

THE HIGH COURT

[2015 No. 2051 S]

BETWEEN

THE GOVERNOR AND COMPANY OF BANK OF IRELAND

PLAINTIFF

AND

PATRICK TIMMONS

DEFENDANT

JUDGMENT of Mr. Justice Meenan delivered on the 20th day of May, 2019

Introduction

1. In these proceedings the plaintiff is seeking liberty to enter final judgment in the sum of £194,905.52 or the euro equivalent thereof. The plaintiff maintains that these monies are due and owing as being monies advanced to the defendant on foot of two loan accounts being account numbers 300731192 and 3007338474.

2. The defendant was not initially legally represented and drafted and filed his own affidavits. He was, however, legally represented at the hearing of the motion before the Court. In the course of these affidavits, the defendant maintains that he has raised an arguable defence such that the plaintiff's application for final judgment ought to be remitted to plenary hearing.

Affidavits of the defendant

3. In his first affidavit the defendant raises a number of technical issues and, in particular, states that the accounts which he had with the bank were cleared in full and thus there are no money due and owing.

4. These proceedings are related to other proceedings entitled *Bank of Ireland v. Michael Timmons* (bearing Record Number 2015 No. 2050 S) in that the loans in question appear to have arisen from the same commercial transaction. This judgment is to be read in conjunction with the judgment delivered in those related proceedings.

5. In a further affidavit, the defendant maintains that he does not have information concerning the two loan accounts referred to in para. 1 above. Though not relevant to these proceedings, the defendant criticises the appointment by the plaintiff of a receiver over the properties in respect of which the monies were advanced.

Affidavits of the plaintiff

6. A number of affidavits have been filed on behalf of the plaintiff in support of the application for summary judgment. The various affidavits of Ms. Hazel Fitzpatrick set out the background to these loans and the basis for the two accounts referred to. In support of these averments, Ms. Fitzpatrick exhibits various bank statements and other documentation. The basis of the claim herein is clear from these statements and it is also entirely clear that the monies sought to be recovered were drawn down by the defendant but have not been repaid.

Principles to be applied

7. Granting judgment against a defendant in a motion for summary judgment clearly has serious implications in that by doing so the defendant is being refused a plenary hearing. Given this, it is not at all surprising that the threshold is low for a matter such as this to be remitted to plenary hearing. This is clear from the following passage of Hardiman J. in *Aer Rianta v. Ryanair Limited* [2001] 4 I.R. 607, 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 simply and easily determined? Do the defendants' affidavits fail to disclose even an arguable defence?"

8. On an application of this principle, it is clear to me that the affidavits of the defendant do not disclose any *bona fide* defence to the plaintiff's claim. The various issues which the defendant has raised concerning the background to the loans is fully answered in the documentation exhibited in the affidavits of Ms. Fitzpatrick. It is entirely clear that monies were advanced by the plaintiff to the defendant and that these monies were not repaid.

9. It should be noted that, unlike the defendant in the related proceedings, the defendant herein does not raise, in any detail, a claim for negligent misrepresentation. Though it is correct that there are references to this in the course of an affidavit, there is not even the most basic detail as to whom, on behalf of the plaintiff, made the alleged misrepresentation, what representations were made and when they were made.

Conclusion

10. By reason of the foregoing, I will grant summary judgment to the plaintiff and hear counsel as to the precise amount.