THE COURT OF APPEAL

Neutral Citation Number: [2018] IECA 203

Record Number 2016/330

Irvine J.
Hogan J.
McGovern J.

BETWEEN/

DANSKE BANK A/S trading as Danske Bank

PLAINTIFF/

RESPONDENT

- AND -

GREGORY DUGGAN

DEFENDANT/

APPELLANT

JUDGMENT of Ms. Justice Irvine delivered on the 27th day of June 2018

1. This is the appeal of the defendant, Mr. Gregory Duggan, against the order of the High Court, O'Regan J., made on the 20th June 2016.

2. By her order, the High Court judge granted Danske Bank ("the bank") judgment against Mr. Duggan for a sum of €150,000. She ordered that the balance of the bank's claim be adjourned for plenary hearing.

Background
3. By summary summons dated the 10th September 2013 the bank commenced proceedings claiming judgment against Mr. Duggan in the sum of €387,254.49 on foot of term loan facilities dated the 16th February 2005 and the 23rd May 2006 and also on foot of current account number 95164931014617.

4. By notice of motion dated the 24th March 2014 the bank applied for liberty to enter judgment in the aforementioned sum and did so grounded upon an affidavit sworn by Ms. Sharon Keenan dated the 27th February 2014. In her affidavit she deposed to Mr. Duggan's failure to meet his contractual obligations and that by letter dated the 22nd August 2013 the bank had written to Mr. Duggan demanding payment of the aforementioned sum. Ms Keenan further advised that a further demand had been made of Mr Duggan by solicitor's letter dated the 3rd September 2013. She also referred to a copy statement of account concerning the monies outstanding as of the 21st August 2013 in respect of both principal and interest.

5. It later became clear that Mr. Duggan's borrowings from the bank had been secured on a property which he owned at 5 Glenabo Heights, Fermoy, County Cork and that by reason of his default in meeting his repayment obligations, the bank had appointed Mr. Fergus Lowe as receiver with a power to sell that property. Mr. Duggan fully cooperated with the receiver and handed him the keys to the property so it might be sold and his liabilities to the bank thereby reduced. It would appear that in early 2014, after the bank had issued its proceedings but long before it issued its motion for judgment, the receiver sold the property. The property was sold for a sum of €180,000 and a sum of €159,297.31, stated to represent the net proceeds of sale, was remitted to the bank on 24th July 2014.

6. The bank's motion was before the court on the 24th March 2014 and again on the 23rd June 2014. At that stage Mr. Duggan advised the presiding judge that judging from a property search which he had carried out, he could tell his house had been sold by the receiver and that the bank had not credited his account with the proceeds of sale.

7. It is of little surprise that Mr. Duggan was extremely perturbed that the bank's claim had not been modified in light of the sale. He was understandably aggrieved by the conduct of the bank given that its claim at that point was grossly exaggerated in the light of the sale of his home several months earlier. According to Mr. Duggan, he expressed his concern to the court as to what might have happened had he not been in attendance to make known the true position.

8. It is difficult in light of the bank's conduct not to empathise with Mr. Duggan's scepticism about all which later followed. It is easy to understand why, in light of what had occurred, he was anxious to ensure that the claim as recast by the bank in light of the sale was not unwarranted or inflated.

9. Mr. Duggan wrote to the bank's solicitors, Ivor Fitzpatrick & Co, seeking details regarding the sale of his property. When advised that the net proceeds of sale were €159,297.31, he wrote by letter dated the 18th August 2014 requesting the bank to make discovery of a range of documents destined to establish the extent of his then liability to the bank. That request was declined on the basis that a request for discovery in summary summons proceedings was not appropriate.

10. Following a number of adjournments, Mr. Duggan was ultimately furnished with a supplemental affidavit sworn by Ms. Keenan dated the 19th November 2015. That affidavit detailed the sale of Mr. Duggan's property by the receiver. She also exhibited a letter from Peter Morrissey & Co, the Solicitors who had acted on behalf of the receiver in the sale, enclosing a number of documents and

vouchers regarding deductions made from the sale price in order to explain how the net proceeds of sale had been calculated in the sum of €159,297.31.

11. It should be said that notwithstanding that affidavit, Mr. Duggan by letter dated the 11th April 2016 sought extensive discovery from the receiver. Mr. Duggan readily acknowledges that the receiver is not a party to the proceedings but he is perturbed by the fact that the receiver has chosen not to communicate with him concerning the sale of his property. He has further expressed to this court his frustration with the fact that whilst the bank maintains the position that the receiver is his agent, it is the bank's solicitors that reply to him when he writes to the receiver seeking information.

