THE HIGH COURT

[2017 No. 1522 P.]

BETWEEN

HEATHERRIDGE ASSOCIATES LIMITED

(IN MEMBERS VOLUNTARY LIQUIDATION)

PLAINTIFF

AND

HUGH CURRAN, LATTERIDGE LIMITED,

HARDING HOTEL LIMITED, YARTON LIMITED,

THE COACH LIMITED AND APPLEGLADE LIMITED

DEFENDANTS

JUDGMENT of Mr. Justice Meenan delivered on the 6th day of June, 2019

Introduction

1. This is a claim for monies due and owing to the plaintiffs, an architectural firm, for professional services from the defendants. An important feature of this claim is that the fees were only sought to be recovered after the economic collapse despite the architectural services being provided during the economic "boom".

2. The plaintiff is a single member company, limited by shares, with a registered office at 63 Rock Road, Blackrock, County Dublin. On 10 December 2010 the company went into members' voluntary liquidation and Mr. Damien Young was appointed as liquidator ("the liquidator").

3. The first named defendant is a company director and at all material times was a director and/or shareholder and/or exercised a controlling interest in the second to sixth named defendants. At the opening of the hearing, the sixth named defendant was struck out of the proceedings.

The claim

4. The plaintiff is seeking to recover the sum of €1,130,418 (plus VAT) from the defendants being the balance of monies due and owing for architectural services provided during the years 2000 – 2009 in respect of a number of projects. These projects were the Blanchardstown House, The Europa Hotel, Drogheda, the Ceann Sibeal Hotel, Ballyferriter, the Coachmans Inn, the Harding Hotel, the Crowley Apartments and the London and Castleknock Apartments. In the alternative, the plaintiff claims the said amount of the basis of a quantum meruit.

5. An examination of the various amounts claimed and the basis of such claims shows an absence of invoices being raised by the plaintiff at the time when the architectural services were provided. More significantly, the debt, the subject matter of these proceedings, is not referred to in the statutory declaration of solvency ("the declaration") as required by s. 128 of the Companies Act 1990. The declaration was made on 26 November 2010 and was signed by Mr. Frank Ennis and Ms. Anne Kenny, Directors of the plaintiff company. For reasons which are not entirely clear, the debt owed by the defendants was deliberately excluded from the declaration notwithstanding the fact that the declaration has the status of being a sworn document. Though the declaration was false and misleading, I do not find that such precludes the plaintiff from maintaining a claim for recovery of the debt in question. It does, however, follow that the Court should treat the evidence given by Mr. Ennis, principal of the plaintiff, with considerable caution.

6. The starting point for the claim is a meeting held in May 2009 between the first named defendant and Mr. Ennis. This was at a point when the economic crisis was seriously impacting the plaintiff. The Court was furnished with a document entitled "Hugh Curran – Summary of Fees as Tabled at client meeting May, 2009". This document lists the projects, referred to at para. 2 above, and the total amount sought in relation to same was €552,409. In respect of each of the projects, there were two headings, namely "*RIAI percentage recommended*" and "*discounted percentage offered*". Thus, in my view, the sum being claimed by the plaintiff was in effect an offer. This offer was not accepted by the first named defendant but a payment of €50,000 was offered.

7. Mr. Ennis gave evidence of the meeting in May 2009 to the effect that the first named defendant seemed to accept the amounts proposed. The first named defendant, however, gave evidence that he did not agree to the proposed fees.

8. The next significant event took place when Mr Ennis and the first named defendant met again on 8 March 2010. Prior to this meeting, the first named defendant wrote to the plaintiff, by letter dated 5 March 2010, stating that in connection with certain of the projects:

> *"I totally disagree with the fees, which were never agreed before you carried out the work"*

9. I am satisfied that, following this meeting, Mr. Ennis and the defendant reached an agreement as to what the outstanding fees were and agreed a schedule for their repayment. At or around the time of this meeting, the first named defendant made a payment of €25,000. This agreement is evidenced by a letter dated 10 March 2010 from the plaintiff to the first named defendant and states:

> *"Frank Ennis and Associates outstanding fees*
>
> *Further to your meeting with Frank Ennis on 8th March, I write to confirm the details of the settlement agreement reached.*
>
> *Frank Ennis tabled fee amounts outstanding to the total sum of €552,407 as per the attached schedule.*
>
> *Agreement was reached for a full and final settlement in the total amount of €265,000 plus VAT.*

> *We acknowledged with thanks receipt of your initial payment of €25,000 plus VAT by cheque on 8th March. It was further agreed that the balance of €240,000 would be paid over 36 months in equal instalments of €6,666 plus VAT commencing in April, 2010, with the final payment in March, 2013"*

This letter incorrectly stated the total amount to be €265,000 (plus VAT) when, in fact, the agreed amount was €225,000 (plus VAT) as confirmed by emails between the parties.

10. Ms. Orla Henry (nee Roche), who worked in the administration division of the plaintiff's practice, gave evidence to the Court as to how the agreement operated and confirmed that payment was made once an invoice was issued. Ms. Henry gave evidence of the intense financial pressure which the plaintiff was experiencing at the time. Ms. Bernadette Enright, a bookkeeper for the defendants for some forty years, confirmed the operation of the agreement of March 2010 was as such.

