Neutral Citation: [2016] IEHC 192

THE HIGH COURT

[2014 No. 2381 S.]

BETWEEN

ALLIED IRISH BANKS PLC

PLAINTIFF

AND

VICTORIA CASEY

DEFENDANT

JUDGMENT of Mr. Justice Barr delivered on the 15th day of March, 2016

Introduction

1. In this application, the plaintiff seeks summary judgment as against the defendant in the sum of €216,000.00, together with interest thereon from 8th September, 2014, at current bank rates until payment or judgment. The plaintiff sues on foot of a contract of guarantee allegedly signed by the defendant on 3rd June, 2010. Under that contract, the defendant guaranteed the present and future indebtedness of her husband, William Casey, with the plaintiff. It is alleged that on 15th March, 2011, Mr. Casey entered into a credit agreement with the plaintiff. It is also alleged that the defendant signed this agreement.

2. It is alleged that Mr. Casey defaulted on the repayments due under the credit agreement. The defendant was then asked to pay the sum due under the contract of guarantee. When the defendant refused to pay this sum, the present proceedings issued.

3. In her defence, the defendant states that, in the course of family law proceedings with her estranged husband, it has come to light that her signature was forged on a number of documents. It is the defendant's case that her signature was forged on the contract of guarantee dated 3rd June, 2010, and on the credit agreement dated 15th March, 2011. In these circumstances, the defendant submits that there are serious issues raised and that it is not a matter that is suitable for disposal by way of summary judgment. The defendant has asked the court to remit the matter to plenary hearing.

The Plaintiff's Claim

4. The plaintiff's application for summary judgment is grounded on an affidavit sworn by Ms. Jo Ann Shannon, a case manager with the plaintiff bank, sworn on 20th January, 2015. In the affidavit, Ms. Shannon stated that the defendant, by way of an agreement in writing with the plaintiff dated 3rd June, 2010, agreed in favour of the plaintiff to guarantee the obligations of Mr. William Casey, the defendant's estranged husband (hereinafter the Principal Borrower) pursuant to a credit agreement dated 15th March, 2011, between the Principal Borrower and the plaintiff, to an amount not exceeding €216,000.00 together with interest thereon. A copy of the credit agreement and contract of guarantee were exhibited in the affidavit.

5. Under the terms of the credit agreement, the plaintiff agreed to make available to the Principal Borrower, credit facilities in the amounts of €206,000.00 and STG£152,000.00, secured, inter alia, by means of mortgages over certain properties held by the Principal Borrower and assignments of life assurance policies on his life, as well as the contract of guarantee, whereby the defendant guaranteed the performance by the Principal Borrower of his obligations under the credit agreement to an amount not exceeding €216,000.00.

6. Ms. Shannon went on to state that the credit agreement provided that each facility was to be repaid on 28th February, 2012, by a single repayment equivalent to the principal borrowed, plus interest accrued, as at the date of final repayment, but with the facilities being extendable. The rate of interest applicable to the first facility was stated to be base lending rate varying plus 3% per annum (4.067% at the date of offer). The rate of interest applicable to the second facility was stated to be market related rate plus 1% per annum.

7. Ms. Shannon stated that funds were originally drawn down on 24th October, 2006, and in this regard she exhibited statements recording the said draw down. Interest was charged on the said facility in accordance with the terms of the credit agreement. It was further stated that the Principal Borrower failed to abide by the terms of the credit agreement in relation to repayment thereof and the loan account went into arrears. That represented an Event of Default under the terms of the credit agreement, entitling the plaintiff to demand repayment, within seven days, of principal and interest due and all monies and liabilities owing on foot of the credit agreement.

8. By letter dated 3rd February, 2014, addressed the to the Principal Borrower, the plaintiff formally demanded repayment by the Principal Borrower within seven days under the credit agreement as outlined therein. A copy of this correspondence was exhibited in the affidavit.

