THE HIGH COURT

COMMERCIAL

[2010 No. 900 S]

[2010 No. 90 COM]

BETWEEN

BANK OF SCOTLAND PLC.

PLAINTIFF

AND

CHARLES (OTHERWISE CHARLIE) FERGUS

DEFENDANT

JUDGMENT of Ms. Justice Finlay Geoghegan delivered on the 30th day of March, 2012

1. The plaintiff now sues as successor to Bank of Scotland (Ireland) Ltd. ("the Bank") pursuant to Regulation 19(1)(d) of the European Communities (Cross-Border Merger) Regulation 2008. The Bank merged with the plaintiff on 31st December, 2010.

2. The Bank commenced acting as bankers and granting various facilities to Fergus Haynes (Developments) Ltd. ("the Company") in 2003. That company was carrying out developments, particularly in Donegal. The defendant ("Mr. Fergus") was at all material times the Chief Executive and principal promoter of the Company and a director thereof.

3. On 4th September, 2008, the Bank made demand on the Company for the repayment of all amounts then due and owing by the Company to the Bank pursuant to the existing loan facilities in the sum of €7,796,121.84. Repayment was not made, and on 6th September, 2008, the Bank appointed a receiver over the Company. On 17th September, 2008, an order for the winding up and the appointment of a liquidator was made.

4. On 15th December, 2009, the solicitors for the Bank made a demand on Mr. Fergus on behalf of the Bank that he, as guarantor, pay all sums due by the Company to the Bank "pursuant to the terms of the various guarantees entered into" by him. The amount then alleged due was not stated in the letter of demand.

5. On 24th February, 2010, these proceedings commenced by the issue of a summary summons in which it was pleaded that Mr. Fergus entered into 17 guarantees in respect of the Company's obligations to the Bank. Those guarantees were listed, several being referred to as undated with only a year specified. The amount then claimed as due and owing by the Company and Mr. Fergus, as guarantor, was €8,444,457.88.

6. The proceedings were admitted to the Commercial List on 22nd March, 2010, and on 22nd October, 2010, the matter remitted to plenary hearing. Mr. Fergus had made objection to the validity and/or enforceability of the guarantees.

7. A statement of claim was delivered by the Bank on 5th November, 2010, in which it pleaded and listed the 17 guarantees and indemnities contended to have been entered into by Mr. Fergus with the Bank. However, it also pleaded that it was only now relying upon four guarantees which it pleaded are valid and capable of individual execution and enforcement as continuing security for all sums advanced to the Company. It also pleaded that by each of those guarantees, referred to as "plenary guarantees", Mr. Fergus guaranteed the indebtedness of the Company and indemnified the Bank against any default or loss suffered by the Bank having advanced monies to the Company.

8. Mr. Fergus, in the defence, firstly put the Bank on proof of the amount allegedly due and owing by the Company to the Bank. He also pleaded, *inter alia*, that none of the guarantees were enforceable against him and were not a note or memorandum for the purpose of the statute of frauds. Not all of the matters relied upon in the pleading were pursued at the hearing and, accordingly, I do not propose setting them out in detail. Similarly, a counterclaim was pleaded which was not pursued at the hearing.

9. Pre-trial procedure took place in accordance with practice in the Commercial List. Discovery was made by the Bank in February 2011, which included statements of the accounts under which the principal amounts were alleged to be due and owing by the Company to the banks. Witness statements were exchanged and a trial date set for the summer of 2011, which had to be adjourned. A new trial date was fixed for November 2011.

10. On the first day of the hearing, it became apparent that the Bank did not intend calling one of the witnesses in respect of whom a witness statement had been delivered. Further, the witness being called by the Bank was not a person who could properly give evidence of the amount of the indebtedness of the Company to the Bank. The Bank did not have a witness in respect of whom it had delivered a witness statement available to give admissible evidence of the indebtedness of the Company to the Bank.

11. On 9th November, 2010, I made an order permitting the Bank to call an additional witness to give evidence of the amount due by the Company and confined the evidence of debt to the amounts due in accordance with the statements of accounts in respect of which discovery had been made by the Bank. I also directed the delivery of a witness statement and gave time to Mr. Fergus to examine the documents already discovered in relation to the amount claimed by the Bank to be due and owing by the Company.

