

THE HIGH COURT

2006 2911 P

BETWEEN

CROHAN O'SHEA, SEAN FITZPATRICK AND O'SHEA HOMES LIMITED

PLAINTIFFS

AND

MATT LYNCH

DEFENDANT

Judgment of Mr. Justice de Valera delivered on the 19th day of March, 2009.

I have given judgment in the associated matter of Crohan O'Shea, Sean Fitzpatrick and O'Shea Homes Limited v. Lynch Freight (Kilmallock) Limited (Record No. 2004 – 934S).

As already indicated in my judgment in that matter I am satisfied that the necessary formal proofs are in order and that the defendant is in debt to the plaintiffs in the sum of €98,814.41.

In this, associated matter, the plaintiffs contend that the defendant, by an instrument of guarantee dated the 3rd April, 1998, guaranteed that Lynch Freight (Kilmallock) Limited would, *inter alia*, observe the covenants contained in the lease between the plaintiffs and the defendant. The original guarantee document was produced in Court on the 17th January, 2008 and formally proved. It has been submitted to me that the text of the guarantee is ambiguous: this I do not accept. Nor do I accept that the guarantee is limited to the third named plaintiff as submitted by the defendant. The wording of the document "... whether any demand [for arrears] shall have been made or not" makes it clear that the question of a failure of a demand raised by the defendant in his written submissions must also fail. I am satisfied that the guarantee is effective and that the plaintiffs are entitled to recover the sum of €94,814.41 against the defendant on foot thereof.