12. It is important to record that Mr. Duggan swore two replying affidavits for the purposes of resisting the bank's application for summary judgment. Those affidavits detail his frustration with the bank and the receiver. In particular, he drew the court's attention to the bank's efforts to recover judgment in a grossly inflated sum having regard to the sale of his property, and to the fact that he had been thwarted in his efforts to obtain full disclosure of wide-ranging documents, which he considered necessary to enable him properly assess whether the banks claim was validly constituted. It should also be noted at this stage that neither of his affidavits address the possibility that his property may have been sold by the receiver at an undervalue or at a price below that which was available.

Decision of the High Court judge

13. Following extensive exchanges between the court and the parties the High Court judge concluded that, giving Mr. Duggan what she described as "a full crack of the whip" (p.17 line 32) he owed the bank at least €150,000. That being so she remitted the balance of the bank's claim (€50,242.88) to plenary hearing. In so deciding the trial judge took into account Mr. Duggan's argument that he might, *inter alia*, advance a defence to the balance of the banks claim on the basis that the receiver had sold his property for €15,000 less than what was available in terms of an offer.

14. The High Court judge also took into account Mr. Duggan's contention that he might be in a position to challenge the validity of the sum of €21,000 that had been deducted by the receiver in respect of fees, costs and expenses from the actual sale price of €180,000. In support of her conclusion, the High Court judge stated that the receipts vouchers and invoices supporting the deductions made by the receiver were not comprehensive, were confusing and in one instance appeared to be excessive.

15. Thus, the High Court judge decided to grant judgment in the sum of €150,000 being a sum Mr. Duggan clearly could not dispute. In the course of her ruling she also stated that the balance of the bank's claim could be referred to plenary hearing to allow Mr. Duggan dispute the banks claim and if necessary join the receiver for that purpose. She also awarded the bank its costs for the day of the hearing, but adjourned all other costs that had not already been dealt with on earlier occasions to the trial of the action.

The appeal

16. In his notice of appeal Mr. Duggan maintains that the High Court judge:-

> 1. did not afford him a fair hearing. In particular, he complains that he was not permitted to open the supplemental affidavit which he filed on the 20th June 2016;
>
> 2. erred in law in failing to direct the bank to make "full and frank disclosure" when it was apparent it had exaggerated its claim;
>
> 3. erred in law in calculating the amount in respect of which she had granted judgment in the absence of supporting documentary evidence; and
>
> 4. erred in law and in fact in failing to remit the entire claim to a plenary hearing.

17. In its respondent's notice the bank maintains that:-

> 1. the High Court judge conducted the hearing in accordance with the principle of *audi alteram partem*;
>
> 2. there was no legal obligation on the High Court judge to order disclosure/discovery;
>
> 3. the High Court judge was entitled to grant judgment in the sum of €150,000 based upon the evidence before her.

18. The bank also cross appeals the decision of the High Court judge to remit the balance of the claim to plenary hearing. It claims that she should have granted judgment in the full amount claimed, namely €200,242.88. The bank submits that the High Court judge impermissibly relied upon Mr. Duggan's assertion that the receiver had sold the property at an under value. Even if Mr. Duggan was correct and the receiver had sold the property at an undervalue, the bank could not be liable for any wrongful act on the part of the receiver, who was in law the agent of Mr. Duggan. Likewise, the bank argues that it was entitled to judgment against Mr. Duggan based upon the sum outstanding after the net proceeds of sale had been credited to his account. If the net proceeds of sale were less than they ought to have been by reason of any default on the part of the receiver that was a matter between Mr Duggan and the receiver. The receiver's actions could not afford Mr Duggan any defence to the bank's claim. Neither could they support any valid counterclaim which might be set off against the bank's liabilities.

Legal principles

19. The principles to be applied by a High Court judge when hearing an application for summary judgment are well established and are not in contest in this case. The most straightforward guidance on the proper approach to the judge's task is to be found in the decision of Hardiman J. in *Aer Rianta v. Ryanair* [2001] 4 I.R. 607 where he stated at p. 623:-

> "In my view, the fundamental question 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?"