9. Despite the said demand, the Principal Borrower failed, refused or neglected to pay the sum demanded therein or any sum in satisfaction or reduction of his liabilities to the plaintiff. It was further stated that the Principal Borrower failed to engage in any meaningful way with the plaintiff. Ms. Shannon stated that the sums demanded in the letter of 3rd February, 2014, remained due and owing, together with daily interest accruing thereon.

10. By letter dated 8th September, 2014, the plaintiff formally demanded payment by the defendant on foot of the said guarantee agreement within seven days. A copy of that letter was exhibited in the affidavit.

11. Ms. Shannon stated that despite the said demand, the defendant had failed, refused or neglected to pay the sum demanded, or any sum, in satisfaction or reduction of her liabilities to the plaintiff, or to engage with the plaintiff in any or any meaningful way. Ms. Shannon stated that the sum demanded in the letter dated 8th September, 2014, remained due and owing by the defendant to the plaintiff.

12. Ms. Shannon stated that the proceedings were commenced by way of summary summons issued on 24th September, 2014. An appearance thereto was entered by the defendant on 23rd October, 2014. Ms. Shannon stated that it was her belief that the defendant did not have any bona fide or arguable defence to the claim made in the proceedings and that the appearance had been entered solely for the purpose of delaying the plaintiff in obtaining judgment. Accordingly, she prayed for judgment as against the defendant.

The Defendant's Position

13. The defendant has sworn a number of affidavits in the proceedings. The defendant stated that she had become estranged from her husband and they separated. There followed acrimonious family law proceedings before the Circuit Family Court in Cork. The defendant stated that in the course of those proceedings, she became aware that her signature had been forged on a number of documents, which had been made available by way of discovery. While she did not explicitly say so, the clear inference put forward by the defendant, was that her husband, or someone acting at his behest, had wrongfully forged her signature to the documents.

14. In support of this contention, the defendant exhibited a number of reports from a handwriting expert, Mr. David Madden. Initially, he had had to make his report based on photocopies of original documentation, as these were the only documents then available to the defendant.

15. The defendant stated that she had no knowledge at all of the credit agreement or of the contract of guarantee. She believed that her signature had been forged on the originals of these documents.

16. In a supplemental affidavit sworn on 16th April, 2015, the defendant stated that in the circumstances, where there was extensive forgery of her signature on documents, it would be necessary for her handwriting expert to have access to the originals of the credit agreement and the contract of guarantee so as to carry out a full forensic examination thereof. She stated that the credit agreement dated 15th March, 2011, had not been signed by her and her alleged signature on the document was a simulation. In relation to the contract of guarantee, she had no recollection of signing the alleged guarantee on 3rd June, 2010. She stated that she had not attended at the offices of AIB at 66 South Mall, Cork, to sign that document. She stated that to the best of her knowledge and belief she did not sign the contract of guarantee.

17. Without prejudice to the main plank of her defence in relation to forgery of her signature, she stated that it appeared from the statements of accounts which had been made available, that the funds therein were drawn down in October 2006, and April 2009, respectively. She stated that she had no knowledge of the alleged draw down of those funds and as such, if funds were drawn down, they were drawn down some four years and one year prior to the purported guarantee having been allegedly completed. She stated that it was not conceivable that the purported guarantee could refer to, or encompass funds that were drawn down in advance of its alleged execution of which the purported guarantor had no knowledge.

18. The defendant stated that in respect of the purported guarantee and more particularly the letter of loan sanction, to the best of her knowledge, information and belief, her signature had been simulated on these documents. She further stated that she was a stranger to the purpose described in the said letter of sanction at facility 2 thereon and more particularly to the property therein described as 9 Haslers Place, Dunmow, Essex. She stated that she had no knowledge whatsoever of that property.

19. The defendant stated that, without prejudice to any other defence which may be available to her, the monies alleged to have been advanced were advanced prior to the execution of the alleged guarantee. She stated that the plaintiff did not allege that any monies were advanced after the guarantee was executed. In such circumstances, the defendant had been advised that, although more appropriately a matter for legal submission, the purported reliance on the guarantee was misconceived, as there was a failure of consideration.