11. The defendants were also experiencing financial pressures and in October 2010 the first named defendant requested that the monthly amount be reduced for a period of six months to the sum of €4,000 (plus VAT). This was agreed and the October 2010 payment was duly made.

12. The plaintiff went into members' voluntary liquidation on 10 December 2010 and the liquidator was appointed. In his evidence, the liquidator told the Court that he did not become aware of the debt owed by the defendants until 2011. I find this very difficult to understand given the value of the debt and the fact that repayments were regularly made between April and October 2010. It seems extraordinary that the liquidator did not pursue the matter.

13. The liquidator gave evidence of entering into a further agreement with the defendants, evidenced by a letter dated 21 December 2011 from the first named defendant to the liquidator, wherein it was stated that the plaintiff would accept the sum of €140,000 (plus VAT) in full and final settlement for the amount owed by the defendants. This amount was to be paid by forty monthly repayments of €3,500 (plus VAT). It was further confirmed that the original amount would become due and owing in the event that the agreement was not being honoured. The original copy of the agreement was returned to the liquidator with a note requesting that invoices be sent every month and stating that the cheques would issue from the defendant's companies.

14. The defendants duly paid the first instalment by cheque dated 8 February 2012 but heard nothing further from the liquidator. Ms. Enright gave evidence of trying, without success, to contact the liquidator so that he would furnish an invoice as provided for in the agreement. She gave evidence of attempting to contact the liquidator by phone but that the phone simply rang out. On 31 May 2012 the first named defendant sent an email to the liquidator requesting invoices which would consequently be paid by cheque. The liquidator gave evidence to the effect that he did not receive this email. Notwithstanding the duty of a debtor to seek out his/her creditor, I again find the non-engagement of the liquidator difficult to understand.

15. In March 2016 the liquidator, having taken effectively no step to recover the monies since 2012, contacted his solicitor who wrote to the defendants seeking the sum of €1,598,382.54 in respect of the said architectural services.

Consideration of issues

16. No claim arises on the basis of a quantum meruit as I have held that there was an agreement between the plaintiff and the defendants in respect of the architectural services provided.

17. I do not accept that the amount being claimed by the plaintiff, that being €1,130,418 (plus VAT), is due and owing by the defendants. In considering the evidence, I prefer the evidence of Mr. Hugh Curran to that of Mr. Frank Ennis. The evidence of Mr. Curran is supported by correspondence, which I have already referred to. This evidence supports a finding that the amount in respect of outstanding architectural fees was that agreed in March 2010 namely €225,000 (plus VAT) of which the sum of €72,496 has been paid therefore leaving a balance of €152,504 (plus VAT) due and owing.

18. The defendants seek to rely on the agreement of December 2011 which reduced the amount then owing to €140,000 (plus VAT). The plaintiff maintains that this agreement is unenforceable by reason of the rule in *Pinnel's* case (1602) 5 Co Rep 117a. The rule in *Pinnel's* case is set out in *Contract Law* (Paul A. McDermott, Bloomsbury Professional, 2nd edition, 2017) at p. 167 as follows:

> *"[3.90] Suppose X owes Y €100. X is slow in paying and Y is in need of funds. Y promises X that if he pays him €50 immediately that will settle the debt. On this basis X pays €50. You might be surprised if the next day Y could successfully sue X for the remainder of the debt. Yet that is exactly what the law says Y can do. The rule in Pinnel's case provides that if a liquidated debt (ie a debt which is ascertained as to amount and undisputed as to existence) is owed by X to Y, a promise by Y to accept a lesser sum in full satisfaction of the whole debt will not bind Y … Another way of formulating this is to say that the creditor's promise to accept part of a debt in full satisfaction of it is not supported by any consideration"*

Thus, the central issue is whether the agreement of December 2011 is supported by consideration so as to avoid the rule in *Pinnel's* case.

19. In answer to this, the defendants submit that it is supported by consideration in that by deliberately excluding the claim from the declaration there is an issue as to whether the plaintiff is entitled to bring the claim at all. As the compromise reached in 2011 was effectively a waiver of the first named defendant's entitlement to object to the validity of the claim. Secondly, it was submitted that, under the agreement, the first named defendant became personally liable and agreed that the other defendants had taken on each other's liabilities.

20. I do not accept these submissions. Firstly, the debt owed was wrongly excluded from the declaration but notwithstanding this I have found that this is not, as such, a bar to the plaintiff bringing the claim. Further, the personal involvement of the first named defendant and the other defendants taking on each other's liabilities was a feature of the agreement in March 2010. The only new aspect to the agreement was that the amount owed was reduced in return for a repayment schedule. I find, therefore, that the agreement of 2011 is unsupported by consideration and so the rule in *Pinnel's* case applies.

Conclusion

21. By reason of the foregoing, I find that there is a sum of €152,504 (plus VAT) due by the defendants to the plaintiff on foot of the agreement made in March 2010 whereby the plaintiff agreed to accept the sum of €225,000 (plus VAT) in respect of the architectural services provided by the plaintiff to the defendants, having credited the amounts paid between 10 March 2010 and 8 February 2012.