalf of Gavrila Puscas, an occupant of Richmond Avenue, and Iuliu Putina, an occupant of Little Mary Street.

30. The hearing of the present application took place on 4th and 5th May, 2021. Very extensive written submissions were proffered by both sides, and complex and wide-ranging oral submissions were made by each counsel at the hearing. Mr. Rory Kennedy and Mr. Burns each adopted the submissions made by John Kennedy SC, while concentrating on other aspects of the objections of the occupants in their own submissions. I have, for the purpose of this judgment, read and considered all

submissions and arguments made, and have had the benefit of the transcript of the hearing, to which I will refer as appropriate in this judgment.

31. While it will be necessary to deal in some detail with the points made by all sides, the net position of the plaintiff in relation to the application may be stated succinctly. It was submitted on behalf of the plaintiff that the defendants remained in occupation of one or other of the properties, something which was "…expressly and unequivocally prohibited by the Injunction Orders"; that the occupants had been "…given every possible opportunity to surrender vacant possession of the Properties without facing the risk of imprisonment"; and that there was no basis upon which the injunction orders could or should be amended or revisited [paras. 39-41 written submissions]. As the plaintiff put it in its written submissions:

> "50. In the present case, there is simply no doubt that the Occupants were served with the proceedings, the documents comprising the Injunction Applications and the Injunction Orders bearing a penal endorsement, in strict compliance with the directions concerning service which were given by the High Court (Ms. Justice Reynolds). Those directions involved *inter alia,* the delivery by hand of five hardcopies of each of the relevant documents to Richmond Avenue and the delivery by hand of three hardcopies of each of the relevant documents to Little Mary Street."

32. It was the position of the plaintiff that, as there had been strict compliance with the directions concerning service given by the High Court, the failure of the occupants to abide by those orders constituted a contempt of the court order such as would justify their attachment and committal.

33. It will be necessary to examine in detail the circumstances surrounding the service of the injunction orders in due course. However, the case was made during

submissions on behalf of the occupants that this Court had jurisdiction to set aside the orders made by Reynolds J on 25th November, 2020, and should do so. I propose to examine this issue presently, but it is appropriate, before doing so, to say something about the attempts made by the plaintiff to communicate with the occupants in advance of the issue of the present proceedings and the injunction applications.

34. The injunction applications were based on affidavits of Gerard McHugh of 8th October, 2020 in each of the proceedings. These affidavits exhibited documentation setting out the background to the matters. By way of example, the affidavits for the application in respect of Richmond Avenue exhibited documentation involving Maples & Calder LLP, Solicitors on behalf successively of KBC, Beltany, and ultimately the plaintiff herein, and the occupants, as follows:

Date	**Document**
28th August, 2019	Letter to "the occupants" sent by registered post, certified post and hand delivery;
13th February, 2020	letter to "the occupants" sent by certified post and by hand;
4th March, 2020 - 18th June, 2020	email correspondence with "Tenants Richmond Road";
6th July, 2020	letter to "the occupants" sent by certified post, by hand and email;
21st July, 2020	letter to "the occupants" sent by certified post, hand and email;
7th August, 2020	attendance by Pamela Keely, Solicitor for the plaintiff, on a call with an unnamed occupant;

25th September, 2020 letter to "the occupants" sent by certified post, by hand and email.

35. All of the letters referred to above made it clear that it was not accepted that the occupants had any legal basis upon which they would be entitled to possession of any portion of the properties. The letters of 18th August, 2019 and 6th July, 2020 requested the occupants to make their identities known to the plaintiff's solicitors. The email correspondence and the phone call to Ms. Keely suggested that at least some of the occupants had received the correspondence and were aware of the situation. The correspondence, while asserting the mortgagee's rights, was not aggressive, and invited engagement by the occupants. However, there was no response at all to any of the correspondence.

Does this Court have jurisdiction to set aside the injunction orders?

36. It was submitted forcefully by both John Kennedy SC and Rory Kennedy BL that I should set aside the orders of Reynolds J on the basis that they had been improperly procured. Two bases for this submission in particular were advanced: firstly, that the occupants – with the exception of Mr. Petrut and Ms. Hanrahan – were unaware of the application, due in the main to a failure of the plaintiff to identify the occupants and to specify the flat occupied by each of them when corresponding with them. Secondly, it was suggested that Reynolds J was misled by being told at the hearing that consent had never been furnished by the mortgagee to the creation of tenancy, as was required by the mortgages executed by Mr. Beades ('the consent issue').

37. The plaintiff in its submissions drew a distinction between an application to set aside an "irregular judgment or order", and an application to set aside a "regular"

order. The distinction between an irregular order and a regular order was explained by Clarke J (as he then was) in *O'Tuama v. Casey* [2008] IEHC 49:

> "…where judgment is obtained irregularly, the court will normally set aside the judgment without enquiring into the merits of the proposed defence. The logic of this position is that the judgment should not have been obtained in the first place and a plaintiff who has obtained judgment irregularly should not have any benefit by reason of having obtained judgment in that fashion. On the other hand, where judgment is obtained regularly, the court may, nonetheless, be persuaded to set aside the judgment so as to permit the defendant to defend the proceedings but will only do so after considering the possible merits of the defence which the defendant would wish to put forward".

38. It is accepted by the parties that, as in the decision of Allen J in *Van Dessel v. Carty* [2018] IEHC 626, there is a jurisdiction of the court to set aside or vary interlocutory orders where there is a change of circumstances. The occupants contend that this is such a case, in that the occupants "…were not even aware of the proceedings having taken place, the Plaintiff having failed to carry out the necessary inquiries to contact them". [Paragraph 44 written submissions].

39. I propose to deal with the consent issue first, as the second issue – that of service of the injunction applications – is relevant to the question of service of the injunction orders, which I will then consider.

The consent issue

40. It is submitted that the way in which the "consent issue" was dealt with before the court caused the court to be misled, and that the order of Reynolds J should be set aside on that basis. This issue arises in the following way. It was intimated by

counsel for Pepper to Reynolds J in the course of the application for injunctive relief that the mortgage between Mr. Beades and IIB contained a "negative pledge", *i.e.* a covenant by the borrower that no lease or tenancy of the mortgaged premises could be granted without the prior written consent of the lender. Counsel submitted that the plaintiff's correspondence had stated unequivocally that no evidence had been produced by any party "to the effect that there was ever consent provided by IIB or KBC or Beltany or, indeed, Pepper to the creation of any tenancy in respect of these properties…" [transcript pp. 39-40, lines 28-29, 1-2].

41. Counsel went on to draw to the attention of Reynolds J that IIB had been seeking possession of the properties since 2006, and that this suggested that there would be no question of the mortgagee consenting to a tenancy "in the intervening 14 years".

42. In his affidavit of 22nd February, 2021 in the present application, Mr. O'Reilly on behalf of the occupants draws attention to a facility letter of 20th May, 2003 from IIB to Mr. Beades which contained among its special conditions the following clause:

> "34. The Lender consents to the Borrower creating a tenancy in respect of the premises on the following terms:
>
> (i) The term of the tenancy must not under any circumstances exceed 1 year. No options to extend such a tenancy will be permitted.
>
> (ii) The tenancy must be in writing and at an arm's length transaction between the parties.
>
> (iii) The rent reserved must represent the open market rental of the premises.

(iv) A solicitor's certified copy of the tenancy agreement must be furnished to the lender once executed by the tenant. Any extension of a new tenancy must comply with the above provisions."