12. At the adjourned hearing in December 2011, Mr. Julian Moroney, a manager in the Customer Debt Management Division of the property team in the Bank until 31st December, 2010, and now a senior manager in the Customer Debt Management Division of Certus, which has been engaged by the Bank to provide customer support and administration services to the Bank in its management of its

customers in Ireland and Northern Ireland, gave evidence. Mr. Moroney had sworn the affidavit of discovery delivered on 22nd February, 2011, in these proceedings. Mr. Moroney gave evidence of checking the electronic records of the Bank in relation to the Company and identified three subsisting accounts in February 2011, copies of which had been discovered and were produced to the Court and stated, in his belief, to be correct and accurate as of those dates. His evidence was that the aggregate amount due by the Company to the Bank on those accounts in February 2011, as at the date of each statement of account, was €9,211,764. He also gave evidence that on the information available to him, the net amount realised in the receivership to date was €323,488, and expenses of the receiver shipped to date being €471,500 and a deficit in the receivership in the amount of €148,012. Mr. Moroney, in his oral evidence, also stated that he had made spot-checks on the Company's accounts with the Bank for the purposes of identifying that there were no unusual transactions and also that the rate of interest charged was in accordance with the amount specified in the relevant facility letter. He made clear, however, that he was relying upon the electronic records of the Bank to accurately state the amounts due.

13. It was submitted Mr. Moroney's evidence was sufficient evidence of the debt due by the Company to the Bank in accordance with the principles set out by Clarke J. in *Moorview Developments and Others v. First Active plc. and Others* [2010] IEHC 275. In that judgment, at p. 22, dealing with evidence given by a Mr. Collison on behalf of the bank, Clarke J. stated:

> "What Mr. Collison gave evidence of was an analysis carried out by him of documents kept by the bank in the ordinary way as part of the bank's records. Business records of that type are prima facie evidence of a course of dealing between parties, although, of course, any party is free to challenge the accuracy of any such records. However, the idea that a bank wishing to prove its case in debt against a customer has to produce a separate bank official who was personally involved in each individual transaction which gives rise to the customer's current debt is, in my view, fanciful. A witness from a bank is entitled to give evidence of the bank's records showing the amount due by a customer of that bank. That evidence and those records provide *prima facie* evidence of the liability. If a specific element or elements of those records are challenged, then the bank might well have a problem if it could not produce a witness who could give personal evidence of the contested matter."

14. I respectfully agree with the above approach as being correct. In this case, Mr. Moroney, as a former official of the Bank, is entitled to give evidence of the Bank's records in relation to the indebtedness of the Company to the Bank. Those records include the electronic records of the Bank. That evidence is admissible evidence and is *prima facie* evidence of the liability of the Company to the Bank. As pointed out by Clarke J., if a specific element of the records is challenged, the Court would have to decide on the factual dispute and the weight to be attached to the evidence of the relevant bank official would depend upon his personal knowledge of the matter in dispute.

15. However, in the present case, there was no specific challenge to any aspect of the Bank's records in relation to the alleged indebtedness of the Company. Whilst, in submission, it was stated on behalf of Mr. Fergus that, since the receivership he did not have available to him Company records, he was the person who primarily negotiated with the Bank on behalf of the Company and he has had available to him since discovery was made in these proceedings in February 2011, all the relevant bank statements. He was granted an adjournment in November 2011, when to call an additional bank witness was granted for the purpose of having an accountant examine the bank statements. Mr. Fergus chose not to give evidence in the proceedings and did not call any evidence which contested the Bank's records of the Company's accounts of which evidence was given by Mr. Moroney.

16. On the evidence before the Court, I am satisfied that the plaintiff has discharged the onus of proving as a matter of probability that the amount due by the Company to the Bank in February 2011 was €9,211,764.

Guarantees

17. The claim pursued by the plaintiff is on four alleged guarantees and indemnities dated 30th March, 2004; undated 2004; 22nd July, 2005 and 1st June, 2006. The original of each of those guarantees was produced to the Court by the Bank and purported to have been signed by Mr. Fergus. Mr. Fergus has chosen not to give evidence, despite furnishing a witness statement in advance of the hearing, and has not denied his purported signature. I am satisfied as a matter of probability that Mr. Fergus signed each of the four original documents termed by the Bank a "guarantee and indemnity". They were produced by the Bank and hence were delivered to the Bank.

18. Whilst the plaintiff pursues the claims on each of the documents to which I will refer for simplicity as a guarantee, it contends that each of the guarantees is a continuing guarantee and indemnity for all liabilities due by the Company to the Bank. It submits that it is entitled to judgment against Mr. Fergus on any one of the guarantees.