20. The defendant called on the plaintiff to allow her handwriting expert to have inspection facilities in relation to the originals of the credit agreement and the contract of guarantee. In addition, the defendant stated that it would be necessary for her legal advisers to have the opportunity to cross examine the plaintiff's deponent, Ms. Jo Ann Shannon and, as such, it would be necessary to remit the matter to plenary hearing.

21. Without prejudice to any other defences that may be available to the defendant, the defendant stated that she wished to draw to the attention of the court, that the plaintiff, acting through its servants or agents, had failed, refused or neglected to explain to the defendant, or otherwise bring to her attention, the fact that a document, that the plaintiff alleged the defendant executed, amounted to a guarantee, which guarantee could give rise to a purported liability to the bank in the sum of €216,000.

22. The defendant further stated that without prejudice to her other grounds of defence, the plaintiff had failed, refused and neglected to advise her to obtain independent legal advice, prior to executing any purported guarantee. The defendant further stated that the plaintiff had been wholly lacking in ensuring that she was aware of the extent of any liability, in an effort to procure an alleged signature from her. She stated that the plaintiff had failed to act with the utmost good faith during the course of any of its dealings with the defendant.

23. The defendant stated that, where it was necessary to obtain discovery of documents and inspection of the originals of documents and to examine and cross examine witnesses, it was not suitable for such matter to be dealt with in a summary fashion and she prayed for the matter to be remitted to plenary hearing.

24. An affidavit was sworn by Mr. Fergus Appleby, of Appleby Solicitors, who are the solicitors on record for the defendant herein. He stated that he had corresponded with the plaintiff's solicitors and sought their consent to having an inspection of the originals of the relevant documents carried out by the defendant's handwriting expert. He stated that the plaintiff's solicitors had indicated a willingness to allow such inspection to take place. He went on in the affidavit to state that where discovery of documents and cross examination of bank witnesses would be required, this could not be done in summary proceedings and therefore the action should be remitted to plenary hearing.

25. The defendant swore a second supplement affidavit on 9th December, 2015. She stated that Mr. David Madden, the defendant's handwriting expert had carried out an examination of the originals of the credit agreement and the contract of guarantee on 14th July, 2015. He had issued a supplemental report dated 23rd July, 2015. That report was exhibited to the defendant's affidavit.

26. In his report, Mr. Madden stated that it was his opinion that the signature on the contract of guarantee dated 3rd June, 2010, was the genuine signature of the defendant. In relation to the credit agreement dated 15th March, 2011, he was of opinion that the signature thereon, purporting to be the signature of the defendant, was not in fact her signature.

27. The defendant stated that subsequent to the confirmation of Mr. Madden that her signature had been simulated on some of the aforementioned documents, she caused her solicitors to communicate with the plaintiff's solicitors by a number of telephone calls and to write directly to the receiver, Mr. Gearoid Costello, appointed over a number of properties on 4th September, 2015 and 8th October, 2015. She stated that neither the plaintiff, the solicitor for the plaintiff or indeed the receiver, had addressed the fact of confirmation of her simulated signature on a number of these financial documents in any meaningful way to date. She further stated that the plaintiff had failed to act with the utmost good faith during the course of its dealings with the defendant and, as such, the nature of the findings of the aforementioned Mr. Madden and the issue of her simulated signatures should be explored fully in open court. She stated that the plaintiff should not be allowed to attempt to force through obtaining a judgment herein in complete disregard of this issue, more particularly when it pertained to some of the base documents in respect of charges, which had been registered against some of these properties, which now involved an issue of criminal fraud, which required to be addressed by the court and by other relevant authorities.

28. The defendant also noted that she had caused her solicitors to write to the plaintiff's solicitors indicating that they intended to call the plaintiff's deponent, Ms. Jo Ann Shannon, for the purpose of cross examination in due course. She stated that this was a further reason why the application was not suitable for summary disposal.