43. While this letter was exhibited to the grounding affidavit of Mr. McHugh in the injunction application, it was not drawn specifically to the court's attention at the hearing. The plaintiff now concedes that this letter did offer a form of consent to the creation of tenancies in the properties, but subject to a number of clear and express conditions. The occupants however contend that Reynolds J made her orders on what the occupants say is the mistaken basis that there had never been any consent to the creation of a tenancy. They rely on the evidence adduced in the affidavits of Ms. Bortas and Mr. Circu, that a tenancy agreement on which they rely was executed by them with Mr. Beades on 1st April, 2005. Ms. Bortas and Mr. Circu each exhibit this agreement to their respect affidavits, but it is clear that there is only one agreement, and that only Mr. Circu is named in the agreement. This agreement is for twelve months only, and it is not suggested by Ms. Bortas or Mr. Circu that there were any further executed agreements in respect of their occupancy. Other tenancy agreements relating to various occupants of much more recent vintage were also exhibited.

44. The occupants submit that "…the Court was misled as to the existence of consent to create a tenancy, the Plaintiff did not put material matters before the Court and caused the court to be misled in the application for eviction. Justice dictates that it cannot rely on this order" [written submissions, para. 17]. I am invited to set aside the order of Reynolds J, or at least to refuse the plaintiff's present application, on this basis.

45. There can be no doubt that Clause 34 in the facility letter did grant consent to the creation of tenancies in the properties. However, it did so in very defined circumstances. The only lease exhibited in respect of either property which pre-dates the grant of possession orders by Dunne J on 23rd June, 2008 is that exhibited by Ms. Bortas and Mr. Circu. In their affidavits, each sworn on 19th March, 2021, Ms. Bortas and Mr. Circu, who are partners and have two children, averred that they reside at Flat D, 31 Richmond Avenue. They each exhibit the twelve-month lease of 1st April, 2005. The lease itself refers to Flat D and, as I have said, only refers to Mr. Circu as a tenant. However, they each aver that they were living at Flat A at 31 Richmond Avenue from 2005, moving into Flat D where they currently reside in 2012. They exhibit documentation corroborating that they have lived in Flat D after 2012. There is no evidence of the creation of a lease in respect of the move to Flat D in 2012 which is in accordance with the criteria set out in Clause 34 of the facility letter, nor is there any evidence which would contradict the assertion by the plaintiff that it has not consented to the creation of any such tenancy.

46. It is clear, in my view, having reviewed all of the documentation before the court, that there is no basis for the occupants to allege that any of them has a tenancy that is binding on the mortgagee. The orders for possession in favour of the mortgagee were made on 23rd June, 2008. I do not think there can be any basis upon which a valid tenancy could have been created after that date by Mr. Beades. He was simply not in a position to confer possession of the properties, or any part of them, on a prospective tenant, as to do so would have been in breach of the order of Dunne J. It also seems clear that, at very least from the date of institution of the possession proceedings – 29th November, 2006 – no consent, written or otherwise, was forthcoming from the mortgagee to a grant of tenancy by Mr. Beades. To the extent

that the affidavits of the occupants identify Mr. Beades as "the landlord" to whom they pay rent – and some of the affidavits do not – it seems clear beyond argument that Mr. Beades had no entitlement to create a tenancy such as that envisaged by Clause 34 of the facility letter, and in particular a 12-month tenancy which would cover their current occupancy.

47. It does not seem to me, in all the circumstances, that it can be said that the consent issue provides the sort of grounds which would cause me to consider that Reynolds J had been led into error, or that an injustice had occurred by reason of some misunderstanding of the position. Indeed, I note that the issue was advanced on behalf of all of the occupants – including Mr. Petrut and Ms. Hanrahan – in the application to the Court of Appeal for an extension of time to appeal the injunction orders, as a basis upon which the occupants proposed to appeal. In assessing whether or not there were arguable grounds for appeal – one of the three criteria for an extension of time identified in *Eire Continental Trading Company Limited v. Clonmel Foods Limited* [1955] IR 170 – the Court of Appeal (Donnelly J) stated as follows: -

> "Put simply, all available evidence, including the order for possession in 2008, the deed of mortgage, the facility letter, the evidence of occupation averred to by the applicants together with the *Fennel & Anor. v. N17 Electrics Limited* line of authorities, suggest that there is no basis for saying that on the basis of a reverse burden there is an arguable case that all or any of these tenancies are binding on Pepper. In light of the complete absence of any factual or legal basis for arguing that all or any of these applicants have an arguable case based upon their tenancies, I must reject the application for an extension of time to appeal based upon any ground concerning the validity of those tenancies. The balance of justice can only enter into consideration if there is at

least an arguable ground. On the contrary, as far as the validity of the tenancy is concerned the applicants have failed to show that they meet any of the *Eire Continental* criteria. It would not be in the interests of justice to permit an extension in those circumstances."

48. There can be no doubt, on consideration of the transcript of the hearing before Reynolds J, that the court was given the impression that there was no consent from any mortgagee to any occupation or lease of either of the properties. As against that, the facility letter was exhibited to the grounding affidavit on behalf of the plaintiff. There was no attempt to conceal the letter. It might have been preferable if it had been specifically brought to the attention of Reynolds J. However, I do not believe the view of the court as to whether there was any valid tenancy on the part of the occupants would have been altered by considering the letter. As my view, on the evidence before me, of the validity of the alleged tenancies of the occupants is aligned with that of the Court of Appeal as quoted above, and as I am of the view that there was no deliberate non-disclosure to the court of the limited consent offered in the facility letter, I do not consider that there are valid grounds arising from the consent issue for setting aside the injunction orders.

Setting aside the injunction orders on the basis of service

49. In his submission to the court, John Kennedy SC laid particular emphasis on the averments of various occupants, as set out in more detail at para. 62 below, that they were unaware that the application before Reynolds J was taking place. It was submitted that these averments were not challenged by cross-examination, and must be accepted by the court, and that it was now clear that there was information in relation to the position of the occupants as purported tenants –in particular, the documentation relating to the lease of 1st April, 2005 in favour of Mr. Circu – which

had not been before Reynolds J when she gave her decision in relation to the interlocutory application, and which should have been considered by the court, particularly given that the plenary summons in each of the proceedings calls for "…[a] declaration that all purported leases, licences or other arrangements providing for occupation of any portion of the Property by the Defendants, their servants and/or agents are void and have no legal effect".

50. During the course of submissions, I asked counsel whether he was contending that I should set aside the orders of Reynolds J in circumstances where it appears that the court, on hearing an application for short service of the interlocutory application on 14th October, 2020, gave directions as to service on the occupants, and was satisfied on 25th November, 2020 that there had been compliance with the court's directions. Counsel accepted that the validity or otherwise of service was a matter for an appeal, but that "the real question for the court" was whether or not an order of attachment and committal would be appropriate where, as counsel contends, occupants did not have the opportunity to put this evidence regarding their own situations before the court. See transcript Day 2, p.23, line 24 to p.25, line 27.

51. Mr. Rory Kennedy BL, while adopting Mr. John Kennedy's submissions on behalf of his own clients, specifically made the case that the information given by the plaintiff to the court in relation to the situation of the occupants was "simply incorrect and…led Ms. Justice Reynolds into error…", thereby creating an irregular judgment. In this regard see transcript, Day 2, p.127 line 16 to p.133 line 2. Counsel contended that the plaintiff conveyed to the court that it had been unable to identify the occupants, and that "…essentially they were trespassers, almost like squatters. The only way they could deliver bundles to them was deliver them at the door and drop them because they have no other way to do it". [Day 2, p.127 lines 21 to 25].

52. The occupants were not present at the hearing on 14th October, 2020, when Reynolds J gave directions as to service of the application. There is in fact no order available in relation to the directions given on that date. However, it is clear from the transcript of the hearing on 25th November, 2020 that Reynolds J had ordered service on the occupants at the properties by post, with a number of copies to be left at each of the properties. On that occasion, counsel took the court through the affidavits of service, and Reynolds J was satisfied that service had been effected in accordance with her directions.

