

**THE HIGH COURT**

[2021] IEHC 255  
[2015 No. 5126P.]

**BETWEEN**

**WARDGLADE LIMITED**

**PLAINTIFF**

**AND**

**FERGAL (OTHERWISE FEARGAL) DEERY**

**DEFENDANT**

**JUDGMENT of Mr. Justice Allen delivered on the 26th day of March, 2021**

1. By order of the High Court (Gilligan J.) made on 7th July, 2015 and amended on 24th November, 2015, the defendant, Mr. Fergal Deery, was restrained from entering upon, remaining on, or trespassing upon the premises formerly known as Master Deery's at 27/28 Markey Street, Monaghan and the premises at 34/36 Park Street, Monaghan, formerly known as The Junction at Master Deery's. That order was in plain terms and it was served personally on Mr. Deery.
2. By notice of motion dated 11th July, 2019, the plaintiff, Wardglade Limited, which is the owner of the premises, applied to the High Court for an order of attachment. It was then alleged that in breach of the High Court order Mr. Deery had broken into the premises.
3. That application was heard on 19th July, 2019, which was a Friday. Mr. Deery did not attend court and I made an order that he be attached and brought before the court to answer for his contempt.
4. On the following Monday, 22nd July, 2019 Mr. Deery was arrested by An Garda Síochana and brought to court. Mr. Deery, on his oath, undertook to vacate the premises by no later than noon on the following day and I adjourned the application for his committal to allow him to do so.
5. When the matter came back before me on 29th July, 2019 Mr. Deery did not attend and had not honoured his undertaking and I made an order that he be committed to Mountjoy Prison until he should purge his contempt and be discharged by further order of the court.
6. Mr. Deery was promptly arrested on foot of that order and was detained in Mountjoy until 22nd August, 2019 when he applied to the High Court to purge his contempt. Mr. Deery again gave an undertaking on oath that he would obey the 2015 orders and, further, that he would not whether in person or by deputy attend at or in the vicinity of the business premises or homes of the directors of the plaintiff or its solicitor and he was discharged.
7. By notice of motion issued on 5th March, 2020 a further application was made for Mr. Deery's attachment and committal. It was alleged that on various specified dates in December, 2019 in the company of other men – said to have been unknown – he had broken into the premises, and that he was harassing the directors of Wardglade and its solicitor and their families. The motion was grounded on an affidavit of Mr. Ciaran Marron which exhibited a large number of stills taken from security video recordings and social media postings.

8. A number of previous applications had been made to court for the attachment and committal of Mr. Deery arising out of those events but I had not been satisfied that he had been properly served, and I had refused them.
9. The motion issued on 5th March, 2020 came before the court on 12th March, 2020. Mr. Deery was not present but one of his associates appeared to say that the Jeep in which he had intended to come to court had broken down. I put the application back until the following day to allow Mr. Deery to make alternative travel arrangements but he did not appear. I heard the motion on Friday 13th March, 2020. I was satisfied on the evidence before the court that Mr. Deery was in breach of both the court order and his undertakings and I made a further order for his attachment.
10. On 2nd December, 2020 Mr. Deery was arrested and brought before the court (Reynolds J.). He was found guilty of contempt by and again committed to Mountjoy Prison until he should purge his contempt.
11. On 3rd December, 2020 he was brought before me (by videolink). If he had then proposed to purge his contempt that would almost certainly not have been the end of the matter but in the event he did not. I encouraged him to reflect on his position and to take legal advice. He did not need legal advice as to the meaning and effect of the order committing him to prison which, although in formal language, must have been clear to him but a solicitor would have been able to advise him of the futility of spending an indefinite time in prison.
12. I had the matter listed before me again on 3rd February, 2021 on the basis that Mr. Deery had by then been in custody for two months. I asked whether he had reflected on his position but, in his own words, he said that he would not budge. Mr. James McGowan, for the plaintiff, made its position very clear. The plaintiff's object in seeking the attachment and committal of Mr. Deery was solely to secure the peaceful possession of its property.
13. Mr. Deery appears before me again this morning by videolink: not on his application but because I have had the case listed. Since 2nd December, 2020 he has been in custody for 115 days, including, of course, over Christmas. I have, over the course of those 4 months, carefully considered from time to time whether he needs to stay where he is.
14. The order of the High Court on foot on which Mr. Deery is in custody was made in the exercise of the jurisdiction of the court to deal with contempt of court. That is a jurisdiction which was summarised by Fennelly J. in *McFeely v. Dublin City Council* (Unreported, Supreme Court, 31st July, 2012) as follows: -

*"The remedy of committal for contempt of court is an indispensable procedural remedy, whereby the courts can give effect to their orders, promote the enforcement of orders in the interests of the parties and guarantee respect for the administration of justice and the rule of law. Without it, defiant and recalcitrant litigants might be able to defy the courts and the law and deprive opposing parties*

*of their just rights. The ultimate remedy is committal to prison for contempt of court.”*