19. A number of matters have been raised in defence on behalf of Mr. Fergus. I propose, firstly, considering the issues raised in relation to the guarantee signed by Mr. Fergus which is last in time *i.e.* 1st June, 2006, for the purpose of determining whether the plaintiff is entitled to judgment against Mr. Fergus pursuant to the terms of that guarantee.

20. The first objection made to the plaintiff's entitlement to judgment against Mr. Fergus pursuant to that guarantee in respect of the amount which I have determined was due and owing by the Company to the Bank in February 2011 is that the guarantee defines the "Principal" as meaning "Fergus Haynes Developments Ltd." The correct name of the Company liable to the plaintiff in February 2011 is Fergus Haynes (Developments) Ltd. It is submitted that the error in the guarantee in the name of the Company is such that the Court should not hold Mr. Fergus liable, either as guarantor or indemnifier (as appropriate) for the liabilities of the Company pursuant to the guarantee of 1st June, 2006. The plaintiff submits that this is a clear typographical error in the name of the Company in the guarantee of 1st June, 2006, and that, in accordance with the principles set out by Clarke J. in *Moorview Developments Ltd. and Others v. First Active plc. and Others* [2010] IEHC 275, the Court should now construe the guarantee of 1st June, 2006, as intending that the Principal referred to therein is the Company. In *Moorview Developments Ltd.*, the guarantees at issue entered into by Mr. Cunningham included liabilities of a company described as "Moorview Properties Ltd." The relevant company was Moorview Developments Ltd. Clarke J. at p. 6 of his judgment stated:

> "3.5 This aspect of the case concerns what has, in some of the case law, (see for example *East v. Pantiles (Plant Hire) Ltd* [1981] 263 E.G. 61) been described as "correction of mistakes by construction". As is clear from *East* and from the speech of Lord Hoffman in *Investors Compensation Scheme Ltd v. Bromwich Building Society* [1998] 1 W.L.R. 896, two conditions must be satisfied in order for such a correction to occur. First, there must be a clear mistake. Second, it must be clear what the correction ought to be.
>
> 3.6 It is also clear from the speech of Lord Hoffman in Investors Compensation that a correction of the type with which I am concerned is not a separate branch of the law, but rather an application of the general principle that contractual documents should be construed according to their text but in their context. That context may make it clear that the

words used in the text are a mistake. Thus, a reasonable and informed person may conclude that the words used are an obvious mistake and may also be able to conclude what words ought to have been used. In those circumstances, as a matter of construction, the court will, as it were, construe the contract as if it had been corrected for the obvious mistake. The reason for so construing the contract in that way is that the proper principles for the construction of contracts lead to that construction in any event. I am satisfied that those cases, most recently restated by the House of Lords in *Chartbrook v. Persimmon Homes Ltd* [2009] 1 A.C. 1101, represent the law in this jurisdiction."

21. I respectfully agree with the above. It is consistent with the decision of the Supreme Court in *Analog Devices v. Zurich Insurance* [2005] 1 I.R. 274, and in particular, the judgment of Geoghegan J. in which he approved the principles set out by Lord Hoffmann in *Investors Compensation Scheme Ltd. v. West Bromwich Building Society*, referred to by Clarke J.

22. The context in which the guarantee of 1st June, 2006, was given by Mr. Fergus to the Bank was a series of facilities advanced by the Bank to the Company. The facility letters were produced in evidence. The undisputed evidence was that the facilities were granted to the Company and there is no evidence to suggest the existence of any other company other than the Company, Fergus Haynes (Developments) Ltd. However, several of the facility letters also leave out the brackets in the name. Accordingly, I am satisfied that the parties to the guarantee of 1st June, 2006, intended that the Principal referred to therein is the Company.