53. Counsel also set out at length for the judge the evidence in relation to serving documentation which apprised the occupants of the hearing on 25th November, 2020, and alerted the court to the appearances served by Mr. Petrut and Ms. Hanrahan, and indeed Mr. Beades. Reynolds J professed herself satisfied with service, and the steps taken by the court to ensure that the occupants were aware of the hearing before her. See the transcript of the hearing, p.18 line 29 to p.34 line 9.

54. Although there was no appearance by or on behalf of Mr. Petrut or Ms. Hanrahan at the hearing before Reynolds J, they did not seek to contend that they were unaware of the hearing, and they each lodged an appeal against the court's orders, albeit that they were unsuccessful in obtaining a stay on those orders until the hearing of the appeal. The evidence on behalf of the occupants who have chosen to submit affidavits in the present application is that, by and large, they were unaware of the orders until the end of February 2021. Notwithstanding this, there was no attempt to bring their lack of awareness of the order thereafter to the attention of Reynolds J, nor was any application for an extension of time to appeal those orders made until after the hearing of the attachment and committal application on 4th and 5th May, 2021, several months later.

55. It does not seem to me that there is any basis for suggesting – as is the clear implication in the submissions of Mr. Rory Kennedy BL – that either inadequate attempts were made by the plaintiff to ascertain the identity of the residents of the two properties and their exact location within such premises, or that the plaintiff for its own purposes deliberately refrained from doing so. The affidavits proffered by the plaintiff, both as to service and otherwise, make it clear that the plaintiff wrote repeatedly to the occupants of both premises and asked them to identify themselves. While the occupants did not do so, the email correspondence with "Tenants Richmond Road" between March and May 2020 was the only response in writing which the plaintiff received to its attempts to ascertain who the occupants were. The correspondence intimated that the emails were from individuals who were "all tenants of Jerry Beades, some for over a decade paying weekly rent to either himself or his son". An email of May 19th, 2020 in the chain of correspondence indicated that "…since the lockdown two further tenants have been admitted to the property by Conor Beades who are creating problems…[i]t is believed those people have been allowed occupy the property to make it difficult not only for us but also for you in the future".

56. The only other contact from occupants appears to have been an anonymous call received by Ms. Pamela Keely, a Solicitor in Maples & Calder LLP. The caller identified himself as an occupant of 31 Richmond Avenue, although he did not give his name. He said that there were fifteen individuals including two young children living in the flat. Ms. Keely records that the caller "confirmed that the property has not been adequately maintained and there has been a lot of activity in the property which made him uncomfortable".

57. Representatives of the plaintiff's solicitors repeatedly attended at the two premises to effect service of copies of correspondence and proceedings. They relate their experiences and contacts with some of the occupants in the numerous affidavits before the court, both in the present application and in the application for the injunction orders. It is not at all apparent to me that the repeated attempts to ascertain the identities of the occupants and to serve documents upon them were in any way deficient. There is no evidence before me that would suggest that the plaintiff knew who the occupants were, or what the living arrangements in the two premises were. If the plaintiff had known, it would undoubtedly have addressed the documents to the occupants of the individual apartments, so that there could be no question of ineffective service. Mr. Petrut in Richmond Avenue, and Ms. Hanrahan in Little Mary Street, were aware of the proceedings and delivered appearances prior to the hearing on 25th November, 2020. The anonymous email correspondents and the caller to Ms. Keely were clearly aware of the issues with the mortgagee, and the threat of possible action against the occupants. There was no evidence before the court which suggested that the service directed by Reynolds J, and meticulously examined by her at the hearing, was inappropriate in any way.

58. In all the circumstances, I do not consider that the way in which service of the injunction application was effected caused the judgment of Reynolds J to be irregular, and there is no basis upon which I could set it aside. Service of the injunction application was carried out in accordance with the directions of the court, which in the circumstances seem to me to be entirely appropriate.

Service of the injunction orders

59. In his grounding affidavit of 11th February, 2021, Mr. McHugh summarises the position in relation to the service of the injunction orders in relation to the Richmond Avenue property as follows:

> "16. Following the making of the 31 Richmond Avenue Order, I believe and am advised that under cover of letters dated 7 December 2020 and 11 December 2020 from the Plaintiff's solicitors, a true copy of the 31 Richmond Avenue Order bearing a penal endorsement was served on the occupants of the Property, Mr. Petrut, Mr. Beades and Mr. Beades' solicitor namely Mr. Herbert Kilcline, who is Mr. Beades' solicitor in the Possession Proceedings.
>
> 17. I say and believe that five copies of the said letter and the 31 Richmond Avenue Order were hand delivered to the Property addressed to the Occupants of the Property. A further copy of the letter and 31 Richmond Avenue order was hand delivered to the Property addressed to Mr. Petrut. A copy of the said letter and the 31 Richmond Avenue Order was also hand delivered to 23 Richmond Avenue addressed to Mr. Beades and was also sent by email to Mr. Beades and his solicitor, Mr. Kilcline.
>
> 18. In addition, copies of the correspondence and the 31 Richmond Avenue order were sent by certified post to all of the above parties. I beg to refer to copies of the various letters dated 7 December 2020 and 11 December 2020, copies of the 31 Richmond Avenue Orders each bearing a penal endorsement and to a true copy of the affidavit of service from Mr. Oisín Ferriter sworn on 16 December 2020…
>
> 19. As can be seen from the said correspondence, it was clearly stated to the occupants, and in particular to Mr. Petrut and for completeness also to Mr. Beades, that vacant possession of the property was to be delivered to Pepper

on or before 5.00p.m. on 14 January 2021. Further, the penal endorsement on the 31 Richmond Avenue Order made it clear that if the order was not complied with, the said recipients would be liable to a process of attachment and committal up to and including imprisonment for the purposes of compelling compliance with the 31 Richmond Avenue Order.

20. I say and am advised that the Plaintiff's solicitors sent further correspondence to the occupants of the Property and to Mr. Petrut on 11 January 2021 reiterating that the terms of the 31 Richmond Avenue Order required them to vacate the property by 5.00p.m. on 14 January 2021."

60. Very similar averments were made by Mr. McHugh in his affidavit of 11th February, 2021 in the Little Mary Street proceedings, in each case exhibiting the affidavit of Mr. Ferriter, a trainee solicitor, which set out in detail the steps taken by him to serve the occupants of each of the properties.

61. The plaintiff's position is that service in each case was carried out strictly in accordance with the orders and directions of the High Court, and that the occupants could have been under no illusions as to the orders which had been made, or the consequences of not complying with them.

62. In relation to Richmond Avenue, affidavits were submitted by Doina Bortas, Vasile Circu, Ion Mahali, Nicolae Mahali, Ioan Brat and Irina Ucaciu. These deponents each averred that they had never received any letters or post from Pepper and only became aware of the risk of imprisonment on or about 26th February, 2021. Each deponent averred that it appeared that Pepper had sent correspondence to "the building" rather than to their specific address, and that they did not know of any "general post", relying only on post which came directly to their address, *i.e.* with a specified flat letter. The deponents each undertook to pay "the agreed rent" to Pepper

pending the determination of the plaintiff's application. Affidavits in similar vein were sworn by Augustin Gabor and Iosua Striblea in respect of the Little Mary Street property.

63. The position, then, of the plaintiff is that it has carried out meticulous service of the injunction orders in strict observance of their terms. Each of the occupants has been served with a copy of the order bearing a penal endorsement. On the other hand, the position of the occupants – with the exception of Mr. Petrut and Ms. Hanrahan – is that they were completely unaware of the making of the injunction application, let alone the orders, until the end of February. The defendants do not explain how they came to be aware of the situation at that time, or how they came to instruct F.H. O'Reilly & Co who, as we have seen, entered appearances in the present proceedings on behalf of all of the occupants on 22nd February, 2021.