29. The defendant also wished to draw the attention of the court to a number of matters:-

> (a) She alleged that the plaintiff through its servants or agents, failed to explain the extent and nature of the liabilities under the credit agreement and loan facilities herein;
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> (b) She stated that the plaintiff was guilty of negligent misrepresentation to the defendant and was therefore estopped in equity from enforcing the said alleged liabilities as against her;
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> (c) she alleged that the plaintiff had breached its duties to the defendant, as a wife (who was in grave martial difficulties) to a seasoned businessman/investor and as such failed in its duty of care to the defendant and, in particular, its duty to properly advise her to get independent legal advice and to ensure that any of the documentation pertaining to the loan facilities, would only be signed by the defendant, with her fully informed consent and knowledge. It was alleged that the plaintiff had wholly failed to ensure this and instead was purporting to rely on documentation, which to the best of the defendant's knowledge, information and belief, contained simulated signatures of the defendant and the bank should not be permitted to enforce the purported agreement against the defendant; and
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> (d) in the alternative, the defendant alleged that the plaintiff bank had failed, refused and/or neglected to advise her to obtain independent legal advice, prior to executing the aforementioned various loan facilities and credit agreement and was in fact wholly lacking in ensuring that the defendant herein was aware of the extent of her ultimate liabilities.
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> 30. The defendant stated that she had been advised that affidavit evidence alone would not suffice to prove her defence in this action and as such a plenary hearing was required to try all of the issues in dispute between the parties. Furthermore, she required cross examination of bank witnesses to consolidate her defence. This could not be done in the course of summary proceedings. In the circumstances, she submitted that it was necessary and just that the various issues raised be tried together by way of plenary hearing. It was not a suitable matter to be tried by affidavit.

Submissions on behalf of the plaintiff

31. The plaintiff submitted that the defendant's handwriting expert had been given the opportunity to examine the originals of the relevant documents. He was of the opinion that the signature appearing on the contract of guarantee was, in fact, the genuine signature of the defendant. In such circumstances, it was submitted that it was no longer tenable for the plaintiff to maintain the defence that her signature had been forged on the guarantee, as her own handwriting expert had found that that was not the case.

32. While Mr. Madden was of the opinion that the signature appearing on the credit agreement was not the genuine signature of the defendant, it was submitted on behalf of the plaintiff, that her signature was not necessary on the credit agreement. Once the plaintiff had established that funds were made available to the principal borrower under the credit agreement and that he had defaulted on the repayment thereof, it was submitted that the plaintiff was entitled to pursue the defendant on foot of the contract of guarantee.

33. In relation to the alleged misrepresentation made by the plaintiff, it was noted that the defendant did not say what the misrepresentation was, or by whom, or when it was made. It was submitted that such a bare allegation was not sufficient to qualify as a ground of defence to resist the application for summary judgment.

34. The plaintiff stated that while the bar for having a matter remitted to plenary hearing was a low one, a defendant could not just allege that there was misrepresentation; she would have to go further and give details to support this allegation. In this case, the plaintiff could not say that there was a material misrepresentation at the time of signing the contract of guarantee, because she denied that it was her signature on the guarantee.

35. In relation to the allegation that the bank had failed to advise the defendant to get independent legal advice prior to entering into the contract of guarantee, no authority had been cited to establish that the bank owed a duty of care to a customer to advise them to get independent legal advice. Furthermore, the defendant did not say that she was not given the opportunity to get legal advice, or if she had got it, that she would not have entered into the contract. The plaintiff further stated that its failure to advise the defendant to get independent legal advice could only be relevant if the defendant had said that she entered into the agreement due to undue influence exercised by her husband and if she made the case that the bank was aware of this state of affairs, then it could be argued that the bank should have advised her to get independent legal advice. However, the defendant did not say that she acted under undue influence, or that she did not understand the terms of the contract of guarantee.