20. More detailed guidance as to the approach to be adopted by the court is to be found in the judgment of McKechnie J. in *Harrisrange Limited v. Duncan* [2002] IEHC 14, [2003] 4 I.R. 1 where he identified the following principles as those to be applied on an application for summary judgment, namely at para. 9: -

> "(i) the power to grant summary judgment should be exercised with discernible caution;

(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;

(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;

(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.

21. Of assistance also is the test as described in *First National Commercial Bank plc v. Anglin* [1996] 1 I.R. 75 which identified the task for the court as being "to decide whether … the defence set out in the affidavits … is credible, or in other words, whether there is a fair or reasonable probability of the defendant having a real or *bona fide* defence."

22. Of further relevance in the context of the first of Mr. Duggan's grounds of appeal, is the principle that constitutional justice requires that litigants be afforded a fair, just and impartial hearing. A judge must ensure that he or she gives a party to litigation a reasonable opportunity to be heard and to address the issues in the proceedings. Litigants are not however, entitled to unlimited access to the court. They are not entitled to address the court for as long as they consider appropriate on matters they consider relevant. Litigation must be conducted in an efficient and orderly manner and with regard to the ever increasing demands on the court's own scarce resources. Judges often have to curtail the submissions of litigants particularly if they appear determined to waste the court's time and expose their opponent to additional costs by addressing matters which in the court's view are clearly not material to the matters in dispute. On other occasions, litigants will be advised that they must make their submissions within a confined period of time. More fundamental than all of this, however, is that it is not open to a litigant to claim that they did not get a fair hearing by reason only of the fact that the judge concerned rejected their submissions and ruled against them, on any or possibly issues.

Decision

23. Whilst I have no doubt whatsoever that Mr. Duggan is bona fide in his belief that he did not obtain a fair hearing from the High Court judge, having read the transcript of the proceedings I am quite satisfied that this is because Ms. Justice O'Regan failed to respond favourably to his application that the entire claim be remitted for a plenary hearing. I am fully convinced that he would have had no complaint regarding the manner in which she conducted the hearing or the time she devoted to his submissions if, at the end of her deliberations, she had acceded to his application.

24. Not only did the trial judge pay great attention to each of the submissions made by Mr. Duggan, she went through, in a painstaking way, all of the documentation exhibited by the bank in its efforts to explain how the net proceeds of sale figure had been calculated and in order to ascertain whether his assertion that the deductions were potentially excessive was born out by the evidence. Indeed on many occasions she intervened and raised issues with counsel on behalf of the bank which were destined to clarify matters about which Mr. Duggan was concerned.

25. Not only did the High Court judge have regard to all of the matters raised by Mr. Duggan in his two affidavits, but she also engaged with a number of his concerns which were not addressed in his affidavit, such as his assertion that he had heard that the receiver had received an offer of €195,000 for the property which was not accepted.

26. For the aforementioned reasons I am fully satisfied that the complaint made by Mr. Duggan, that he did not get a fair hearing from the High Court judge, is unsustainable.

27. In relation to Mr. Duggan's claim that the High Court did not permit him open his replying affidavit, I can see nothing in the transcript to suggest that he was precluded from opening any affidavit to which he wished to refer. Also, Mr. Duggan does not explain how he was prejudiced by reason of any such restriction. Further, from my reading of the transcript, it is clear that the trial judge was live to the matters referred to by Mr. Duggan in his supplemental affidavit and in particular to his stated concern that without full disclosure he was not in a position to assess whether the sum claimed against him was or was not excessive. For these reasons, I would reject this ground of appeal.

28. I also reject Mr. Duggan's submission that he was entitled to discovery/disclosure and the trial judge erred in law in granting judgment against him in the absence of the documentation that would have been available to him had such an order been made.

29. The first thing to be said in relation to this submission is that discovery is not a procedure which is available in the context of

summary summons proceedings. Indeed, the benefit of the summary procedure is that straightforward claims, where the amount claimed is readily ascertainable, can be dealt with in a relatively short timeframe and in a cost-effective manner. Because the sum claimed must be readily ascertainable, discovery of documents should not be required. If it is, the claim is not one suitable for disposal in a summary manner.

30. It is also understandable that Mr. Duggan, who is a lay litigant and consequently unfamiliar with the rules and practices of the courts, would not understand that orders for discovery are only made in the context of plenary proceedings and then only when it is necessary to resolve issues which can be identified in the pleadings exchanged between the parties. In the present case, because the proceedings are of a summary nature there has been no exchange of pleadings. However, if a judge refers summary proceedings for a plenary hearing, then discovery may be ordered at that stage.