64. The plaintiff is, to say the least, sceptical about the evidence of the occupants in this regard, raising what it calls a "series of factual anomalies" which it contends undermines the occupants' position. How did Ms. Hanrahan and Mr. Petrut become aware of the applications and orders, but not the other occupants? Is it suggested that they told none of their co-occupants about the applications? How is that "vast amounts of correspondence" sent to the properties over a period of more than one year were apparently ignored? Who were the persons who took in correspondence which was hand-delivered at the properties as described in a number of the plaintiff's affidavits of service?

65. As against that, it was submitted on behalf of the occupants that the affidavit evidence of the occupants must be accepted in the absence of cross-examination, and that the plaintiff should have taken whatever steps were necessary to identify the individual occupants and serve them individually and in person. It was also suggested

that, in circumstances where the occupants were contending that they had been unaware of the injunction application, the plaintiff should have deferred the present application at least until after the appeal by Mr. Petrut and Ms. Hanrahan on 13th July, 2021 had been determined: see transcript Day 2 pp. 108-112.

66. Certain very specific points were made in respect of the service of the orders on the occupants as set out in the affidavits of Mr. McHugh and Mr. Ferriter. Mr. Rory Kennedy BL concentrated in particular in what he claimed was defective service of the orders, which it was suggested was fatal to the present applications.

67. Firstly, counsel addressed the standard to be applied by the court when considering the applications. It was submitted that an application to attach and commit "…isn't a civil case in the truest sense. This is more akin to a criminal case…it's a criminal standard of fact and law, and criminal procedures apply to this case…". [Day 2, transcript, p.114 lines 10 to 16]. Submissions thereafter were made by counsel on the premise that any procedural default was such as to undermine fatally the plaintiff's applications, as the plaintiff would not have proved its case on an application of the standard of proof applicable to a criminal trial.

68. Counsel then proceeded to make a number of points regarding service of the orders. As we have seen, an application was made by Mr. Petrut and Mr. Beades to the Court of Appeal for a stay on the orders of Reynolds J. These applications were heard on 15th January, 2021 by the Court of Appeal (Noonan J), which refused the applications, but extended the stay in respect of Mr. Petrut and Ms. Hanrahan, who attended the hearing, from 14th January, 2021 as stated in the order of Reynolds J, to 5pm on 5th February, 2021. The transcript of this hearing was produced before this Court, although it does not appear that a formal order reflecting the decision of the Court of Appeal was procured.

69. Counsel argued that the Court of Appeal decision of 15th January, 2021 "has to be the valid order", and that the order of Reynolds J was "spent". On being challenged on this characterisation by the court, counsel stated that the date in the order of Reynolds J by which the occupants had to vacate the property had been varied by the Court of Appeal, and thus failure to serve the occupants with this latter order was fatal to the plaintiff's applications; a gap in the plaintiff's proofs which, applying a standard of proof applicable to criminal matters, was fatal to the plaintiff's applications.

70. It was suggested by counsel that the service effected was manifestly unsatisfactory in any event. Reference was made to an affidavit of service from 2008 in the possession proceedings sworn by a deponent on behalf of IIB, which alluded to the existence of separate flats in the Richmond Avenue property. On a further appearance before Costello J in the High Court in the possession proceedings in June 2018, reference was made by the court to there being seven apartments in Richmond Avenue, and that 21 Little Mary Street "was occupied by an organisation and three residential tenants". It is suggested that the failure to inform Reynolds J at the injunction application of the existence of separate flats bearing lettered designations led to an unsatisfactory position regarding service whereby hand-delivered letters were "…[dumped] on the doorstep". It was submitted that, as the court was not apprised of the existence of separate "lettered" or "numbered" flats, the court was led into error and its orders were "irregular".

71. Trenchant criticism was also made of the penal endorsement on the orders served in the manner indicated by Mr. McHugh and Mr. Ferriter. The penal endorsement in respect of Richmond Avenue was as follows: -

> "IF YOU, BEING THE WITHIN NAMED PERSONS UNKNOWN IN OCCUPATION OF THE PROPERTY KNOWN AS 31 RICHMOND AVENUE, FAIRVIEW, DUBLIN 3, OR ANY OTHER PERSON ON NOTICE OF THIS ORDER, NEGLECT TO OBEY THIS JUDGMENT OR ORDER BY THE TIME THEREIN LIMITED YOU WILL BE LIABLE TO PROCESS OF EXECUTION INCLUDING IMPRISONMENT FOR THE PURPOSE OF COMPELLING YOU TO OBEY THE SAME JUDGMENT OR ORDER.
>
> THIS ORDER IS SERVED UNDER PENAL ENDORSEMENT.
>
> MAPLES AND CALDER (IRELAND) LLP SOLICITORS
>
> 07 DECEMBER 2020"

An identical endorsement in respect of the Little Mary Street property was served on the occupants of that property.

72. The phrase "YOU, THE WITHIN NAMED PERSONS UNKNOWN" was singled out for particular criticism. It was suggested that this was a contradiction in terms. It made no sense particularly with regard to Ms. Hanrahan and Mr. Petrut, who were known persons who had delivered appearances in their respective actions.

73. It was submitted that the penal endorsement must be accurate, and in particular must allow the person addressed to know what they must or must not do, and the time by which they must comply with the order. It was suggested that the penal endorsement in the present case was not addressed to any specific person, nor did it suggest any particular action which must be undertaken by any specific individual.

74. Counsel for Gavrila Puscas and Iuliu Putina, Mr. George Burns BL, also addressed the question of service. The court's attention was drawn to the plenary

summons in each of the proceedings; each plenary summons frames its relief in the endorsement of claim by reference to "the property described in the Schedule hereto (the 'Property') …". In the case of Richmond Avenue, the schedule simply reads "…ALL THAT AND THOSE the property known as 31 Richmond Avenue, Fairview, Dublin 3…". In the case of Little Mary Street, the schedule reads "…ALL THAT AND THOSE the property known as 21 Little Mary Street, Dublin 7…".

75. Counsel then referred to the affidavits of service of the injunction orders by Mr. Ferriter. These demonstrate that, while the order of Reynolds J was served on "the occupants", Mr. Petrut and Ms. Hanrahan, there is no indication that the applicable plenary summons, or any documents setting out the schedule to either plenary summons, was served on the intended recipients.

76. To appreciate fully the point made by counsel, it is necessary to consider in detail the operative part of the order of Reynolds J of 25th November, 2020:

> "IT IS ORDERED that the Defendants and each of them their servants and/or agents and all other persons having notice of the said Order
>
> 1. immediately surrender possession and control of the property described in the Schedule to the Plenary Summons (the 'Property') to the Plaintiff
>
> 2. immediately deliver up to the Plaintiff all keys alarm codes and/or security and access devices in respect of the Property
>
> AND IT IS ORDERED that the defendants and each of them their servants and/or agents and all other persons having notice of the said Order be restrained pending the trial of this action from
>
> 1. impeding and/or obstructing the Plaintiff its servants and/or agents in their efforts to take possession of the Property

2. impeding and/or obstructing the Plaintiff its servants and/or agents in their efforts to secure the Property

3. impeding and/or obstructing the Plaintiff its servants and/or agents in their efforts to sell or rent the Property

4. trespassing or entering upon or otherwise interfering with any portion of the Property without he prior written consent of the Plaintiff

5. collecting or attempting to collect any rent or other payments in respect of any portion of the Property

6. holding themselves out as having any entitlement to sell rent or otherwise grant any entitlement to possession of any portion of the Property

7. making contact with any current or prospective tenant or purchaser of any portion of the Property without the written consent of the Plaintiff…".