36. The plaintiff noted that there was a very clear warning written in bold print at the top of the contract of guarantee in the following terms:-

> *"Warning – as guarantor of the credit facilities you will have to pay off the credit facilities, the interest and all associated charges if the borrower does not. Before you sign this guarantee you should get independent legal advice."*

37. In relation to the allegation made by the defendant that there was a failure of consideration to support the contract of

guarantee, the plaintiff stated that this was not correct, as the bank had agreed to give credit facilities to the defendant's husband, this was sufficient to constitute adequate consideration for the contract. It was accepted that some funds had been advanced to the Principal Borrower prior to the execution of the contract of guarantee; however, he obtained an extension of credit facilities under the agreement of 15th March, 2011. It was submitted that this was sufficient consideration for the plaintiff entering in the contract of guarantee. The credit facilities were extended under the March 2011 agreement with the defendant's husband. The guarantee was for existing and future obligations of the defendant's husband to the bank.

38. In summary, the plaintiff submitted that the defendant was bound by the contract of guarantee, as she had signed it. It was submitted that the other grounds of defence were couched in such general terms, that they did not constitute valid grounds of defence to the plaintiff's claim herein.

Submissions on behalf of the Defendant

39. It was submitted that the defendant had led cogent evidence from her handwriting expert, Mr. Madden, that her signature had been forged to the credit agreement dated 15th March, 2011. While Mr. Madden was of opinion that the signature appearing on the contract of guarantee, was indeed her signature, it was still the defendant's case that she did not attend at the bank to sign the guarantee. The defendant stated that the plaintiff seemed happy to rely on Mr. Madden's opinion when he made a finding in favour of the plaintiff, but did not accept the other findings made by him in the report. The defendant still contended that she did not sign the guarantee. According to that contract, her signature was allegedly witnessed by a Mr. Coleman from the bank. There had been no affidavit from him. The defendant submitted that it was not sufficient for the plaintiff to simply rely on the findings of the defendant's expert when it suited them.

40. The defendant submitted that the court had to consider the issue of whether the contract of guarantee was unsupported by consideration, due to the issue of past consideration. The defendant stated that the funds were drawn down in October 2006, and April 2009. The defendant had no knowledge of the draw down of these funds. However, this was a long time prior to the execution of the contract of guarantee. It was submitted that this was past consideration and was therefore not sufficient consideration to support the contract of guarantee. The defendant relied on the decision in *Provincial Bank v. O'Donnell* [1932] 67 ILTR 142, and also relied on the opinion expressed by Paul A. McDermott SC in his book *Contract Law*, at para. 2.52, where it was stated as follows;-

> *"In Provincial Bank of Ireland v. O'Donnell, the bank sued the defendant on an agreement on which she agreed to provide security for her husband's overdraft in consideration of 'advances heretofore made or that may hereafter be made'. It was held that there was no valid consideration for this agreement for two reasons:-*
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> *(i) The advances which had already been made by the bank were past consideration.*
>
> *(ii) The advances which might be made were illusory consideration since the bank was left with total discretion as to whether or not it would make such advances. Unless and until such advances were actually made there was no consideration."*

41. The defendant submitted that the issue of past consideration arose in respect of the funds, which had already been drawn down prior to execution of the contract of guarantee.

42. The defendant pointed out that the terms and conditions which had been exhibited in the plaintiff's affidavit, were dated December 2010. These would apply to the credit agreement dated March 2011, but post dated the signing of the guarantee in 2010. It was submitted that the plaintiff had not shown the court that the guarantor was made aware of the terms and conditions, if they were different to the terms and conditions applying when she allegedly entered into the contract of guarantee.

43. In relation to the draw down of funds on foot of the credit agreement in March 2011, the defendant alleged that her signature was forged on the credit agreement and she was a stranger to the terms of that agreement. She did not know anything about the property in the United Kingdom. The defendant mentioned that she was not aware of the contract of guarantee, nor was she aware of the draw down of funds of which she was the alleged guarantor. Nor was she aware of the use to which the funds had been put.