31. Another reason to reject this ground of appeal is that discovery must be directed to issues between the parties to the proceedings. Here Mr. Duggan's complaint concerns the actions of the receiver, who was at all times his agent and is not a party to the proceedings. That being so there were no issues extant before the court as between the receiver and Mr. Duggan which might be resolved by discovery.

32. Finally, leaving aside the fact that discovery is unavailable in the context of summary summons proceedings there was no suggestion that any documentation existed that might have offered Mr. Duggan a defence to the first €150,000 of the banks claim. That being so and for all of the other reasons earlier mentioned this aspect of Mr. Duggan's appeal must also fail.

33. In order for Mr. Duggan to succeed on all other aspects of his appeal he must establish that the evidence which he put before the High Court judge on affidavit, demonstrated the probability that he could advance a *bona fide* and credible defence to the banks claim in the amount of €150,000.

34. For the purposes of assessing whether Mr. Duggan met that threshold of proof I have read all of the papers which were before the High Court judge. I have also had the benefit of reading the transcript of the hearing that took place on the 20th June 2016 and of considering all of the submissions advanced by Mr. Duggan on his appeal.

35. Whilst I have considerable sympathy for Mr. Duggan and can well understand his distrust of the bank's claim in light of the manner in which it conducted these proceedings, I am nonetheless fully satisfied that he did not provide the type of evidence required to resist the judgment granted against him by the High Court judge. He simply has not established on this appeal that he put evidence before the High Court judge from which she ought to have concluded that he might advance a credible and *bona fide* defence to the bank's claim for €150,000, that being the amount of the judgment granted against him.

36. The height of the defence proposed by Mr. Duggan was based upon an alleged sale of his property by the receiver at an under value of €15,000 and then a query over deductions of €21,000 from a sale price of €180,000. I will return later to consider the manner in which these proposed grounds of defence were put before the court. Suffice to say at this juncture that those sums, when taken together, could at best potentially have afforded Mr. Duggan a defence to some €36,000 of the bank's overall claim of €200,242.88. This was the final figure claimed by the Bank as clarified by Ms. Keenan in her affidavit of 19th November 2015. In those circumstances it cannot be stated that the High Court judge erred in law or in fact in granting judgment in favour of the bank for €150,000.

The Bank's Cross Appeal

37. As to the bank's cross appeal, I am satisfied that the legal submissions made by counsel on behalf of the bank are correct in that Mr. Duggan did not establish the probability of a *bona fide* or credible defence to the total claim of the bank (€200,242.88) at the hearing of the bank's application for summary judgment.

38. All of Mr Duggan's proposed grounds of defence concern alleged wrongdoing on the part of the receiver who is not a party to the proceedings and for whose actions the bank cannot as a matter of law be held accountable. This is because the receiver is Mr. Duggan's agent. He is not the agent of the bank. That said, I can well understand how, in circumstances where the bank's solicitors corresponded with him concerning queries which he raised with the receiver, Mr. Duggan might consider that the receiver was acting hand in glove, so to speak, with the bank.

39. Accordingly, even if Mr. Duggan had adduced credible evidence to the effect that the receiver had sold his property at an under value, that would be a matter between Mr. Duggan and the receiver. Any such evidence could not afford him a defence to any aspect of the bank's claim. The same legal position pertains in respect of any evidence that might credibly demonstrate that the sum deducted by the receiver for costs and expenses concerning the sale of the property was excessive. Again, that evidence could only give Mr. Duggan a cause of action against the receiver and not the bank. Accordingly, even if the proceedings were conducted in the manner anticipated by the trial judge and the receiver was to be joined to the proceedings, Mr. Duggan's claim against the receiver could not as a matter of law afford him a defence to the bank's claim. This is not a case in which Mr. Duggan might have a counterclaim against the bank which could be set off against the sum claimed against him.