77. These orders prescribe firstly that the recipient or person on notice of the order "immediately surrender possession and control of the property described in the Schedule to the Plenary Summons (the 'Property') to the Plaintiff…" (albeit subject to a stay until 14th January, 2021). The recipient or person on notice is also restrained in seven numbered paragraphs from carrying out certain acts in relation to "the Property". Counsel submitted that the order does not identify the property of which the recipient is obliged to surrender possession or control. As he put it "…we now have a situation where we are serving an order to Persons Unknown to immediately surrender possession and control of a property unknown…" [Day 2, p.156 lines 19-22].

78. In this regard, counsel relied on the dicta of Hardiman J in *Dublin City Council v. McFeely* [2015] 3 IR 722, in which the court referred to the need, in

relation to contempt proceedings, for "meticulous observation of procedural justice", and further stated that:

> "…the exercise [of the power of committal] must, in my opinion, always be a matter of last resort, embarked on with manifest caution and great reluctance. This is because the contempt of court procedures have the potential to deprive a citizen of his or her liberty, not to mention property, without their being accorded the elaborate but very necessary protections normally provided by the procedures of a criminal trial…It is important that the Court Order allegedly breached should be indicated with absolute clarity and precision in the Motion for attachment and committal and that the evidence alleged to establish breach of that Order should be led in proper form after due and timely service of the Motion for attachment and committal…" [at para. 133]

79. Mr. Burns also submitted that an order bearing a penal endorsement must be served personally except in exceptional circumstances, which did not apply in the present case.

The court's jurisdiction

80. The plaintiff submits that the court has clear jurisdiction to enforce the injunction orders by means of attachment and committal, and relies on the following passage from the judgment of Finnegan P in *Shell E&P Ireland Limited v. McGrath & Ors.* [2007] 1 IR 671 as a summary of that jurisdiction: -

> "On a review of the cases I am satisfied that committal for contempt is primarily coercive, its object being to ensure that court orders are complied with. However in cases of serious misconduct the court has jurisdiction to punish the contemnor. If the punishment is to take the form of imprisonment, then that imprisonment should be for a definite term. Insofar as Ó'Dálaigh C.J.

> in *Keegan v. de Burca*... and in *In Re Haughey*… held that the objective in imposing imprisonment for civil contempt was coercive and not punitive, I have regard to the facts of each of those cases. In each case he was concerned with criminal contempt and for that reason I regard his definition of civil contempt to be *obiter*; while the definition was sufficient for his purposes it is not completely accurate. More accurate is the proposition in *Flood v. Lawlor*… which left open the question as to whether civil contempt is exclusively, as distinct from primarily, coercive in nature. In *Ross Co. Ltd v. Swan*… O'Hanlon J. was of the view that in an appropriate case the court must exercise its jurisdiction to commit for contempt not merely for the primary coercive purpose but in order to vindicate the authority of the court and in which case the court has jurisdiction to make a punitive order."

81. The occupants do not take issue with this summary, which was approved by Fennelly J as representing the law in *Dublin City Council v. McFeely* [2015] 3 IR 722 at 761. However, they submit that the jurisdiction to imprison for civil contempt is to be exercised sparingly. They rely on the dicta of Fennelly J in *Laois County Council v. Hanrahan* [2014] 3 IR 143 to the effect that imposition of committal should be a "last resort", and of Hardiman J in *McFeely*, that the power of committal should be "embarked on with manifest caution and great reluctance".

82. In addition, the occupants submit that the criminal standard to be applied to an application for attachment and committal is that the plaintiff must prove its case on a standard applicable to criminal matters, *i.e.* beyond a reasonable doubt. This was the position adopted by McKechnie J in *Competition Authority v. Licensed Vintners Association* [2009] IEHC 439 in which, having reviewed the authorities, the court concluded as follows: -

> "26. …There is little doubt in my mind that in proceedings of a criminal or quasi-criminal nature the standard must be that of beyond reasonable doubt. Contempt, either civil or criminal, is a misdemeanour, and on a committal application, a person can be deprived of his liberty, in some situations for as long as it takes to achieve compliance. The imposition of a fine is an option as well as the forcible taking of possessions. In serious cases substantial penalties are available. Therefore it is of no surprise that the courts view such matters with concern and insist upon the safeguard of the higher standard being met."

83. In his judgment, McKechnie J. relied particularly on the decision of Keane J in *National Irish Bank Limited v. Graham* [1994] 1 IR 215. In that case, the plaintiff had obtained judgment against the defendants, who owned a substantial farm. The plaintiff sought an order for attachment and committal against each of the defendants for what was alleged to be their contempt of court in failing to obey an order of the High Court whereby they were restrained from disposing of any interest in a non-milking herd or any progeny of such cattle, except with the consent of the receiver and/or the court, and of an undertaking given by the first and second named defendants not to attempt to frustrate the activities of the receiver as receiver over the non-milking herd.

84. The matters relied upon by the plaintiffs as set out in the head note of the case are as follows: -

> "…After the appointment of the receiver in January, 1993, an inventory was taken on behalf of the bank and there were 657 non-milking cattle. The number of non-milking cattle was 397 at the beginning of December, 1993, and only 33 of the 397 had the same tag numbers as the cattle contained in the inventory of 657, although some 125 were the same cattle. Although the 657

cattle were specially tagged in January, 1993, those tags had subsequently been removed. On behalf of the receiver it was claimed that the defendants were attempting to frustrate the legal entitlement of the bank to the cattle by removing them from the farm and by disposing of them."

85. Each of the defendants was cross-examined in the course of the application, and each denied that he had taken part in the management of the non-milking herd since the order of the High Court and had not been responsible for the removal of animals from the farm. Two of the receiver's representatives were also cross-examined, and said that they had no doubt that a significant number of cattle belonging to the non-milking herd could no longer be accounted for. Counsel for the plaintiffs submitted that the only reasonable inference was that cattle had been removed through the agency of one or more of the defendants, and that it was inconceivable that so large a number of cattle could have disappeared from the farm without their connivance.

86. In his judgment, Keane J stated as follows: -

"The present application is unusual in that there is no direct evidence of the alleged contempt. It is clear that before the court takes the serious step of depriving a person of his or her liberty for failure to comply with an order of the court, it must be satisfied beyond reasonable doubt that he or she has in fact committed the alleged contempt. (See the observations of Lord Denning M.R. in *In re Bramblevale Ltd.* [1970] 1 Ch. 128.) In the present case, there is not merely no direct evidence implicating the defendants in the removal of the cattle from the farm or attempts to interfere with the tagging of the cattle: the defendants have each of them denied in the strongest terms on oath that they removed any of the cattle or interfered with the tags. I accept fully the

> evidence of [the receiver's representatives] and I have no doubt that there has been a significant and unexplained reduction in the size of the non-milking herd. Since the defendants live on the farm and are engaged in the active management of the milking herd on the farm, it is indeed remarkable that they were totally unaware of the disappearance of so many animals from the farm and the apparently concerted attempt to remove and replace the T.B. tags and yellow jumbo tags. The fact remains that the defendants' complicity in these matters has not been established beyond a reasonable doubt and in these circumstances I cannot accede to the application that the defendants be attached".

87. As Keane J makes clear, the court must be satisfied beyond reasonable doubt that the alleged contemnor has in fact committed the alleged contempt. McKechnie J in *Competition Authority v. Licensed Vintners Association*, pointed out that "…the court must be clear as to what it is being asked to find beyond reasonable doubt. Each case must be carefully scrutinised so that the correct question is identified and answered to this standard [para. 29]". I accept this dictum as the guiding principle for the court in approaching an application for attachment and committal.

