THE HIGH COURT

[2016 No. 211 S.]

BETWEEN

ALLIED IRISH BANKS PLC

PLAINTIFF

AND

MICHAEL DOYLE

DEFENDANT

JUDGMENT of Mr. Justice O'Connor delivered on the 1st day of June 2017

Introduction

1. Senior counsel for the defendant effectively referred to two potential defences to the plaintiff bank's application for summary judgment at the hearing of this application in Cork on 14th and 22nd March, 2017.

2. The hearing of this application was spread over two days in separate weeks. There was a suggestion of mediation on 20th or 21st March, 2017, prior to the resumption of the application hearing on 22nd March. On 22nd March I was aware from senior counsel for the defendant that he was seeking interlocutory injunctive relief against Ennis Property Finance DAC **("Ennis")** on Thursday 23rd March, 2017, in respect of the exercise of Ennis's rights deriving from security in the Glen of Downes lands **("The Golf Course")**. Ennis acquired the loans due by the defendant to Bank of Scotland. Nothing came of the mediation suggestion and the defendant has since appealed the refusal of Costello J. to the said interlocutory injunction application involving Ennis.

3. By way of further background, the plaintiff bank took security for loans to the defendant over the leasehold interest in the Golf Course which the defendant's solicitor in his open letter of 15th March, 2017, described as a *"defunct tenant's leasehold interest".*

4. Hence, it can be gleaned that the defendant is in quite a pickle. Before the Court proceeds to adjudicate on whether the plaintiff is entitled to summary judgment for €751,870.71 against the defendant in respect of undisputed loans made, it exhorts the parties again, and the defendant in particular, to recognise that the time and expense incurred in litigating various issues might be better spent on working towards an overall solution to the defendant's entire indebtedness to the plaintiff bank, Ennis and any other creditor who may be pressing for payment.

The Two Defences

5. The two defences can be summarised as follows:

> 1.The defendant is entitled to defend on the basis of s. 30 of the Consumer Credit Act 1995 (as amended) **(" the 1995 Act")** and European Communities (Unfair Terms in Consumer Contracts) Regulations **("the EU Regulations").**
>
> 2.The plaintiff unlawfully interfered in the economic interests of the defendant by inducing a breach of the lease obligations of the Glen of Downes Golf Club PLC **("PLC")** to the defendant.

Meaning of Consumer

6. Counsel for the defendant submitted that Baker J. in *Stapleford Finance Limited v. Lavelle* [2016] IEHC 385 established in that judgment delivered on 6th July 2016 that *"consumer"* was not to be interpreted strictly or restrictively. He further submitted that the view of Costello J. in *AIB v. McGouran & Ors*. [2016] IEHC 629 delivered on 10th November 2016 was in conflict with *Stapleford* because Costello J. found at para. 23 of the judgment that *"the concept of a consumer is one which must be strictly construed".*

7. On that basis it was argued that the law is unclear and requires to be adjudicated upon again in these proceedings. Having considered the facts in this case as will be explained in this judgment, I do not find it necessary to embark on an analysis of those judgments.

The facts relied upon

2009 Loan:-

8. Under the first loan agreement made on 17th September, 2009, **("the 2009 Agreement"),** the defendant borrowed €45,000. The defendant ceased repayments on 3rd January, 2013, and by 11th April, 2016, the balance due on this loan stood at €25,887.00. The purpose of the loan in the standard documentation was *"to fund the restructure of a current account …".* There were various standard references to the 1995 Act in the 2009 Agreement focused upon in the submissions of the defendant.

9. The defendant in his second supplemental affidavit (containing nineteen paragraphs, some of which were unnecessarily lengthy) sworn on 22nd February, 2017, referred to a 2009 housing loan facility in the amount of €660,000 for eighteen years but did not explain the defendant's purpose for or use of the current account number quoted in the exhibited 2009 Agreement. The plaintiff bank emphasised that repayments were made up to 3rd January, 2013, over three years after the 2009 Agreement.

10. The proposed defence for the repayment of this loan that the defendant is a consumer does not withstand scrutiny. It alleges that the defendant is entitled to exercise a right under the 2009 Act and the EU Regulation. The defendant merely suggested in reply to the plaintiff's application before this Court that he was a consumer in respect of the first loan in 2009. The defendant's averments obfuscate the status of the defendant. Despite having made the repayments up to January 2013, it was submitted on his behalf that there is no evidence that he was handed a copy of the first loan agreement which allegedly breached S 30(1) of the 1995 Act. It was argued that *"the absence of contradiction can amount to acceptance".*

11. This Court does not agree that there is an issue to be tried about whether a copy of the 2009 Agreement was given to the defendant even if he was a consumer in respect of the 2009 Agreement. The defendant knew of and complied with the terms of the loan for a number of years.