44. In relation to the issue of obtaining independent legal advice, the plaintiff had pointed to the warning clause at the top of the contract of guarantee. The defendant was unaware of this document. She did not get any legal advice in the matter, as she was not aware of the contract of guarantee or the funds to which it related.

45. The defendant submitted that this action should be remitted to plenary hearing, as there were serious questions in relation to the documentation allegedly executed by the defendant. While, the report from her expert stated that some of the signatures were hers, she did not agree with that opinion.

46. The defendant submitted that there was a receiver appointed over certain properties secured by the loans, so there should be a proper investigation of the matter by sending the action to plenary hearing. On the basis of the decisions in *Aer Rianta v. Ryanair Limited* [2001] 4 I.R. 607, and *Harrisrange Limited v. Duncan* [2003] 4 I.R. 1, it was submitted that the defendant had cleared the requisite hurdle and had raised an arguable defence, and that the matter should be remitted to plenary hearing.

47. In reply, the plaintiff's counsel submitted that the plaintiff was not cherry picking from Mr. Madden's report. He pointed out that the plaintiff was not tendering Mr. Madden to prove anything. It was the defendant who had put his report in evidence. He was the defendant's expert. The plaintiff did not have to accept any of his findings. It was submitted that the simple fact was that the defendant's own expert thought that it was her signature on the contract of guarantee. It was further submitted that the defendant could not have it both ways: if she relied on the Madden report, then she had to take the entire of his report. She could not accept only parts of his report, and reject the findings she did not like.

48. In relation to the terms and conditions, it was accepted these were dated 2010 and post dated the guarantee, however, they applied to the credit agreement of March 2011. They were the correct terms and conditions attaching to the loan agreement. The terms and conditions of the guarantee, were set out in the contract of guarantee itself.

49. In relation the decision in *Provincial Bank v. O'Donnell*, and the extract cited from Mr. McDermott's textbook, the plaintiff conceded that advances already made would be past consideration and that if the contract provided for advances which may be made in the future, this could be illusory as the bank may not actually make advances in the future. However, in 2011, the plaintiff had entered into a fresh facility with the defendant's husband. This was sufficient consideration for a contract of guarantee which was entered into in 2010. In this case, the bank had actually given a fresh facility after the date of the contract of guarantee and had done so in 2011.

The Applicable Law

50. The defendant relied on the decision in *Bank of Ireland v. Educational Building Society* [1999] 1 I.R. 220, and in particular to the following portion of the judgment of Barron J. at p. 233:-

> *"This Court does not have to decide whether these submissions or any of them will ultimately succeed. It is sufficient that the defendant should not be shut out from making a bona fide case: see First National Commercial Bank plc v. Anglin [1996] 1 I.R.*
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> *Usually, liberty to defend is sought upon the ground that there is an issue of fact to be determined. When the issue is solely one of law, then the court may determine that issue and give final judgment. Where, however, the court would be in a better position to determine the issue of law after a closer and fuller examination of the facts, then the defendant should be given liberty to defend."*

51. The defendant also referred to the decision in *Aer Rianta v. Ryanair Limited* [2001] 4 I.R. 607, and in particular to the following portions of the judgment of Hardiman J. at p. 621:-

> *"More recent Irish authority, in my view, supports the impression gleaned from authorities from the early days of the summary judgment jurisdiction, that the defendant's hurdle on a motion such as this is a low one and that the jurisdiction is one to be used with great care."*

52. Having reviewed certain Irish authorities, Hardiman J. continued as follows:

> *"In light of these authorities, I believe that the test for obtaining summary judgment has not changed since the early days of the procedure in the late nineteenth and early twentieth centuries. The formulation used in First National Commercial Bank plc. v. Anglin [1996] 1 I.R. 75 and the cases cited in that judgment are useful and enlightening expressions of the test, but I do not believe that this formulation expresses an altered criterion which is more favourable to a plaintiff than that derived from the other cases cited. The 'fair and reasonable probability of the defendants having a real or bona fide defence', is not the same thing as a defence which will probably succeed, or even a defence whose success is not improbable."*