40. It is also important for Mr. Duggan to understand that, in accordance with the legal principles earlier described, a judge cannot remit a claim or any portion of a claim to plenary hearing based upon a bald assertion which is otherwise unsupported by credible evidence. Hence, even if the bank could be made liable in respect of any wrongdoing on the part of the receiver there was simply no evidence upon which they High Court judge was entitled to have regard to Mr. Duggan's stated belief that there had been an offer of €195,000 for his property which had not been accepted by the receiver. First, that statement of fact was not offered on affidavit. Second, the statement was no more than a bald assertion which was unsupported by any other evidence. Indeed, Mr. Duggan himself admitted that the person who had furnished him with this information was not prepared to become involved in the legal proceedings. Accordingly, even if the matter had proceeded to trial Mr. Duggan could never prove that there had been an offer of €195,000 for the property which had not been accepted by the receiver and the parties would have been put to the expense of an oral hearing in the course of which no admissible evidence on the issue would have been forthcoming, Mr Duggan's evidence being inadmissible as hearsay. Neither did Mr Duggan put before the court any valuation of the property at the time which might support his own belief that the property could have been sold at a better price had the receiver acted in accordance with his professional obligations.

41. Having regard to the legal relationship between the bank, the receiver and Mr. Duggan it is probably not necessary to go further to explain why it is the High Court judge erred in law in failing to grant judgment to the bank in the sum claimed. However, in light of his grounds of appeal, I should probably try to explain to Mr. Duggan in simple terms why it is clear that at least €200,242.88 can be stated to have been due by him, notwithstanding the fact that the figures of the bank and those furnished by the receiver's solicitor do not correspond.

42. Ms. Keenan's supplemental affidavit reduced the bank's claim from €387,254.49 to a sum of €200,242. 88 on the basis that Mr. Duggan was entitled to two credits. The first was €159,297.31 in respect of the net proceeds of sale and the second the sum of €4,020 in respect of a credit due for Non Principal Private Residence tax (total €163,317.31). It would appear beyond doubt that Ms. Keenan's calculation, as advised in paragraph 7 of affidavit, cannot be correct. Assuming the validity of the net proceeds of sale figure and making allowance for the aforementioned credits the greater sum of €223,937.18 remained outstanding. However, even if the full €180,000 sale price and the tax remittance of €4,020 had been credited to Mr. Duggan's undisputed earlier liability for €387,254.49, it is clear that the bank was entitled to recover judgment for at least €203,234.49 (€387,254. 49 less €184,020).

43. In order not to complicate matters, I have not factored into my calculations counsel's submission that only €175,000 was actually paid for the property on the basis that the purchaser paid a reduced purchase price to reflect some problem concerning the boundary to the property. Whilst a deduction of €5,000 is mentioned in Mr. Morrissey's correspondence, I cannot be certain that this deduction might not have been made in coming to the sale price of €180,000. It is likewise fair to say that my calculations take no account of *any* expenses incurred in relation to the sale as are identified in the vouchers attached to Mr Morrissey's letter. These include costs relating to such matters as skip hire, the changing of locks, electrical work, auctioneer's fees, estate agent's fees, tax advice and so on. When totalled these costs and expenses amount to a figure somewhere in the region of €16,000. Even if Mr Duggan as a matter of law was entitled to rely on the conduct of the receiver and upon a bald assertion to defend the bank's claim, which he clearly is not, it is beyond doubt that the greater portion of these costs and expenses would ultimately be validated. In other words, Mr Duggan had no prospect of establishing deductions which could ever reduce the bank's entitlement to a sum of less than €200,242.88.

Conclusion

44. It is easy, in the circumstances of this case, to understand how Mr. Duggan is suspicious and sceptical about every aspect of the bank's claim and feels that he will only achieve justice if the bank's full claim is remitted to a full plenary hearing. However, Mr. Duggan needs to understand, that for the reasons I will now summarise, he has no such entitlement. He also needs to come to terms with the fact that for the reasons I have sought to explain earlier in this judgment, a plenary hearing would not be in his interests as he has simply no prospects of successfully defending any aspect of the bank's claim. Such a hearing would probably take a number of days after which judgment would be granted against him. He would also likely be directed to pay the bank's legal costs, a very significant additional financial burden to be borne by someone already under such financial pressure.

45. For the reasons earlier stated I am fully satisfied that Mr. Duggan was afforded a just and fair hearing by the High Court judge. The judge cannot be faulted in any respect in terms of her courtesy and consideration and the attention she paid to Mr. Duggan's submission that the proceedings should be referred to plenary hearing. The hearing fully complied with Mr. Duggan's rights to natural justice and fair procedures.

46. I am also satisfied, for the reasons earlier stated, that the trial judge was entitled to grant judgment in favour of the bank without making any order for discovery and/or disclosure in favour of Mr. Duggan.