12. Furthermore, if this Court had to decide whether the defendant was a consumer it is guided by the detailed judgment in a similar application delivered by Kelly J. in *AIB v. Higgins* [2010] IEHC 219. At page 29 the learned judge discounted the bare assertion that the defendant in that case was a consumer and found that the assertion was *"not sufficient to warrant this case being adjourned to plenary hearing".*

13. In those circumstances and adopting the terminology of Hardiman J. in *Aer Rianta Cpt v Ryanair Limited* [2001] 4 I.R. 607, it is clear that the defendant has no case to make in respect of the sums due under the 2009 Agreement despite the effort by counsel for the defendant to divine a construction of *"consumer"* which would meet the defendant's situation. In short, this Court finds that there are insufficient facts in favour of the defendant's proposition to warrant a plenary hearing concerning the enforceability of the 2009 Agreement.

The Second Loan

14. The second loan agreement which originated in December 2002 when the defendant purchased 27 Meadowvale in Boyle was restructured in 2008 and 2009 before a final agreement on 5th July, 2011. By the time of the demand letter dated 12th October, 2015, the defendant was indebted to the plaintiff in the sum of €728,520.61. In 2011, the defendant was required to make interest repayments of €2,400 per month to be reviewed in six months. The defendant failed to keep up the repayments and again made no repayments since 3rd January, 2013.

15. The stated purpose on the letter of sanction dated 5th July, 2011, for the second loan was *"Originally sanctioned to fund the purchase of property at Boyle Co Roscommon and to restructure personal debt".*

16. The defendant's third affidavit filed after his solicitor came on record in February 2017 referred to alleged duties under the Consumer Protection Code issued by the Central Bank. This reference was not pursued during the hearing of the application giving rise to this judgment. The Court is grateful for the discernment in this regard. The defendant has issued proceedings having Record Number 2017/674P but has yet to deliver a Statement of Claim. This judgment does not concern the prosecution of those proceedings.

17. The defendant was unfortunately long winded and inconsistent in his affidavits about his knowledge or execution of the second loan. He explained that he is seventy-three years of age, had a heart attack in 2009 and was pressured by Bank of Scotland in respect of his personal borrowings in 2011 at the time of the second loan. Nevertheless, he has not sworn that he did not execute the second loan agreement or that he is indebted to the plaintiff bank for his application of the proceeds to the purchase of the house in Boyle Co Roscommon which I shall mention later.

18. Ultimately the suggested defence for the second loan is that the *"cooling off period"* required for consumer loans under s 30 (2) of the 1995 Act was not provided

19. The submission for the defendant also sought to make a virtue of the fact in favour of the defendant's stance, that the original loan which was restructured in 2011 contained the requisite notice while the said letter of sanction did not do so.

20. Suffice to say that despite the verbiage in the defendant's affidavits, there is no tangible evidence which could justify a finding by this Court that the defendant was acting as a consumer in respect of the second loan. Paragraph 12 of the affidavit of Ms. Murray, an officer in the financial solutions group of the plaintiff bank, sworn on 6th March, 2017, listed seven *"buy to let investments" of the defendant other than that at 27 Meadowvale in Boyle, the target for the original loan.*

21. Moreover, the open letter dated 18th January, 2016, from accountants for the defendant to the plaintiff's solicitors with a statement of affairs as at 31 October 2015 is an acknowledgement of the debt due by the defendant. Any further effort to bamboozle this Court at a plenary hearing will clearly not avail the defendant. The defendant's reliance on a cooling off period is implausible. He does not have any bona fide defence to the plaintiff's claim under the second loan.

Interference with Economic Interests

22. The defendant sought to blur the distinction between himself and the PLC when alleging that the plaintiff breached some obligation by the plaintiff to keep the PLC funded. The Court was not impressed by the argument that the plaintiff can setoff some claim for the PLC against the plaintiff's claim for the loans which are acknowledged. It is stretching credulity that the plaintiff has some obligation to fund the PLC in order for the defendant to settle with another Bank.

Decision

23. The defendant has not disclosed a *bona fide* defence to the Plaintiff's claims and therefore the Court grants judgment to the plaintiff for the sum of €751,890.71.