Neutral Citation Number [2014] IEHC 311

THE HIGH COURT

[2012 No. 4721 S]

BETWEEN

NORTHERN BANK LIMITED TRADING AS DANSKE BANK

PLAINTIFF

AND

MICHAEL QUINN AND BRIDGET QUINN

DEFENDANTS

JUDGMENT of Mr. Justice Hedigan delivered on the 23rd day of June 2014

1. These guarantee cases have always been difficult and painful ones for the courts to determine. In these difficult times, they are even harder. They are, however, harder still for the defendants before the courts. Almost invariably, they relate to stories of business enterprises embarked upon with high hopes and involving hard work and ending in business failure, frequently through no fault whatever on the part of the defendants. The Court is only too well aware that, as Mr. Quinn said in his submissions, they are before the Court practically fighting for their lives.

2. The application is one for summary judgment on the basis that the defendants have no bona fide defence in law or upon the merits. The defendants seek to defend the case and assert that they do, in fact, have a good defence. In particular, they assert that they have not been given access to company documents which they maintain will prove a breach of contract.

3. The test for the Court to apply in cases such as this is well-settled. "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 defendants' affidavits fail to disclose even an arguable defence?" See *Aer Rianta v. Ryanair* [2001] 4 I.R.

4. The test was further elaborated by Kelly J. in IBRC v. Quinn in a judgment delivered on 16th December, 2011, citing the judgment of Denham J. in *Danske Bank v. Durkan New Homes* [2010] IESC 22:

> "Proceedings for summary judgment are not decided by weighing the two affidavits. It is also trite that the mere assertion in an affidavit of a given situation which is to be the basis of a defence does not ipso facto provide leave to defend. The Court must look at the whole situation and ask itself whether the defendant has satisfied the Court that there is a fair or reasonable probability of the defendants having a real or bona fide defence."

5. The plaintiff bases its case on:

> (i) The existence of a valid binding guarantee entered into between them and the defendants of the debts to them of a company known as Cloughvalley Stores Northern Ireland Ltd. The guarantee is limited to a sum of Stg. £500,000.
>
> (ii) The failure of the said company following demand to pay its debt to the plaintiff.
>
> (iii) The failure of the defendants to make payment on foot of the plaintiff's demand made pursuant to their guarantee.

6. The defendants have raised in their affidavits the following grounds of defence upon which they wish to rely;

> 1. The plaintiff has sued in the wrong jurisdiction. It should sue in Northern Ireland.
>
> 2. There is no privity of contact between them and the plaintiff bank the guarantee they claim was with Northern Tailored Solutions as set out in the facility letter.
>
> 3. There was no consideration.
>
> 4. They did not have independent legal advice.
>
> 5. The plaintiff's claim is statute-barred by the Statute of Limitations.
>
> 6. The defendants have issued proceedings in Northern Ireland against Northern Bank Ltd. t/a Danske Bank and Tom Keenan t/a Keenan Corporate Finance and by later amendment Cloughvalley Stores Northern Ireland Ltd.
>
> 7. The claim is not properly particularised.
>
> 8. No demand was made of the company for payment of the debts.
>
> 9. The defendants are all simply employees of the Bank and not officers, thus all their evidence, as set out in their affidavits is hearsay.

7. Taking as a point of departure the proceedings issued in Northern Ireland which are the basis of the defendants' argument that they wish to and can offer a bona fide defence to these proceedings. The Northern Ireland proceedings are a challenge to the manner of the appointment of Tom Keenan as administrator and to his conduct of the administration. They do not challenge the debt owing by the company, Cloughvalley, to the plaintiff herein, the first defendant in the Northern Ireland proceedings. They, thus, are proceedings which are entirely separate from the ones before this Court. The documents that the defendants seek, and which they could possibly obtain in discovery were the case to be referred to plenary hearing, are connected to that Northern Ireland case. They may well indeed be sought in discovery in those proceedings. I cannot, however, see any relevance that these documents could have to these proceedings which are confined to an action on a guarantee. The documents the defendants seek relate, as Mr. Quinn said in answer to my question, to the breach of contract they allege. They have issued the proceedings in Northern Ireland in relation to this claim and it is within those proceedings that the documents they have referred to belong.

8. Taking the nine grounds of defence raised in order.

> 1. It is, in the first place, too late to challenge the jurisdiction in which the plaintiff herein has issued proceedings. It is well established that they could have entered a conditional appearance to enable them challenge jurisdiction; they did not do so, and have thus acceded to the jurisdiction of the Irish courts. Secondly and in any event, the defendants reside within this jurisdiction and that, ipso facto, makes Ireland the correct jurisdiction in which to sue.
>
> 2. Privity of contract is quite clear. The guarantee that they signed states clearly that it is one between Northern Bank Ltd. trading as Danske Bank and themselves. The fact the facility letter is headed 'Northern Tailored Solutions' is of no significance.
>
> 3. As the guarantee itself recites at its beginning, the consideration advanced by the plaintiff was the making or continuing of advances or otherwise giving credit or affording banking facilities. This is good and valuable consideration.
>
> 4. The defendants suffer from no disability or infirmity and are adults. Even if they did not have independent legal advice, that does not provide even an arguable defence, see AIB v. McKenna, Birmingham J. 12th March, 2014, citing with approval at para. 9 the judgment of Harmon J. in *O'Hara v. AIB* [1985] BSCLC at p. 52. On the evidence, it is clear they were advised by the Bank to seek independent legal advice but waived the same.
>
> 5. These proceedings are issued well within the statutory limitation period because, as paragraph one of the guarantee states, it is an on-demand facility and time runs from the date of demand, that is, in October 2011. These proceedings issued on 19th December, 2012.
>
> 6. The proceedings issued in Northern Ireland have no bearing on these proceedings and may continue independently in that jurisdiction. The documents the defendants wish to seek should be pursued in discovery there.
>
> 7. The formulaic particulars provided in the endorsement of claim are sufficient to enable the defendants to know whether they should defend or not. The claim is thus adequately particularised. See *AIB v. The George*, Butler J. 21st July 1975.
>
> 8. Demand was, in fact, made of the company by the plaintiff on 30th November, 2011, in writing requiring immediate payment of the sum of Stg. £4,701,581.15. The evidence is that the company's property, having been sold and applied against the debt, the balance now remaining due is Stg. £3.9m, a sum well in excess of the sum guaranteed.
>
> 9. The two deponents on behalf of the Bank, Blackwood Hall and Amanda Browne, have both perused the liabilities of the company, Cloughvalley Stores, to the Bank as set out in the books and records of the Bank. They are, thus, giving prima facie evidence and this is admissible. See the *Governor and Company of the Bank of Ireland v. Keehan*, Ryan J. 16th September 2013.

9. Thus, I find that all the grounds raised do not raise an arguable defence to these proceedings on foot of the guarantee. It is clearly a valid guarantee. The principal debtor has defaulted. The guarantee has been called in. No payment has been made in respect thereof and the plaintiff, on the basis of the formal proofs opened to the Court, is entitled to summary judgment.

10. There will be judgment in the amount of £500,000 plus interest from the 3rd of December 2012.