23. The next objection to the guarantee of 1st June, 2006, concerns two sheets, one signed and one unsigned in the following terms:

> ***"IMPORTANT- THE GUARANTOR MUST ALSO SIGN BELOW***
> The Guarantor hereby confirms that:
>
> (i) it/he/she is fully aware of the nature of this Guarantee and Indemnity, the effect of which has been explained to, and understood by it/him/her;
>
> (ii) it/he/she has been advised to take and has given due opportunity to take separate independent legal advice on the effect of this Guarantee and Indemnity;
>
> (iii) it/he/she has taken/has declined the opportunity of taking [delete as applicable] such legal advice;
>
> (iv) it/he/she is now willing to be legally bound by the terms of this Guarantee and Indemnity.
>
> Signed:
>
> Charlie Fergus"

24. On the original guarantee produced to the Court, the unsigned sheet in the above terms is inserted after the execution clause and before the back sheet of the guarantee. There is then attached after the back sheet of the guarantee a signed version of the same sheet. The first objection made by counsel for Mr. Fergus is that the signed sheet is in a black pen, whereas the signature of Mr. Fergus in the execution clause is in a blue pen. He submits that having regard to the state of the original document, as a matter of probability, the signed sheet was added after the document was signed. It must be recalled Mr. Fergus did not give evidence and did not dispute that the page bore his signature. Even in the absence of evidence of Mr. Fergus, I am prepared to accept that the signed sheet was added after the execution of the document as a matter of probability, and I propose disregarding it as part of the document at the time of execution of the guarantee. Counsel for Mr. Fergus further invited me, but without any authority, to consider as invalid the guarantee, if I found that as a matter of probability, this sheet was added. It does not appear to me that there is any basis for such a finding, even if the sheet was subsequently added.

25. Counsel submitted that the document executed by Mr. Fergus on 1st June, 2006, is a guarantee and not an indemnity, and as a guarantee, is a contract which requires to be in writing and signed by the party to be charged pursuant to s. 2 of the Statute of Frauds (Ireland) 1695. That section provides in part:

> "No action shall be brought ... whereby to charge the defendant upon any special promise to answer for the debt, default or miscarriage of another person ... unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised."

26. The contention of counsel for Mr. Fergus in reliance upon the judgment of O'Flaherty J. in *Boyle v. Lee* [1992] 1 I.R. 555, is that the agreement in writing signed by Mr. Fergus did not contain all the essential terms.

27. In my judgment, the objection is unfounded. The guarantee signed by Mr. Fergus in the execution clause contains in writing on the preceding pages all the terms agreed between the parties which constitute the contract of guarantee (or guarantee and indemnity as contended for by the Bank). The additional writing on the page after the execution clause signed by Mr. Fergus does not, in my judgment, form part of the contract of guarantee between the parties. The document states that the guarantor must sign below. Mr. Fergus has not done so in this instance. The purpose of obtaining Mr. Fergus's signature is to obtain certain confirmations from him through which the Bank seeks to exclude potential defences to the entitlement to enforce the guarantee against Mr. Fergus. Mr. Fergus, to his credit, has not sought to advance a defence to which these confirmations are directed. Accordingly, even if the document executed by Mr. Fergus is a guarantee and not an indemnity, in my judgment, there is compliance with s. 2 of the Statute of Frauds as the entire contract of guarantee which is sought to be enforced by the Bank is in writing and signed by Mr. Fergus as the party to be charged.

28. Having regard to that conclusion, it is not necessary for me to consider the Bank's submission that the document entered into by Mr. Fergus is in accordance with its terms a contract of indemnity and not a guarantee. The only potential difference applicable to the claim herein would be if there was not compliance with s. 2 of the Statute of Frauds, as it was agreed between the parties that s. 2 of the Statute of Frauds does not apply to a contract of indemnity.

29. The final issue is whether the Bank has established that Mr. Fergus is liable to it pursuant to the guarantee of 1st June, 2006, for the monies due by the Company having regard to restructuring of the Company's facilities which took place subsequent to 1st June, 2006. There was, *inter alia*, a facility letter of 4th April, 2007, granting certain new loans and restructuring others.

30. The Bank submits that the guarantee of 1st June, 2006, in its express terms is a continuing guarantee (and indemnity) of all sums then due or which might thereafter become due by the Principal to the Bank on any account whatsoever. It relies, in particular, on

clauses 2.1, 3.1, 4.1.1, 4.1.3 and 8 (in part) which provide:

