Neutral Citation: [2017] IEHC 170

**THE HIGH COURT**

**Record No. 2014/2086S**

**BETWEEN:**

**START MORTGAGES LIMITED**

**Plaintiff**

**– AND –**

**JEREMIAH O'REGAN**

**Defendant**

**JUDGMENT of Mr Justice Max Barrett delivered on 16th March, 2017.**

1. The plaintiff is a limited liability company. The defendant is a gentleman who resides in County Cork. By letter of loan offer and agreement dated 7th June, 2006, the plaintiff offered to the defendant a term loan in the sum of €770,000.00 for a period of 30 years at an interest rate of 2.6 per cent. The said term loan facility was advanced to the defendant on or about 9th October, 2006. Unfortunately, the defendant defaulted on his repayments. By letter dated 18th July, 2014, the plaintiff demanded the immediate repayment by the defendant of the sum of €981,886.28. Despite this demand, the defendant had, at the date of hearing, failed, refused or neglected to pay any of the said sums due and owing. As of 31st July, 2014, the total amount due and owing on the defendant's mortgage account was the sum aforesaid. The plaintiff now claims that sum as well as continuing interest (at the standard variable rate applicable to the loan account) on the principal sums due and owing.

2. The defendant objects to the within application proceeding to judgment until resolution of all complaints made by him to the Financial Services Ombudsman (and, it seems, the Central Bank). With respect to the defendant, it seems to the court that that is to conflate these proceedings and those complaints, at least to some extent. Whether or not the within proceedings ought now to go to plenary hearing is a matter that the court is competent to, and capable of, deciding at this time. And if, as the court hereafter concludes, the plaintiff's application can properly be dealt with by way of summary proceedings, the issue of whether or not the defendant is liable for the amounts claimed is also a matter that can be decided at this time on the evidence before the court. What the court can do, to the extent that any legitimate complaint(s) to the Financial Services Ombudsman and/or Central Bank remain unresolved at the moment the within judgment issues, is to:

> (a) put a stay on any order that issues pursuant to its judgment, pending the resolution of such complaint(s);
>
> (b) give liberty to either party to make application to the court, whether as regards a variation of its order or otherwise, following the resolution of such complaint(s); and
>
> (c) in the event that the Financial Services Ombudsman makes a determination which suggests that the within application was brought (if it was brought) prematurely, to invite the parties to make submissions as to whether that ought to be reflected in any costs order that the court might make.

3. There is at least one limit on the extent to which the court would be inclined to grant a stay such as that just mentioned: were the court ever to be persuaded that the defendant was merely making complaint(s) to the Financial Services Ombudsman, the Central Bank and/or any other body or person which (i) had the predominant objective of merely staving off the day when a debt properly owing fell to be paid, and/or (ii) whether or not successful, would have no impact on his liability at law to repay such debt, then it would be entirely proper for the court to decide either to refuse a stay or to lift any such stay as had been granted.

4. Turning to the law applicable to whether the within proceedings ought to go to plenary hearing, the hurdle to be surmounted by the defendant as regards having this matter sent to plenary hearing is notably low. As Hardiman J. stated in the Supreme Court in *Aer Rianta c.p.t. v. Ryanair Limited* [2001] 4 I.R. 607, 623:

> *"[T]he fundamental questions to be posed on an application such as this remain: is it 'very clear' that the defendant has no case? Is there either no issue to be tried or only issues which are simple and easily determined? Do the defendant's affidavits fail to disclose even an arguable defence?"*

5. In Harris*range Ltd. v. Duncan* [2003] 4 I.R. 1, at 7, McKechnie J. summarised the relevant principles when a court approaches the issue of whether to grant summary judgment or leave to defend:

> *"(i) the power to grant summary judgment should be exercised with discernible caution;*
>
> *(ii) in deciding upon this issue the court should look at the entirety of the situation and consider the particular facts of each individual case…*
>
> *(iii) in so doing the court should assess not only the defendant's response, but also in the context of that response, the cogency of the evidence adduced on behalf of the plaintiff…*
>
> *(iv) where truly there are no issues or issues of simplicity only or issues easily determinable, then this procedure is suitable for use;*
>
> *(v) where, however, there are issues of fact which, in themselves, are material to success or failure, then their resolution is unsuitable for this procedure;*
>
> *(vi) where there are issues of law, this summary process may be appropriate but only so if it is clear that fuller argument and greater thought is evidently not required for a better determination of such issues;*
>
> *(vii) the test to be applied, as now formulated is whether the defendant has satisfied the court that he has a fair or reasonable probability of having a real or bona fide defence; or as it is sometimes put, 'is what the defendant says credible?'…*

*(viii) this test is not the same as and should not be elevated into a threshold of a defendant having to prove that his defence will probably succeed or that success is not improbable, it being sufficient if there is an arguable defence;*

*(ix) leave to defend should be granted unless it is very clear that there is no defence;*

*(x) leave to defend should not be refused only because the court has reason to doubt the bona fides of the defendant or has reason to doubt whether he has a genuine cause of action;*

*(xi) leave should not be granted where the only relevant averment is the totality of the evidence, is a mere assertion of a given situation which is to form the basis of a defence and finally;*

*(xii) the overriding determinative factor, bearing in mind the constitutional basis of a person's right of access to justice either to assert or respond to litigation, is the achievement of a just result whether that be liberty to enter judgment or leave to defend, as the case may be."*

6. With every respect to the defendant, who has had to represent himself in the within proceedings, he has identified no specific grounds of defence that would enable him to surpass the very low hurdle for sending the within matter to plenary hearing. The height that he attains in this regard (and it is not terribly high) is in the following averment in his affidavit evidence:

*"I say that this case has very many serious issues to be tried, and the issues involved are neither simple nor capable of being easily determined by way of summary application."*

7. More, with respect, is required of the defendant, in the face of the evidence presented by the plaintiff, before the court could properly conclude that, to echo the phraseology of Hardiman J. in Aer Rianta, he (the defendant) has other than no case, and that this is a case where there is either no issue to be tried or such issues as arise to be tried are simple and easily determined by the court at this time. In truth, the defendant's evidence in the within application fails to disclose even an arguable defence.

8. It follows from the foregoing that the defendant has, unfortunately, failed to surmount even that limited hurdle identified by Hardiman J. in *Aer Rianta* for those seeking a plenary hearing of a matter in respect of which summary relief has been sought. Consequently, while mindful of that "*discernible caution*" to which McKechnie J. refers in *Harrisrange* when it comes to the power to grant summary judgment, the court sees no alternative but to grant the summary judgment now sought by the plaintiff against the defendant.

9. The court will hear the parties on where matters now stand as regards the investigation of the defendant's various complaints concerning his interactions with the plaintiff before deciding whether or not it is appropriate to grant a stay on such order as will now issue.