88. However, I do not accept that it follows from the criteria set out so clearly by Keane J and McKechnie J that the application must be conducted as if it were a criminal trial. One of the respondents' counsel went so far as to complain about counsel for the plaintiff having the usual brief right to reply to the respondent's submissions which is routinely accorded in civil matters, on the basis that, in a criminal trial, the prosecution would have no such right. In my view, there is no basis whatsoever for contending that the application of the criminal standard of proof in an application for attachment and committal transforms that application into a criminal

trial, which would be prosecuted by the State, and the necessity for which is dictated by entirely different social imperatives and principles.

89. Indeed, it was submitted on behalf of the plaintiff that the court should resist attempts by parties to avoid their obligations pursuant to court orders by reliance on what might be regarded as technical objections. This was illustrated by the approach of Peart J in *Laois County Council v. Scully* [2009] 4 IR 488, in which judgment the plaintiff relied on the following passage:

> "…It is important that the court should be vigilant to ensure that nobody is deprived of their liberty other than in accordance with law, and this includes by reference to procedures laid down by rules of court. Nevertheless, the court must ensure that justice is done for all parties and not simply the person whose attachment is sought. There is also the very important question of upholding the authority of the court in the face of what may well be a flagrant and deliberate breach of a court order. In such situations, the court must look closely at the objections put forward as to non-compliance with rules of procedure, so as to ensure that mere form is not permitted to triumph needlessly over substance. Rules of procedure exist to enable things to be done and steps to be taken, and must not become instruments of obstruction. They must be our servants and not our masters. They for the most part make provision for steps to be taken in proceedings and causes of all kinds in a way which accords to all parties concerned their natural justice rights and entitlements. It would be a truism to state that nobody should suffer any order to be made against them in which their substantive rights are affected, and even more so their liberty, unless they are put on proper notice of the possibility that this could occur and have the appropriate opportunity to be

heard. The rules of court provide appropriate mechanisms for this to happen. That is an objective and purpose of the rules." [Emphasis added by plaintiff in written submissions].

90. It falls to the court to decide whether or not the contempt is established beyond a reasonable doubt, and as McKechnie J made clear, to determine exactly what must be established beyond a reasonable doubt. In the present case, it seems to me that the plaintiff must establish at minimum in the present case the following matters: -

(1) That a valid and regular order was made by the court, following appropriate service of the application for the order;

(2) that appropriate and regular service of the order on the appropriate respondents took place in accordance with the directions of the court; and

(3) that the respondents have not complied with the order.

While there are other matters relating to whether or not it is appropriate to make an order once these factors have been established, a failure to prove these matters beyond a reasonable doubt would in my view be fatal to the application.

91. It follows from what I have found as set out above in relation to the injunction orders that I am satisfied that the plaintiff has established that the application for the injunction orders was validly served in accordance with the court's directions, and that the order of Reynolds J is a valid and regular order. It is also clear that the occupants have not complied with the order. I am therefore satisfied that the first and third matters in the foregoing paragraphs have been established beyond a reasonable doubt.

92. Most of the submissions of the various counsel for the respondents centred on what they submitted was defective service of the order. It is therefore necessary to examine closely the various points made in this regard.

Service of the orders

93. It was suggested on behalf of the respondents, as set out above, that the extension by the Court of Appeal on 15th January, 2021 of the stay on the order of the High Court of 25th November, 2020 from 14th January, 2021 to 5th February, 2021 in the case of Mr. Petrut and Ms. Hanrahan rendered the High Court order "spent", or at least required that the order of 15th January, 2021 be served on the occupants, so that failure to do so rendered service of the order of the High Court ineffective. In my view, there is no merit in this point. The application by Mr. Petrut and Ms. Hanrahan for an extension of a stay on the High Court order pending appeal was refused, but given that the original stay had expired on the previous day, Noonan J granted the applicants a further stay of three weeks until 5th February, 2021. This order was clearly made so that the applicants could consider their position, and did not apply to any of the other occupants. The assertion that this accommodation afforded by the court could vitiate and render void or "spent" the original order is entirely without substance.

94. As we have seen, objection was taken to the wording of the penal endorsement on the orders which were served on the occupants: see paras. 71 to 73 above in this regard. There is no doubt that the penal endorsement, the text of which is set out at para. 71 above, is clumsily worded. In addition, Mr. Petrut and Ms. Hanrahan were not "persons unknown" to the plaintiff. The wording seems to be the product of a wish to adhere as closely as possible to the usual format of a penal endorsement set out in O.41, r.8 of the Rules of the Superior Courts, albeit that the plaintiff was not

aware of the identity of the persons to whom the orders were addressed. Also, as set out at paras. 74 to 78 above, it was submitted that the absence of any identification of "the Property" on or with the order left the "persons unknown" in the position of being required to comply with orders in respect of a "property unknown".

95. A perusal of the documentation served in respect of both properties gives rise to the following observations:

(1) The orders were accompanied by letters from Maples and Calder LLP which identified the title of the proceedings and the property in each case (which was defined for the purpose of the letter as "the property");

(2) the letters explained the situation in clear and simple terms, pointing out that the order of the High Court required the occupants "to surrender possession of the property to our client…";

(3) the letters went on to call on the occupants "to confirm immediately that you will surrender possession of the Property… **at 5.00pm on Thursday, 14th January 2021**." [Emphasis in original];

(4) the letters reserved the right of the plaintiff to bring an application to the High Court seeking attachment and committal if the occupants refused to surrender possession;

(5) the title of the proceedings on the order identified as "defendants" … "Persons Unknown in Occupation of the Property known as [31 Richmond Avenue/21 Little Mary Street as applicable]";

(6) the penal endorsement refers specifically to each individual property by its full address;

(7) the order refers to the order being directed, not just to the defendants, but to "all other persons having notice of the said order…";

(8) similarly, the penal endorsement is directed, not just to "PERSONS UNKNOWN IN OCCUPATION OF THE PROPERTY KNOWN AS [31 Richmond Avenue/21 Little Mary Street] …", but to "ANY OTHER PERSON ON NOTICE OF THIS ORDER…;

(9) the terms of the orders are clearly designed to facilitate an orderly surrender of possession of the "property" by the "persons in occupation of the property known as [31 Richmond Avenue/21 Little Mary Street] …".

96. While neither the letter nor the order contained the text of the schedule to the plenary summons which defined the "property", it is in my view perverse to suggest that the occupants could have been under any misapprehension as to the property of which they were ordered to surrender possession and control by 5pm on Thursday 14th January, 2021. If there were any conceivable doubt, the plaintiff's solicitors would no doubt readily have furnished a copy of the plenary summons on request. In my view, to hold that the service of the order should be deemed bad on the basis that the text of the schedule to the plenary summons was not included with the order would not be a "meticulous observance of procedural justice", but would be to permit the sort of arid technicality envisaged by Peart J in *Laois County Council v. Scully*, and would be a denial of justice rather an implementation of it.