47. As to Mr. Duggan's other grounds of appeal, these must fail for two reasons. First the matters upon which he seeks to rely in order to establish the probability of a credible and *bona fide* defence have not been committed to affidavit. Even if they had been, they would not meet the threshold required to warrant a plenary hearing. His assertion that his property was not sold at the optimum price available is no more than a bald assertion for which there is no supporting evidence. As to his contention that the net proceeds of sale are understated, once again he has not sought to advance on affidavit any basis upon which he might establish that this is so. Second, and perhaps of even more significance, is the fact that even if Mr. Duggan had been in a position to provide credible evidence to support his belief that his house was sold at an undervalue or that there had been unwarranted deductions from the sale price in respect of fees and other charges, any such claim could only lawfully be brought against the receiver who is not a party to the proceedings. Any such default on the part of the receiver could not be relied upon to diminish his liability to the bank. Accordingly, the matters upon which Mr. Duggan seeks to rely do not demonstrate the probability that he might advance a credible and *bona fide* defence so as to warrant a plenary hearing.

48. Having regard to all of the aforementioned matters I would dismiss Mr. Duggan's appeal and for the reasons earlier detailed I would allow the banks cross-appeal with the effect that judgment should be entered against Mr. Duggan for the additional sum of €50,242.88.

49. Before concluding this judgment, I do however feel it necessary to make a number of observations which I consider to be important, even if they do not go to the core of the legal issues raised on the appeal.

50. Whilst it is understandable that Mr. Duggan feels aggrieved about the fact that when the bank issued its motion for judgment he had not been given credit for the sale of his property by the receiver, with the result that the claim made against him was grossly excessive, it does not follow that this error was sufficient to justify the court remitting any part of the proceedings to plenary hearing. Once the bank was prepared to amend its claim, it was entitled to ask the court to grant a judgment in respect of the lesser sum. The court might have struck out the bank's motion on the basis that the sum claimed was excessive, but to have done so would not have availed Mr. Duggan in the long run as the bank would have been entitled to issue a fresh notice of motion to claim the correct sum.

51. It should nonetheless be stated that the error made by the bank was a serious one and would have had profound consequences for Mr Duggan had he failed to appear to the bank's motion for judgment. The bank would have obtained judgment against him in a grossly inflated sum and would have been entitled to take whatever steps it considered appropriate to execute that judgment with potentially very serious consequences for Mr Duggan.

52. Before Ms. Keenan swore her affidavit on the 27th February 2014, knowing as she ought to have done that the bank had appointed a receiver to realise its security, she should have checked to ensure that the property had not been sold so as to make sure that when the bank sought judgment it did so in respect in the sum that validly reflected Mr. Duggan's liability. Certainly by the time the bank's motion came before the court for the first time on the 24th March 2014, it should have been in a position to inform the court that the property had been sold since the proceedings issued.

53. Quite properly, counsel for the bank now accepts that the bank was remiss in this regard and also properly concedes that the sum claimed by the bank in Ms Keenan's supplemental affidavit, having given Mr Duggan credit for the net proceeds from the sale of his house, is also incorrect in that it does not accurately reflect the true extent of Mr. Duggan's liabilities, albeit that he submits that the error was to Mr Duggan's advantage.

54. In my view, it is all very well for the bank to state that whatever error it made in calculating the proper reduction in its claim,

having regard to the sale of the property, was to Mr Duggan's advantage, but that concession, belatedly made, is one hardly likely to dispel Mr Duggan's deep distrust concerning the manner in which the bank has calculated its claim. Neither would it likely give him confidence that he should accept as valid the total sum claimed in the light of all the credits and allowances which he is entitled to having regard to the sale of his house.

55. To add to Mr. Duggan's concerns and the stress which he has been under arising from the manner in which these proceedings have been conducted, is the fact that the documents exhibited to support the sum remitted to the bank as the net proceeds of sale were not only confusing in their content, but when the invoices and vouchers were totalled did not align with the bank's amended claim. However, for the reasons already stated, any errors made by the receiver and his advisers cannot benefit Mr. Duggan in seeking to defend these proceedings.

56. I have made these final observations given that the issue of costs remains outstanding. I consider that, subject to hearing argument from the parties on the matter, the conduct of the bank in this case is a factor that the court might take into account when reaching its decision on that issue.