53. Further on, Hardiman J. stated as follows at p. 623:-

> *"In my view, the 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."*

54. Finally, the defendant referred to Harrisrange Limited v. Duncan [2003] 4 I.R. 1, where McKechnie J. commented on the conclusions reached by Hardiman J. in the Aer Rianta case and stated as follows at p. 7:-

> *"In his analysis of the law, Hardiman J. surveyed what might be described as the historical cases as well as the most modern authorities on this topic. His conclusion was, I think, that leave to defend should be granted unless it was 'very clear' that the defendant had no defence, not even one which could be described as arguable.*
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> *From these cases it seems to me that the following is a summary of the present position:-*
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> *(i) the power to grant summary judgment should be exercised with discernible caution;*
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> *(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, there being several ways in which this may best be done;*
>
> *(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, being mindful at all times of the unavoidable limitations which are inherent on any conflicting affidavit evidence;*
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> *(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?', which latter phrase I would take as having as against the former an equivalence of both meaning and result;*
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> *(viii) this test is not the same as and should be not 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 in 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."*

55. The plaintiff did not disagree that the authorities cited represented an accurate statement of the law in this area.

Conclusions
56. The case made by the plaintiff in these proceedings is quite simple. The plaintiff states that the defendant signed a contract of guarantee on 3rd June, 2010, whereby she guaranteed the present and future indebtedness of her husband, William Casey, to the plaintiff. The plaintiff states that under a credit agreement dated 15th March, 2011, certain sums of money were made available to the Principal Borrower. He failed to repay the loans when they fell due. The plaintiff then called on the defendant to pay the amount that she had guaranteed in the sum of €216,000. These proceedings were instituted when the defendant failed to pay the amount, which the plaintiff alleged was due under the contract of guarantee.

57. The essence of the defendant's defence, is that she denies that she ever entered into any contract of guarantee with the plaintiff. She denies that it is her signature, which appears on the contract of guarantee dated 3rd June, 2010. She also denies that she signed the credit agreement dated 15th March, 2011.

58. In support of her defence, the defendant has retained a handwriting expert, Mr. David Madden, who was given access to the originals of the contract of guarantee and the credit agreement. He has stated that in his opinion, the signature on the contract of guarantee, purporting to be the signature of the defendant, is in fact her genuine signature. In relation to the credit agreement dated 15th March, 2011, he is of opinion that the defendant's signature has been forged thereon.

59. It seems to me that in relation to the contract of guarantee, the plaintiff has not led any evidence to establish that it was not her signature on the document. Indeed, the expert opinion, which she has exhibited in her affidavit, is contrary to her assertion that she did not sign the guarantee. All that one is left with is her assertion that she has no recollection of signing the guarantee and believes that she did not sign it. Where the only external evidence is to the effect that she did sign the contract, I cannot regard her defence, that she did not sign the agreement, as being even an arguable defence.

60. The defendant has also raised a number of secondary defences, which she wishes to avail of, should her primary defence fail. It seems to me that the defendant cannot run two contradictory defences. She cannot say, on the one hand that she did not sign the agreement and knew nothing of it, while on the other hand, stating that the plaintiff should not be able to enforce the agreement, due to the fact that it was unsupported by proper consideration, or due to a failure on the part of the plaintiff to ensure that she had independent legal advice prior to signing the contract of guarantee, or that the plaintiff had been guilty of some misrepresentation, either prior to or when signing the agreement. Where the defendant makes the case that she did not sign the agreement and was never in the bank to sign the agreement, she cannot at the same time make the defence that the bank should have ensured that she had independent legal advice at the time of, or prior to, signing the agreement.