97. It was further submitted that personal service of the penally endorsed order is required, other than in exceptional circumstances. However, it is not apparent to me that O.41, r.8 of the Rules of the Superior Courts, which deals with service of the

order and the penal endorsement, requires personal service. Peart J in *Laois County Council v. Scully* came to a similar conclusion:

> "Order 41, r.8 makes no reference to personal service being required. There is simply a requirement in relation to an order requiring a person to do an act, to state the time after service by which it has to be done, and that the copy order served be endorsed with a penal endorsement. It seems to me that under the Rules of the Superior Courts 1986 an order such as the present one is not an order which the Rules require to be served personally on a defendant bound by it. It is not an order under O. 84, r.1 for example. It seems to me, therefore, that where an order of this kind is made against a defendant for whom a solicitor is on record, service on that solicitor is permitted, since the Rules themselves have not required service to be personal service. The cases [*Century Insurance Company v. Larkin* [1910] 1 IR 91 and *McClure v. McClure* [1951] IR 137] to which I have referred can be distinguished on their facts. That is not to say that out of an abundance of caution a plaintiff's solicitor ought not to in fact effect personal service of such an order duly endorsed upon the defendant personally, but it does not appear to be a requirement." [at para. 42]

98. In any event, in circumstances where the occupants could not be identified, and indeed had not responded to repeated requests for them to identify themselves, where they had been written to repeatedly by the plaintiff's solicitors, where they had been served with the injunction applications to the satisfaction of the High Court, it seems to me that service of the injunction orders in the manner prescribed by the order of 25th November, 2020 was appropriate in all the circumstances.

Awareness of the occupants of the injunction orders

99. However, even if service of the injunction orders was valid and in accordance with the orders of 25th November, 2020, counsel for the occupants submit that there is uncontroverted evidence by affidavit from numerous occupants of the properties – see para. 62 above in this regard – that they were actually unaware of the applications for the orders, the making of those orders, and of their terms, due to the failure of the plaintiff to identify them rather than simply referring their correspondence to "the occupants", and in particular the failure to direct correspondence to particular apartments within the properties. The evidence of these deponents is that they only became aware of the situation in or around the end of February 2021, and appearances were entered on behalf of all of the occupants by F.H. O'Reilly & Co on 22nd February, 2021. It is not explained by any of the deponents how they became aware, or how they came to seek legal representation.

100. It is submitted on behalf of the applicants, that they could not, at the date of issue and service of the motion (12th February, 2021), have been in contempt of the order of Reynolds J as they were simply not aware of its existence. Counsel submits that the evidence of the deponents is not controverted, and must be accepted by the court.

101. It is true that the deponents were not cross-examined on their affidavits. However, the plaintiff submits that this does not mean that the court must uncritically accept their evidence, and relies in particular on the decisions of the High Court in *Ulster Bank Ireland Limited v. Kavanagh* [2014] IEHC 299 and the Court of Appeal in *McGrath v. Godfrey* [2016] IECA 178. In *Kavanagh*, Baker J considered an assertion by a defendant that service had not been validly effected in the context of other objective evidence available to the court: -

> "The irregularity claimed by the defendant is that service was not properly effected on her and that it was effected at an address at which she no longer lived. I have noted above that the defendant says she has 'no recollection' of being served and makes a positive averment that she was not in the house on the day in question. She undoubtedly resided at the address at which service was effected. She nowhere states that the letter containing the court documents did not come to her attention or was not in the house when she returned. She does not offer any explanation as to who might have accepted service and, as she asserts, wrongly identified herself to the summons server. Undoubtedly some person accepted the documents from Mr. McDonald, the summons server. This gap in the evidence is resolved in my view by preferring the evidence of the professional summons server Mr. McDonald who had made several attempts at service and who was careful to describe these attempts. I am not satisfied that the defendant was not served nor that the summons was not left at the dwelling of the defendant. Accordingly I take the view that the judgment was not obtained irregularly and that the defendant is not entitled to have the judgment set aside as irregular." [at para. 7]

102. Similarly, Irvine J (as she then was) in *Godfrey*, in assessing the evidence in an appeal by the defendant of an order granting liberty to enter final judgment stated as follows:

> "In the present case the High Court judge decided Mr. Godfrey's application on the grounds that he was satisfied that the summary summons and the motion seeking liberty to enter final judgment had been validly served in accordance with the two orders for substituted service earlier referred to. In other words he was satisfied that the judgment had been obtained in a regular

fashion in accordance with the Rules of the Superior Courts. In coming to that conclusion the trial judge referred to the relevant affidavits of service.

Mr. Godfrey's principal complaint before the High Court was that he only became aware of the instigation of the proceedings after judgment had been obtained and that he had not been served with any notification of the proceedings. What he did not contest, however, was the plaintiffs' assertion that service had been effected in a regular manner in strict compliance with the Rules of Court and the orders for substituted service.

Thus, I am satisfied that the High Court judge was correct in concluding that the judgment had been validly obtained by the plaintiffs. That being so, the only basis upon which Mr. Godfrey was entitled to seek to have the judgment set aside was to demonstrate that he had a real chance of successfully defending the proceedings and to convince the court that in all of the circumstances and having regard to the interests of all of the parties, that the balance of justice favoured the granting of the relief sought." [at para. 27]

103. I accept on the level of principle that the court is not obliged to accept the evidence of the occupant deponents simply because it has not been directly controverted by affidavit evidence and the deponents have not been cross-examined. Justice demands that all of the evidence before the court must be examined in order to ascertain the truth. The court is entitled to have regard to other evidence available to it, particularly if that evidence casts doubt on the accuracy or veracity of a deponent.

104. In the present case, there are numerous matters which give rise to doubt as to the plausibility of the occupant deponents' assertion that they were unaware of the injunction applications or orders until the end of February 2021. The plaintiff points in particular to the "anomalies" in the evidence which I have summarised at para. 64

above. It is suggested that none of the deponents ever had regard to any of the correspondence addressed to "the occupants" at the properties, notwithstanding a steady stream of such correspondence, not just from the plaintiff, but also its predecessors in title. Mr. Petrut and Ms. Hanrahan at Richmond Avenue and Little Mary Street respectively were aware of the proceedings, as were the individuals emailing the plaintiff's solicitors and the anonymous caller to Ms. Keely. How were these individuals aware of the situation, but not the deponents? Is it suggested that the occupants who took in hand-delivered post had no regard to it, or did not pass it on to the other occupants? Where did Mr. Beades stand in all this? Did any of the occupants discuss the matter with him? The affidavits, other than adverting to the payments some or all of the deponents made to Mr. Beades, are silent as to any other dealings they may have had with him.

105. As against that, it was submitted on behalf of the occupants that English is not the first language of most if not all of the occupants, and the evidence of the deponents is that they did not have regard to any correspondence not addressed to them at their individual apartments. Also, many of the deponents referred to having made regular payments to their "landlord", Mr. Beades, and in fact offered to make payments henceforth to the plaintiff. It may be that some of the occupants had the mistaken belief that, as long as they were discharging the "rent", their tenure in the properties was secure.

106. The position of the plaintiff must be considered. It is clear to me that the plaintiff was in fact unaware of the identity of the occupants, and where in each of the premises the individual occupants resided. Also, while some of the occupants – in particular Ms. Bortas and Mr. Circu in Richmond Avenue – have been in the properties for some time, it transpires that many of the occupants had been in the

properties for a relatively short time. There is some evidence to support the suggestion that there was a certain amount of "coming and going", which made it difficult for the plaintiff to pin down who was residing in the properties at any given time.

107. The plaintiff had a possession order of this Court, obtained in 2008, and confirmed on appeal by the Supreme Court in 2014. How was it to enforce such an order? I do not consider that an application to the High Court for an injunction against the occupants was inappropriate, particularly given the repeated efforts on the part of the plaintiff to communicate with the occupants, inviting them to identify themselves and to engage with the plaintiffs. Having obtained the orders from the High Court and served them in accordance with the terms of those orders, it seems to me that the plaintiff was entitled to take the view that the occupants were refusing to obey the orders and were in fact ignoring them.

108. If, as the High Court deemed appropriate, service of the orders was to be effected by service on the occupants at the properties, and this service was carried out meticulously, is the application for attachment and committal to be defeated by the occupants simply denying any knowledge of the application or order on which it is based?

