

AFFAIRS OF THE NATION

JUDGE GRIFFIN'S AUDIO TAPE

SPARE A thought for Judge Gerard Griffin of the Circuit Court who finds himself on the receiving end of serious allegations that surfaced in the High Court last month, where claims of unconstitutional and fraudulent actions were made. The hapless beak will be looking to have the matter cleared up pronto this week courtesy of the inspection of the Circuit Court audio tape.

The case relates to properties in Kildare where the Bank of Ireland sent in receiver Michael McAteer in 2013. A year later, McAteer, served a Notice of Termination on tenants of the properties and the matter processed through the Residential Tenancies Board (RTB), with a final notice to vacate issued in December 2015. The case ended up in the Circuit Court before Judge Griffin, who ruled on May 10 last that the RTB's ruling be enforced and tenants vacate the properties within 14 days. There was no appearance by any of the tenants at that hearing.

At this stage, things get rather more interesting. On May 16, the tenants appealed Judge Griffin's ruling to the High Court, a move that surprised McAteer. He did not at that stage even have a copy of the Circuit Court order himself, so the appeal suggested the tenants or their representatives had indeed been at the original Circuit Court hearing.

At the High Court hearing of the appeal before Judge Tony Barr before Christmas, one Colin Fasie – who stated he had authority to speak on behalf of all the tenants in each of the properties – sought an adjournment of the appeal hearing on the grounds that the matter had never actually been dealt with in open court in the Circuit Court on May 10. Fasie requested an adjournment so he could arrange to access the digital audio recordings (DAR) of the Circuit Court proceedings that day.

Fasie's allegation is that Judge Griffin never made an order and left the court unexpectedly that day. The claim was backed up by an affidavit by one Tom Morrin, a company director and former

insurance broker with an address in Ratoath, Co Kildare, who claims to have been in attendance at the Circuit Court in relation to a separate matter but had intended to observe the McAteer case as he was planning to relay the facts to his old pal, John Quinn – the original owner of the properties, along with Seamus Finucane. Morrin's affidavit stated that the case was never called and that "the registrar addressed the court to say that the judge [Griffin] had left the building and no further cases would be heard that day".

Judge Barr noted that the claims by Morrin *et al* were most serious, "the inference being that the order was obtained by stealth or fraud by the applicants". He stated that justice must be administered in public and therefore what was being claimed was that the receiver McAteer "and indeed the Circuit Court Judge, acted in a way that was totally improper and unconstitutional". Judge Barr agreed to adjourn the appeal hearing so that the DAR could be examined "because the Court cannot allow such a serious allegation against both the applicant and the Circuit Court Judge to go unanswered".

The issue will be dealt with in the next Circuit Court Appeals hearing in Naas this month and there will be more than a little interest from the legal fraternity (not least Judge Griffin) in the contents of that digital audio tape.

BANKS BEWARE!

THE banks, government and courts could be thrown into chaos by a most interesting legal challenge to home repossessions – with a little help from the George Soros funded Open Society Justice Initiative. Already two finance houses, AIB and Pepper Finance Corporation, have been temporarily prevented from repossessing family homes in recent cases where arguments about EU law and case precedents were cited.

The barrister who acted for the families in both cases, Gary Fitzgerald, is currently touring the country with Barcelona-based Open Society senior attorney Marguerite Angelari, Madeleine Thornton in private practice with Emma Coffey Solicitors, and

other lawyers. They are offering advice to lawyers involved in repossession cases about the legal arguments that can be used to halt evictions in arbitrary, unfair and disproportionate circumstances.

Cases taken to the Court of Justice of the EU include one taken by a Mr Aziz in Spain who successfully argued that the EU Contract Terms Directive, 1993 prevented the Spanish bank, Catalunyacaixa, from repossessing his home. In the case of a Dublin farming family, Mr Justice Max Barrett accepted their barrister, Fitzgerald's argument that the Aziz case – which relied basically on an unfair and unbalanced relationship between lender and borrower – needed to be challenged. The other case was that of a Laos family whose arguments also relied on these precepts. The EU directive, if breached by a repossession, also means that any such possession is also in breach of the European Charter of Fundamental Rights.

One immediate result of these cases is that all county registrars and judges must scrutinise cases to see if they comply with EU law as above. This means the courts and the authorities could be thrown into confusion with four homes being repossessed every day and thousands of such cases before the courts.

Even more threatening – for the legal, financial and political establishment – is another EU precedent, that of Slovakian woman Monica Kusionova whose successful application to the EU court in 2014 relied on arguments about "proportionality". Such arguments would refer to factors like the homelessness of a family with children, their physical, medical and personal circumstances, the amount and nature of the loan and so on. Many thousands of evicted families would be covered by these EU legal precedents and, if they were able to launch legal challenges, could create legal chaos – as well as restoring many to their homes

Open Society is funded by one of the world's richest men, George Soros, and engages in liberal, pro-western issues such as anti-corruption, rights and justice, media freedom and other topics. It has branches around the world and several in Eastern Europe. Recently, it opened a west European office in Barcelona from where Angelari has been commuting to and from Ireland offering legal and financial assistance to Irish lawyers such as Fitzgerald and Thornton. Open Society has opened up a new topic, "abusive lending practices", and Ireland appears to be a prime example of such a category.

Weighing in behind the campaign already is Master of the High Court Ed Honohan whose New Year attack on the Circuit Courts and government in rendering families homeless referred to the Aziz case and EU law. Doubtless, heavily bewigged judges and senior counsel will deliver rebuttals of these arguments in the near future. But Soros has deep pockets; and EU law is EU law that must be applied in member states.



Madeleine Thornton



Judge Gerard Griffin