61. Even if I am wrong in that contention and the plaintiff is permitted to raise her secondary defences, I am not satisfied that the defendant has raised an arguable defence under the secondary headings. In relation to the allegation that the plaintiff was guilty of some misrepresentation, this is just a bare allegation. The defendant has not identified what the alleged misrepresentation was, nor has she stated by whom, or when it was allegedly made. She has not stated that, but for any particular misrepresentation, she would not have entered into the contract of guarantee. Accordingly, this ground of defence is not even arguable.

62. In relation to the alleged failure on the part of the plaintiff to ensure that the defendant had independent legal advice, prior to entering into the contract of guarantee, I accept the submission made on behalf of the plaintiff that, in the absence of an allegation of undue influence or some other impropriety, there is no duty on a bank to ensure that a competent adult has independent legal advice prior to entering into a contract of guarantee. In order to be successful under this heading, the plaintiff would have to establish that there was some undue influence brought to bear upon her by her husband, or some other third party, and that the bank knew or ought to have known that she was acting under such undue influence. No such allegation is made in this case. In these circumstances, I cannot see that there was a duty on the bank to ensure that the defendant had independent legal advice prior to entering into the contract of guarantee.

63. In relation to the assertion made by the defendant that the contract of guarantee was unenforceable, as being unsupported by any consideration and in particular, that the consideration present was past consideration and therefore was not sufficient to support the contract; I am satisfied that it was open to the defendant to guarantee the existing and future indebtedness of her husband to the bank and such contract was supported by consideration, when the bank made further loans to the defendant's husband in 2011.

64. Finally, the defendant argued that the plaintiff should not be entitled to judgment, due to the fact that there was evidence from her handwriting expert that her signature on the credit agreement dated 15th March, 2011, had been forged. While that may have been the case, I accept the argument put forward by the plaintiff, to the effect that the defendant's signature was not a necessary ingredient to that contract of loan. In such circumstances, the fact that her signature may have been forged on that credit agreement, does not affect her liability to the plaintiff under the contract of guarantee.

65. The defendant has also resisted judgment on the basis that she wishes to cross examine the plaintiff's deponent, Ms. Jo Ann Shannon. It seems to me that the defendant cannot just state that she wishes to cross examine a witness and that this will be sufficient to prevent the plaintiff from obtaining summary judgment against her. She must establish that she has an arguable defence and that cross examination is necessary to determine the issues of fact that arise as part of the arguable defence put forward by the defendant.

66. While I accept that the defendant has found herself in a very difficult situation in relation to the acrimonious family law proceedings and in particular having regard to the fact that it would appear that her signature has been forged on a significant number of documents, which have been made available in the course of those proceedings; in the present case, I cannot find that the defendant has raised even an arguable defence to the plaintiff's claim herein. Accordingly, the plaintiff is entitled to the sum of €216,000.00 as against the defendant pursuant to the contract of guarantee dated 3rd June, 2010.

67. In its summary summons and in its notice of motion, the plaintiff has also claimed interest from date of demand, pursuant to the contract of guarantee. Clause 1 of the guarantee provides that the amount recoverable from the guarantor under the guarantee should not exceed the sum specified in the schedule thereto, which was €216,000.00, together with interest thereon, from time to time (whether before or after judgment) at the bank's lending rate from the date of demand by the bank upon the guarantor for payment, until full discharge.

68. Clause 17 of the contract of guarantee provided that the bank's specified lending rate for the purposes of the guarantee shall be the rate or rates applicable to the category of the accommodation granted, fixed by the bank from time to time.

69. The plaintiff has not set out the amount that is claimed by way of interest, nor has it set out the applicable rates of interest, nor has it set out the amount of interest accruing on a daily basis. In these circumstances, I am not going to allow any sum for interest on the amount due by the defendant pursuant to the contract of guarantee.

70. Accordingly, I grant the plainitff judgment against the defendant in the sum of €216,000.00. Interest will accrue on the judgment in the usual way from today until date of payment to the plaintiff.