109. It seems to me that, where it is sought to imprison someone for a failure to abide by an order of the court, that person must be proved beyond a reasonable doubt to have wilfully disobeyed the order. It must be established that the person knew of the order and of the consequences of breaching it. It is for this purpose that the rules of court require a penal endorsement to be placed upon the orders served, so that there is evidence before the court that the recipient of the order was aware of the consequences of breaching it, but nonetheless decided to do so. Where it is

established beyond a reasonable doubt that a person to whom an order is addressed received a penally endorsed copy of the order at the correct address at which that person resides, it will not usually avail that person simply to swear an affidavit stating that they were not aware of the order.

110. However, that is not to say that service of a penally endorsed order in accordance with the terms of that order is necessarily sufficient to establish wilful breach of an order. The dicta in *Kavanagh* and *Godfrey* quoted above are helpful in illustrating the approach of the court in circumstances where a defendant denies that valid service is effected; however, both cases concerned a motion for judgment rather than a motion for attachment and committal. For the latter application, I think that something more than valid service of the application is required. The essence of an application for attachment and committal for breach of a court order is that the person to whom the order is directed is aware of the order, and yet decides not to comply with it. If this is not established, in my view the application cannot succeed.

111. I think, on consideration of all of the evidence, that it is probable that most, if not all, of the occupants were aware of the applications and the making of the injunction orders. However, in view of the fact that the orders, although served in accordance with the orders of 25th November, 2020, were not served on individual apartments, I do not think it is established beyond a reasonable doubt that the occupants each knew of the making of the orders, or that the circumstances of service outweigh the evidence from the eight deponents across the two properties such as would allow me to conclude beyond a reasonable doubt that a conscious decision was made to disobey the orders.

Events since February 2021

112. The plaintiff has what might be termed a "fallback" position. This is expressed at para. 40 of the plaintiff's written submissions as follows: -

> "…there is no question in the present case that the Occupants have been given every possible opportunity to surrender vacant possession of the Properties without facing the risk of imprisonment. Even ignoring the period of many years which preceded the commencement of these proceedings, the Contempt Applications have been before the High Court since 19 February 2021. Rather than attempting to comply with the Injunction Orders or reaching an accommodation with the Plaintiff, the occupants have sought to contest those applications in full without vacating the Properties."

113. In short, the position of the plaintiff is that: -

- The occupants remain in occupation of one or other of the properties, something that is "expressly and unequivocally prohibited by the Injunction Orders" [para. 39 written submissions];
- the occupants are beyond doubt now aware of the orders and their terms, and the consequences of breaching same, having been represented by solicitors since at least 22nd February, 2021;
- the occupants have chosen to contest the present applications, rather than comply with the injunction orders;
- copies of the injunction orders bearing a penal endorsement have been served on the occupants, and "…[T]here is no authority for the proposition that a true copy of an order bearing a penal endorsement must be served before an application for attachment and committal issues. The relevant question, even in cases where there is doubt as to whether the alleged contemnor was aware of the terms of the relevant

> order (which is patently not the case here), is whether a true copy of the order bearing a penal endorsement has been served before the application for attachment and committal is heard". [Para. 60 plaintiff's written submissions – emphasis in original].

114. There is no basis for impugning the order of Reynolds J made on 25th November, 2020. I am satisfied that it is a valid order. The occupants have been served with the orders in accordance with the terms of those orders. I am satisfied that the penal endorsement was sufficient and effective. If there is doubt as to whether the occupants were aware of the terms of the orders prior to the end of February 2021 when they acquired legal representation, there can be no doubt in this regard after that point. The order of Reynolds J applies to the occupants and they have chosen not to abide by it, but rather to attempt to persuade the court that it should be set aside, or that compliance with it should be excused.

115. Mr. Petrut and Ms. Hanrahan await judgment from the Court of Appeal as to the validity of the orders. The other occupants cannot appeal, having been refused an extension of time within which to appeal from the High Court's decision. They have chosen to argue that this Court should set it aside. It cannot be the case that a party is entitled to ignore a regular and enforceable order of this Court, having not appealed it, simply by virtue of resisting an application for its attachment and committal on foot of breach of the order on the basis that the order should not have been granted in the first place. Where they may be situations in which a court might accommodate the making of such an argument, this is not one of them.

116. This is not a criminal trial, in which a court must decide whether a crime occurred at a specific time and place. I am entitled and indeed obliged to take into account matters which have occurred between the issue of the present application and

the hearing on 4th/5th May, 2021. The occupants have had a valid order made against them. This order was served with a penal endorsement in accordance with the order of this Court. The occupants are now beyond a reasonable doubt aware of the implications of the order, and of the consequences of not complying with it. They have chosen not to comply with the orders, and have advanced unmeritorious grounds as to their alleged lack of validity.

Conclusions

117. I find that the occupants are in deliberate breach of the orders of 25th November, 2020. However, the orders to be made on foot of this finding require careful consideration. Indeed, counsel for the plaintiff was at pains, in introducing the applications, to emphasise the reluctance of the plaintiff to proceed with the applications at all. It was submitted that, if the court were of the view that the applications were meritorious in principle, it should make "appropriate and restrained orders to secure [the plaintiff's] sole objective which is of obtaining vacant possession of the two properties…" [transcript Day 1, p.15 lines 8 to 10].

118. Counsel for the occupants emphasised the unfortunate position in which the occupants have found themselves. It was suggested – with some justice – that they have been caught in the middle between the plaintiff and Mr. Beades, and that they have been living in the properties and discharging "rent" to Mr. Beades as it fell due, oblivious to the fact that an order for possession of the properties had been granted against Mr. Beades as long ago as 2008. They say that it would not have been possible to comply with the orders due to the Covid-19 Pandemic, or at least that it would have been well-nigh impossible to find alternative accommodation for twenty

people and three children at that time. It was submitted that the occupants would be rendered homeless by compliance with the orders.

119. It would be impossible not to have sympathy for the plight of the occupants, and in particular that of Ms. Bortas and Mr. Circu, who have lived in Richmond Avenue since 2005, and their two young children who have never known any other home. Mr. Ioan Brat and Ms. Dorina Brat aver that they have resided in that property for seventeen years. However, there is no basis in law upon which the occupants could establish a right to remain in either premises. The mortgagee has had an order for possession in its favour since 2008. Since at least that time, Mr. Beades was not capable of creating a landlord and tenant relationship and granting possession to any prospective tenant. No consent to any current tenancy has been furnished by the mortgagee. The plaintiff does not wish to enter into a landlord and tenant relationship with the occupants, and there is no basis upon which it could be forced to do so.

120. The orders of 25th November, 2020 are regular, valid orders, and they remain in force. The occupants are in breach of the orders, and must comply with them without further delay. I am conscious of the difficulties and disruption that the occupants will face. As against that, their challenge to the plaintiff's application enabled them to remain in the property until the hearing of the matter in May, and unfortunate circumstances outside the control of the court have caused an unavoidable delay in delivering this judgment. It is therefore the case that the occupants have had several months to prepare themselves for what they were surely advised was the inevitability of their ultimate departure from the properties. Even if I had acceded to the technical arguments on behalf of the occupants as regards service of the application, the occupants are now identified, as are the apartments in which they

reside. Further applications, even if the present ones had been declined on the technical grounds advanced, would surely have succeeded.

121. I am prepared to give the occupants some further time to consider their position, and to initiate the process of sourcing alternative accommodation, if they have not already done so. I will adjourn the matter to Monday 30th August, 2021 to give the parties an opportunity to address the court as to the appropriate orders to be made. I would encourage the respective solicitors to liaise in advance of that date, and will expect significant progress on the part of the occupants demonstrating their compliance with the orders, absent which the reliefs sought in the notice of motion will be granted.