15. There are two strands to the jurisdiction, which are not entirely separate. The first purpose of the jurisdiction is coercive: that is, the object is to ensure compliance with orders of the court. The point is that the contemnor is required to cease and desist from doing the act which he has committed, and which has been held to be in contempt. The second purpose is punitive. In an appropriate case a person found to be in contempt of court may be fined or imprisoned for what he has done or failed to do.
16. In each case, part of the objective of the exercise of the jurisdiction is to vindicate the authority of the court. In a case, such as this, involving private law rights, the rights of the successful litigant will be an important consideration. The authorities are clear that imprisonment is the ultimate remedy and should only be used as a last resort.
17. The order made on 2nd December, 2020 for the committal of Mr. Deery was primarily a coercive order. The plaintiff's declared position is that it has no interest in seeing Mr. Deery imprisoned, whether indefinitely or at all, but applied to the court to enforce its legal right to ownership and peaceful enjoyment of its property in Monaghan. The court's position is that High Court orders must be obeyed. Disobedience leads to the undermining of the administration of justice and the rule of law. To that end, the law requires that the authority of the court be recognised.
18. The authority of the court may be recognised in two ways, ideally in both, but in principle, I think in either of them. In the first sense of the word recognition involves understanding. In the second it involves acknowledgement.
19. In this case Mr. Deery has twice acknowledged, or purportedly acknowledged, the authority of the court by his undertakings to obey the order of Gilligan J. and not to molest the officers of the company, but those undertakings proved to be of little or no value. His undertaking on 22nd July, 2019 was given after he had been arrested that morning and brought to the High Court in Dublin. His undertaking on 22nd August, 2019 was given relatively shortly after he had been lodged in Mountjoy on foot of my order of 29th July, 2019. If upon or shortly after his arrest on 2nd December, 2020 he had proposed to purge his contempt by giving undertakings, the court would have had to give serious consideration to the value of any such undertaking. On the last review of his current imprisonment, Mr. Deery indicated that he had only given his undertaking to get out of prison. The authority of the court is not recognised by a hollow acknowledgement.
20. In the other sense of the word, the authority of the court is recognised when it is understood: that is, when it is seen and experienced. Mr. Deery has seen that when the High Court issues an order to An Garda Síochána that order is acted upon efficiently and he is arrested, and he has seen that when the High Court orders that he be brought to prison and kept there, that is what happens. The vindication of the authority of the court does not necessarily mean that it should be acknowledged. The subject of a High Court order is not required to like it, or to agree with it, but only to obey it.

21. If the law is, and it is, that imprisonment is the remedy of last resort, it seems to me to follow that it should not endure beyond the time that is absolutely necessary. I have reflected on whether Mr. Deery's continued imprisonment is necessary.
22. On the one hand, he has not asked to be brought before the court to purge his contempt. On the other, he has spent 115 days in custody. Mr. Deery has previously indicated that he is not prepared to budge. If that means that his intention is to continue to defy the court, he must remain where he is. If, however, it means only that he will not acknowledge Wardglade's ownership of the property but that he will nevertheless keep away from it, and leave its directors in peace, it is not necessary that he should remain in Mountjoy.
23. I have seen and spoken to Mr. Deery in court physically and by videolink. He is very stubborn. The objective of coercive orders is to concentrate the mind of the contemnor and the general experience is that it does. In this case I have a concern that Mr. Deery's obduracy may be an impediment to his doing what he knows he needs to do.
24. I take into account the circumstances of the break-ins in December, 2019. The evidence is, and the photographs show, that Mr. Deery was accompanied by half a dozen men dressed in matching bomber jackets embroidered with the words "*Assets recovery*" who hold themselves out as directors of a Northern Ireland registered company called Mister Deery & Company which, by dint of nothing more than a similarity between its name and that of the business formerly – at this remove long ago – carried on in the premises, claims to own the place. To those men – who have not been brought before the court to answer for their part – the breaking and entering of the building and the dressing up appears to have been a game and Mr. Deery's many court appearances a bit of distraction or entertainment. All the appearances are that Mr. Deery's long endurance and forlorn hope that he can thereby achieve anything are fuelled by encouragement by a motley crew of fantasists. The evidence is insufficient to enable me to assess whether, or the measure in which, they are knaves or fools.
25. I am acutely conscious of the plaintiff's rights and I am zealous of the authority of the High Court, but I find that I am no longer as certain as I was when I sent Mr. Deery to prison that he needs to remain there. I bear in mind that on each occasion when the plaintiff has been obliged to bring this matter back to court it incurs costs which, although orders may be made against Mr. Deery, are probably irrecoverable, but also that the plaintiff's motivation and goal is only that its rights will not be interfered with. If I am thought to put a higher price on Mr. Deery's liberty than he does himself, I make no apology for that.
26. While I cannot say that I am satisfied that Mr. Deery's continued imprisonment is not necessary to ensure that the authority of the court is vindicated, I have come to the view – not without misgivings – that I am no longer satisfied that it is. If I am wrong, the plaintiff will be put to the expense of having Mr. Deery sent back to Mountjoy. But if I am right, the plaintiff will have achieved its objective.

27. If Mr. Deery has not already come to recognise the authority of the court – and I hope that he has – perhaps the contrast between his liberty and his miserable existence over the last 115 days may bring him to that necessary recognition.
28. The order of Gilligan J. restraining trespass upon the properties at 27/28 Market Street and 34/36 Park Street Monaghan applies not only to Mr. Deery but to any person having knowledge of the making of that order. If there is any further disobedience, Mr. Deery and any and every other person who may be brought before the court will answer for it.
29. I will order that Mr. Deery be discharged from the custody of the Governor of Mountjoy Prison as to his contempt.
30. There will be an order for the adjudication of the plaintiff's costs of the motion issued on 5th March, 2020 and all adjournments thereof, and for payment of those costs by the defendant when so adjudicated.