[2017] IEHC 299

THE HIGH COURT

2011 No. 3286S

Between:

ALLIED IRISH BANKS PLC

Plaintiff

– and –

MR H. and MS H.

Defendants

JUDGMENT of Mr Justice Max Barrett delivered on 12th May, 2017.

1. Ms H has not had it easy in recent years. Mr H, her long-time husband, has abandoned her and their children. This has come as a blow to Ms H and brought about or aggravated some related ill-health on her part. Ms H has struggled to get by on the limited financial support that she has received from the State, and what appears to be but intermittent and, Ms H claims, unsatisfactory financial support from Mr H.**[1]**

[1] Although it is necessary to recite the foregoing by way of background facts, given the personal nature of the circumstances that appear to have led ultimately to the within application, the court has elected to anonymise the identities of the defendants in this judgment.

2. AIB seeks now to enforce a personal guarantee against Ms H for an amount which she fears will lead to her losing her family home. Because Ms H has limited financial resources, she was forced to represent herself in court, and represented herself well, albeit that once or twice she, understandably, came close to tears under the pressure of presenting her case.

3. The guarantee in question is a joint and several guarantee, dated 8th April, 2002, executed by Ms H and Mr H in favour of Limited Company Z, and capped at €65k. It is the standard-form guarantee that the court often sees in transactions involving AIB and the court does not, in the context of the within application, see any legal difficulty to present with the terms of the guarantee *per se*. AIB has come to court seeking summary judgment in respect of €65k against Ms H (minus €825 that she somehow managed to pay since demand was made); Mr H has previously consented to an order being entered against him in the amount of €64.9k. The court has to determine, in particular by reference to the decisions of the Supreme Court in *Aer Rianta c.p.t. v. Ryanair Limited* [2001] 4 I.R. 607 and McKechnie J. in *Harrisrange Ltd. v. Duncan* [2003] 4 I.R. 1, whether to grant the summary judgment now sought or to send the matter to plenary hearing.

4. Notable in this last regard is the fact that on 30th August, 2010, Ms H placed a call with AIB and spoke with one of its employees concerning her liability under the guarantee. As the call proceeded, Ms H jotted down notes as to what was being said. Among her notes was the following observation: "*If I pay ½ then I am out*". Perhaps surprisingly, the bank has no recording of the telephone conversation. However, a note separately prepared by the relevant bank official sometime after the call (it is not entirely clear how long afterwards and there appears to be some dispute between the parties as to the completeness of the note) does not refer to the just-quoted segment of the conversation. However, Ms H is adamant that this portion of the conversation occurred as and when she noted it and that the two notes (*i.e.* Ms H's note and that of the relevant bank official) should be read as complementary, with each party to the call jotting down the points that seemed most relevant to such party as they both proceeded.

5. Ms H contends that on the basis of the conversation aforesaid a promissory estoppel arises and that the bank can no longer proceed against her for the full sum guaranteed under the guarantee. Thus she contends in effect for a form of estoppel coming within the classic assertion by Lord Chancellor Cairns in *Hughes* v. *Metropolitan Railway Co* (1877) 2 App Cas 439, as relied upon by Denning J., as he then was, in *Central London Property Trust* v. *High Trees House* [1947] K.B. 130, that:

> "*It is the first principle upon which all courts of equity proceed, that if parties who have entered into definite and distinct terms involving certain legal results…afterwards by their own act…enter upon a course of negotiation which has the effect of leading one of the parties to suppose that the strict rights arising under the contract will not be enforced, or will be kept in suspense…the person who otherwise might have enforced those rights will not be allowed to enforce them where it would be inequitable having regard to the dealings which have thus taken place between the parties.*"

6. Quite where matters will come out for Ms H as regards the purported promissory estoppel presenting is not for this Court to predict. Whether a court at plenary hearing will be satisfied that the alleged representation was ever made to Ms H is a hurdle that she will need to vault. And other hurdles arising from the, to some extent, uncertain ambit and effect of promissory estoppel as it exists under Irish law, even some 70 years after the decision in *High Trees* and 140 years after the decision in *Hughes*, may also be encountered – though it may be, curiously, that that absence of certainty on some key aspects of promissory estoppel in Irish law to which, for example, Professor Biehler refers in *Equity and the Law of Trusts in Ireland* (6th ed.) at 827–830, has the result for Ms B of making it even more preferable that her case should go to plenary hearing, if there is to be (and it appears that there will be) a dispute about both matters of fact and perhaps also of law.

7. The hurdle that must be vaulted by Ms H before the within application is sent from summary hearing to plenary hearing has of course been set very low by the Supreme Court in its decision in *Aer Rianta*, Hardiman J. noting in his judgment therein, at 623, that:

> "*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?*"

8. Having regard to the foregoing, the court cannot conclude that it is very clear that Ms H has no case, that there is no issue to be tried, and that the issues which arise for consideration are simple and easily determined. All this being so, and mindful of the foregoing and of the "*discernible caution*" that the court, per McKechnie J. in *Harrisrange*, at 7, indicates that the court ought to bring to the granting of summary judgment, the court, not without some hesitation, but preferring in a summary application such as that now presenting to err on the side of caution, respectfully declines to grant the summary judgment now sought and will instead refer the within application to plenary hearing.