> ***"GUARANTEE AND INDEMNITY***
> 2.1 In consideration of the Bank at the request of the Guarantor making or continuing advances or otherwise giving credit or affording banking facilities, for as long as and to the extent agreed between the Principal and the Bank, to or with the Principal, the Guarantor as principal obligor and not merely a surety hereby unconditionally and irrevocably covenants to pay and guarantees payment on demand by the Bank of all and every sum or sums of money whether actual or contingent in whatever currency denominated which are now or shall at any time (and whether on or after such demand) be due, owing or incurred and payable to the Bank anywhere on any account whatsoever from the Principal individually or jointly with any other person or person including ... and all other liabilities whatsoever of the Principal to the Bank together with in all cases aforesaid all indemnities and interest (including interest capitalised or rolled up and default interest) as well after as before any demand or judgment to date of payment ...
>
> ***BANK'S PROTECTIONS***
> 3.1 The Guarantor acknowledges and agrees that this Deed is and at all times shall be a continuing security and shall extend to cover the ultimate balance due at any time from the Principal to the Bank and this Deed shall not be considered as satisfied by any intermediate payment or satisfaction of the whole or any part of any sum or sums of money owing pursuant to the provisions of this Deed but shall be a continuing security and shall extend to cover any sum or sums of money which shall for the time being constitute the balance due from the Principal to the Bank upon any such account as herein specified.
>
> ***INDULGENCE***
> 4.1 The Guarantor acknowledges and agrees that none the Guarantor's liabilities under this Deed shall be reduced, discharged or otherwise adversely affected or prejudiced by:
>
> 4.1.1 any variation, release, extension, discharge, waiver, compromise, dealing with, exchange or renewal of any right or remedy or waiver which the Bank may now or hereafter have from or against the Principal and/or any other person in respect of any of the obligations and liabilities of the Principal or any other person;
>
> ...
>
> 4.1.3 any termination, amendment, variation, novation or supplement of, or to, any facility letter, loan agreement or other agreement between the Principal and the Bank.
>
> ***NO PROOF IN COMPETITION***
> 8. This Deed shall be construed and take effect as guarantee and indemnity of the whole and every part of the liabilities and obligations of the Principal to the Bank now or hereafter owing ..."

31. The applicable principles are not in dispute. Counsel for Mr. Fergus relied upon the treatment of O'Donovan and Philips *'The Modern Contract of Guarantee'* English Edition (Sweet and Maxwell) of the circumstances in which a guarantee will be construed as encompassing future restructuring arrangements between the principal and the bank. At p. 309, they state:

> "The determination of whether or not the guarantee embraces the restructured facility will depend in each case on the precise scope of the guarantee and the effect of the subsequent contractual arrangements between principal debtor and creditor ..."

Considerable reference is then made to the decision of the Court of Appeal in *Triodos Bank N.V v. Dobbs* [2005] EWCA Civ. 630, and in particular the judgment of Longmore L.J. The facts of that case were that guarantee at issue was given in respect of all monies due and owing to the bank "under or pursuant to" two specified loan agreements. Subsequently, there was a financial restructuring and the creditor and borrower entered into three new agreements. The Court of Appeal determined that the "replacement" loan agreements did not come within the terms of the guarantee. The reasoning turned on the facts of that case and the terms of the guarantee. O'Donovan and Philips, at p. 312, then state:

> "Finally, the scope of liability of the original guarantee can be drafted in such a way as to encompass future agreements on substantially different terms. The usual 'all monies' clause is the obvious mechanism, or, somewhat more narrowly, the guarantee can be limited to any future loan agreement between creditor and borrower on any term whatsoever. In any event, it is clearly vital to avoid limiting the guarantee to specific and identified loan agreements (as in *Triodos Bank NV. v. Dobbs*)."

In my judgment, the guarantee of 1st June, 2006, when objectively construed in accordance with the words used is one which encompasses all future liabilities of the Company to the Bank on whatever account or agreement. It includes, in the terms used by O'Donovan and Philips, the usual "all monies" clause or analogous clauses.

32. Counsel for Mr. Fergus also sought to rely upon the decision of the Supreme Court in *Bank of Ireland v. McCabe* (Unreported, the Supreme Court, 19th December, 1994), by the judgment of Egan J. to submit that the Court, on the facts herein, should construe each of the guarantees, notwithstanding their express terms, as intended only to guarantee the liability of the Company to the Bank under the facilities in the facility letter pursuant to which the particular guarantee was given.

