[2019] IEHC 321

THE HIGH COURT

2015 No. 2325 S

AIB Mortgage Bank

Plaintiff

– and –

Adrian Blanc and Lucille Blanc

Defendants

JUDGMENT of Mr Justice Max Barrett delivered on 17th May, 2019.

1. Mr and Ms Blanc are being sued pursuant to two separate notices of motion for claimed loan liabilities arising on loans to Mr Blanc as sole borrower and Mr and Ms Blanc as joint and several borrowers. The loan documentation has been exhibited before the court and is in order. The following defences are raised:

> (1) **an affidavit sworn by a bank manager and stating that she is a bank manager in fact contains no evidence that she is a bank manager**. This is to misconstrue the nature of affidavit evidence: the averment by the bank manager that she is a bank manager *is* the evidence that she is a bank manager, and that she is a bank manager is accepted by the court.
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> (2) **the bank manager exhibits bank records but has no first-hand knowledge as to who prepared them, and must produce only original documents**. The evidence supplied by the bank in this regard is precisely the type of evidence contemplated by Clarke J. in *Moorview Developments Ltd v. First Active plc & ors* [2010] IEHC 275, para. 4.8, as approved by the Supreme Court in *Ulster Bank Ireland v. O'Brien & ors* [2015] IESC 96.
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> (3) **the bank manager is factually incorrect when she avers "*that the entry of the said account details into the computer records was made in the ordinary and usual course of business of the Plaintiff*"**. There is no reason to believe that the bank manager is factually incorrect in this regard; the defendants merely assert that this is so.
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> (4) **the bank has not produced perfected deeds of charge from the land registry as none, it is claimed, exist**. This is an issue that goes to the enforcement of security; it is irrelevant to the issue of liability for debt, being the issue at hand.
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> (5) **each of the defendants, it is claimed, is a consumer**. The loans relate to the financing of multiple property investments and it is clear from the evidence that the defendants were engaged in the business of property investment in taking out the loans. Although the court accepts that not every acquisition of a property additional to one's family home would necessarily suffice to mean that one was engaged in the business of property investment, the defendants have clearly 'crossed the Rubicon' from consumer to non-consumer in this regard.
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> (6) **the sums sought are incorrectly stated in the pleadings**. They are. However, the bank has sought to amend its claim to seek the amount actually owing and the court will acquiesce to that application
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> (7) **the defendants "*have not received letters of demand relating to the amounts claimed by the Plaintiff*"**. Before the hearing the plaintiff apparently understood the just-quoted text to mean that the amounts demanded were in error (and the quoted text falls naturally to be read that way). At hearing, it became clear that what was actually being alleged in this regard was that the letters of demand had never been received at all. The court accepts that it was not clear that this was the defence raised and will allow an affidavit to be filed by the bank as to the question of service, albeit that it would have expected proof of service to be included as standard in the material before it.
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> (8) **the loan accounts are the subject of a tracker rate investigation by the bank**. They were. However, that investigation has ended and no error has been found by the bank in this regard.
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> (9) **there is confusion as to whether the plaintiff bank is the correct plaintiff**. There is no such confusion. It is clear from the pleadings and the evidence that AIB Mortgage Bank is the correct plaintiff.
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> (10) **AIB owed a duty of care to ensure that neither defendant signed up to the loans without taking legal advice**. It is trite law that absent an express assumption of responsibility (and there is no evidence of any such assumption of responsibility here) a bank is not under a duty to advise, or to see to it that a customer is advised, as to the prudence or otherwise of a lending transaction (see *e.g., Lloyds Bank plc v. Cobb* [1991] 12 WLUK 199, *Kennedy v. AIB* [1998] 2 IR 48, and *Frost v. James Finlay Bank Ltd* [2002] EWCA Civ. 667).

2. The court will allow the bank to file an affidavit concerning the service of the letters of demand and will allow either or both of the defendants (should they wish) to file a replying affidavit. It will also thereafter hear the parties as to any point that they may make to wish concerning the service of the letters of demand. Subject to all being in order (if it is in order) in this regard, the court will grant summary judgment for the revised amounts sought, because on the basis of what is before the court at this time: (i) it is very clear that (a) neither defendant has any case, (b) there are no issues to be tried or only issues which are simple and easily determined, with (c) the affidavit evidence before the court not even disclosing an arguable defence (and so the low hurdle for sending the matter to plenary hearing, as identified by Hardiman J. in *Aer Rianta c.p.t. v. Ryanair Limited* [2001] 4 I.R. 607, 623 has not successfully been vaulted); and (ii) the foregoing being so clearly so, not even that "*discernible caution*" to which McKechnie J. refers in *Harrisrange Ltd. v. Duncan* [2003] 4 I.R. 1, 7 would justify the matter being sent to plenary hearing.