THE HIGH COURT

2015 No. 1865 S

Between:

CLONES CREDIT UNION LIMITED

PLAINTIFF

– AND –

LIAM STRAIN, PETER LYNCH, JOHN PRUNTY AND BARRY MURPHY

DEFENDANTS

JUDGMENT of Mr Justice Max Barrett delivered on 4th May, 2018.

1. The plaintiff credit union is a limited liability company having its registered office in Clones, County Monaghan. Messrs Strain and Lynch (the only defendants to whom the within judgment relates) are members of the credit union. By credit agreement duly executed by Messrs Strain and Lynch and dated 25th July, 2008, Messrs Strain and Lynch borrowed just in excess of €212k from the credit union. Following default under the terms of that agreement, the credit union now comes seeking summary judgment for the principal sum owing under the agreement plus interest and certain ancillary reliefs. By way of defence, Messrs Strain and Lynch point to a revised repayment structure that was settled between them and the credit union in June 2012 whereby they were to continue paying annual instalments of a lesser amount than the total annual amount required to be paid by them under the terms of the agreement. Messrs Strain and Lynch do not deny the total amount owed under the agreement; they merely point to the altered repayment structure, which they appear to consider was to apply until complete repayment was made of all amounts owing under the credit agreement. Messrs Strain and Lynch also claim to be perplexed by the commencement of the within proceedings when viewed in the context of that revised repayment structure, which they maintain has at all times been met. They want the within matter to be sent to plenary hearing.

2. *The Rule in Pinnel's case*. It is contended by the credit union that the defence of the first and second-named defendants must fail because of the rule in *Pinnel's case* (1602) 5 Co. rep. 117a. The court does not accept that this is so. The effect of the rule in *Pinnel's case* is that if a liquidated sum is owed by A to B, a promise by B to take a lesser sum in satisfaction of the larger debt will not bind B. Here, the credit union never agreed to take a lesser sum in satisfaction of the larger debt; all that was agreed was that lesser monthly repayments would be accepted for a time; the totality of the debt continued, and continues, to be acknowledged.

Standstill Contract. At the core of the contentions of Messrs Strain and Lynch is that a binding standstill contract has arisen between them and the credit union whereby the latter will not commence proceedings under the credit agreement for so long as the revised monthly repayment amounts are paid. However, a bare agreement on the part of a lender to forbear does not, of itself, give rise to a contract in the absence of consideration moving from the borrower. (See in this regard e.g., *ACC Bank plc v. Kelly* [2011] IEHC 7). Here, no consideration moved from either of Messrs Strain and Lynch. Of course, such a standstill arrangement might, in certain circumstances, be capable of enforcement in any event by virtue of the doctrine of promissory estoppel; however, for the reasons set out immediately below, the application of that doctrine in the context of the within proceedings must and does fail.

3. *Promissory Estoppel.* As to promissory estoppel, the court respectfully refers the parties to its recent consideration of this doctrine in *Healy v. Ulster Bank Ireland Ltd* [2018] IEHC 12, paras 51-55 and 57-58. As in *Healy*, it seems to the court that the first and second-named defendants meet an insurmountable obstacle in any claim as to promissory estoppel as there is nothing to suggest that they have in any way altered their respective positions to their detriment on the strength of any, if any, clear and unambiguous promise or assurance from the credit union which was intended to affected the legal relations between the plaintiff and the first and second-named defendants. If anything, even if one were to assume such a clear and unambiguous promise or assurance to present, it seems to the court that Messrs Strain and Lynch have altered their position to their respective betterment; certainly neither of them has engaged in any conduct that would make it unconscionable for the plaintiff credit union to seek or be granted the judgment it now comes seeking. So an essential plinth on which any defence of promissory estoppel must rest does not present on the facts of this case.

4. *Aer Rianta and Harrisrange*. The hurdle to be surmounted by each of Messrs Strain and Lynch as regards having this matter sent to plenary hearing is notably low, though, if the court might observe, rightly so, given what can be at stake for, *inter alia*, defendant debtors. 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 *Harrisrange Ltd. v. Duncan* [2003] 4 I.R. 1, 7, McKechnie J. summarised as follows the relevant principles that are applicable 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. The court considers that (i) it is very clear that each of Messrs Strain and Lynch has no case when it comes to the application now made, (ii) to the extent that issues fall to be tried, they are simple and easily determined, and (iii) they have each failed to disclose any arguable defence. Mindful of that "*discernible caution*" which McKechnie J. indicates in *Harrisrange* falls to be brought to bear when it comes to exercising the power to grant summary judgment, the court is nonetheless coerced as a matter of law into concluding that this is an application in which the summary judgment sought should be granted, and will so order.

7. In passing, the court notes that there was suggestion at hearing and in the evidence that the total restructured repayment amount was not met in Year 1 because the total amount required in that year was not paid after the revised repayment arrangement was settled. Messrs Strain and Lynch contend that the total amount was paid if one looks to all of Year 1, *i.e*. pre- and post- the settling of the revised repayment structure. Even if the court were to accept that Messrs Strain and Lynch are correct as regards this last-mentioned contention, their defence of the within summary application would in any event fail for the reasons outlined above.