33. I accept the submission of counsel for Mr. Fergus that the Bank, in the evidence given through its former officials, did not give any satisfactory explanation for the apparent practice of taking sequentially multiple "all monies" continuing guarantees from Mr. Fergus. The evidence given by Mr. Rafferty may fairly be summarised by stating that he gave three explanations:

> (i) In most instances where the Company approached the Bank for facilities, the loans approval was on the basis of a personal guarantee from Mr. Fergus.
>
> (ii) The facility letters required a guarantee and indemnity of Mr. Fergus or a continuing guarantee of Mr. Fergus.
>
> (iii) The standard approach of the relationship management team in the Bank was that each time a facility was drawn down for the Company, a guarantee was taken from Mr. Fergus as part of the loan documentation.

34. The above evidence was given by Mr. Rafferty from a review of the Bank files. He also stated that it was very difficult from the

files to match each guarantee with a particular loan facility and explained this difficulty by reason of the Company's relationship with the Bank. He referred, in particular, to the transaction history of the Bank with the Company which involved considerable overlapping facilities and refinancing facilities and loan drawdowns taking place at various times.

35. Multiple facility letters have been produced in evidence. It is correct that the facility letters refer in slightly differing terms to the requirement of a guarantee from Mr. Fergus. The facility letter of 4th April, 2007, which postdates the guarantee of 1st June, 2006, at para. 3(iv) specifies as part of the security, "the continuing Guarantee and Indemnity of Mr. Charlie Fergus to Bank of Scotland (Ireland) Ltd. on the standard Guarantee Form".

36. In *Bank of Ireland v. McCabe*, the guarantee at issue given by the defendants was in its express term a continuing guarantee given by the guarantors. The defence advanced was that notwithstanding the express provision in the guarantee, two officials of the bank gave evidence that the bank took the guarantee for the specific purpose of one particular loan transaction, and that when the debtor company repaid the relevant loan, the bank considered the guarantee was discharged. On that evidence, the Supreme Court held that, notwithstanding the terms of the written guarantee, that the parties in that case agreed that once the specific transaction was completed and loan repaid, the guarantee was at an end.

37. In reliance upon the judgment in *Bank of Ireland v. McCabe*, counsel for Mr. Fergus submits that the Court should infer from the fact that the Bank herein took repeated guarantees, albeit all monies continuing guarantees from Mr. Fergus an intention by both the Bank and Mr. Fergus that each individual guarantee, notwithstanding its express terms, was given for a specific facility granted by the Bank to the Company in the relevant facility letter.

38. The terms of the guarantee, when construed objectively, means that it is a continuing guarantee for all monies then due or which might become due in the future by the Company to the Bank. Hence, it appears to me that the onus shifts to Mr. Fergus to establish as a matter of probability that the guarantee, despite its express written terms, was given for a particular facility or transaction. Mr. Fergus has not adduced any evidence to that effect and in my judgment, the evidence given by the Bank officials, including that given on cross-examination, does not establish such facts on the balance of probabilities. It does disclose an extraordinary pattern of less than careful dealings between the Bank, the Company and Mr. Fergus. However, I could not be satisfied on the evidence that there was an intention by the parties to limit any one guarantee (including that of 1st June, 2006) to a particular facility or group of facilities granted by the Bank to the Company.

39. Accordingly, it follows that in my judgment, the guarantee signed and given by Mr. Fergus dated 1st June, 2006, is valid and enforceable. It remained valid and enforceable at the date of the hearing before me. Pursuant to it he is liable to the plaintiff for the monies due by the Company to the Bank. For the reasons given I have limited the amount to that due in February 2011. Accordingly, I am bound to give judgment in favour of the plaintiff against Mr. Fergus pursuant to the guarantee of 1st June, 2006, in the sum of €9,211,764.

40. I would wish to add that it is, in my judgment, extraordinary that a bank would commence proceedings seeking judgment against an individual on seventeen guarantees, contending that on each guarantee, he is liable for the full amount of the judgment, and in circumstances where many of the guarantees were patently unenforceable having regard to infirmities in the guarantees. One can have great sympathy for Mr. Fergus faced with dealing with such a claim and understand his frustration at being required to deal with a claim on documents, some of which did not relate to him, some of which were accepted as forgeries and others of which were incomplete by lack of date, *etc*. Notwithstanding all of that, however, it remains the position that Mr. Fergus, an experienced businessman, did enter into personal guarantees with the Bank in respect of which judgment herein for the reasons set out must be given.

41. In those circumstances, the Court must give judgment against Mr. Fergus on a guarantee which is valid and enforceable. The manner in which the Bank conducted these proceedings is a matter relevant to any order that the Court may be asked to make in respect of costs by either party, and I will hear the parties in relation to costs at a further date.