THE HIGH COURT

2017 No. 2261 S

Between:

ALLIED IRISH BANKS, PLC

Plaintiff

– and –

ELIZABETH MURRAY

Defendant

2017 No. 1782 S

Between:

ALLIED IRISH BANKS, PLC

Plaintiff

– and –

LAURENCE MURRAY

Defendant

JUDGMENT of Mr Justice Max Barrett delivered on 3rd May, 2019.

1. ***Ms Murray's Case.*** Ms Murray's case is another of those unhappy cases in which a mother becomes a director in a family company and a guarantor for certain company liabilities, claims to play no real part in the company and becomes exposed to significant personal financial liability. The court again respectfully exhorts people who find themselves asked by a loved one to become a company director and/or a guarantor of company debt, to consider most carefully whether they truly wish to accept the liabilities that may present if, as so often happens in business, an ostensibly attractive commercial venture fails.

2. Pursuant to a letter of guarantee of 15.12.2015, Ms Murray unconditionally and irrevocably, on a joint and several basis, guaranteed the liabilities of Soljet Limited, a company of which she was then director. The guarantee contains a prominent warning as to the consequences of entering into the guarantee. It contains an advisory note that Ms Murray should obtain legal advice before signing it. It was signed by her in the presence of her solicitor. On 28.06.2017, demand was made under the guarantee. Ms Murray contends that:

> ***(i) while she was a director of the company, she was not involved in the daily operation of same and that she had difficulty in getting relevant information from her son/the company***. Respectfully, this is of no avail to Ms Murray.
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> ***(ii) she signed the guarantee in effect under some form of duress from AIB***. At all relevant times Ms Murray had her solicitor available to her to provide advice. Moreover, her own evidence indicates that any pressure to which she was subject, in particular as to the potential loss of her family home, came from Mr Murray. As to the suggestion that an AIB official's observation that if documentation was not signed AIB would be unsupportive in terms of a restructuring, this appears to have been but a statement of fact; moreover, the court cannot but note that Ms Murray wrote to the relevant officers of AIB on 16.12.2015 thanking them for how they had acted.
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> ***(iii) the facility letter of 28.10.2015 required as a condition precedent to drawdown that AIB be furnished with confirmation of the provision of legal advice to any guarantors, which confirmation was not provided***. This seems more properly a matter for AIB and the borrower. Be that as it may, such a condition precedent is in any event clearly for the benefit of the bank (to avoid a guarantor later claiming that s/he did not appreciate the significance of what s/he was doing) – the notion that a bank would seek in its own terms to benefit a guarantor through the inclusion of such a condition precedent seems a mite unreal; the foregoing being so the clause could be waived by AIB. Even if this were not so, and the court is alive in this regard to the (surprising) decision of the Court of Appeal in *ACC Loan Management v. Sheehan* [2016] IECA 343, point (iii) fails in any event for the following reason: the condition precedent cuts both ways, affecting bank and borrower; by proceeding to drawdown, bank and borrower clearly agreed, at the least impliedly, that the condition precedent should not apply. So by waiver and/or agreement the condition precedent lapsed.

3. The hurdle to be surmounted by Ms Murray as regards having this matter sent to plenary hearing is the low one identified by Hardiman J. in *Aer Rianta c.p.t. v. Ryanair Limited* [2001] 4 I.R. 607, 623, as expounded upon by McKechnie J. in *Harrisrange Ltd. v. Duncan* [2003] 4 I.R. 1, 7. The court has sympathy for the position in which Ms Murray now finds herself. However, it is very clear that she has no case, that there are no issues to be tried or only issues which are simple and easily determined, with the affidavit evidence before the court not even disclosing an arguable defence. Even that "*discernible caution*" which McKechnie J. indicates should be brought to bear in an application such as the within does not suffice for the court to refuse the summary judgment sought.

4. ***Mr Murray's Case***. Mr Murray was a director of Soljet and likewise executed a guarantee on 15 December 2015 in which he unconditionally and irrevocably, on a joint and several basis, guaranteed the liabilities of Soljet Limited. Demand has now been made under the guarantee. The height of Mr Murray's defence appears to be that when Soljet went into receivership the receiver did not act in Soljet's best interests. However, that receiver was acting as the agent of the mortgagor/chargor (Soljet); so AIB is not liable for any actions of the receiver.

5. The hurdle to be surmounted by Mr Murray as regards having this matter sent to plenary hearing is as set out in respect of Ms Murray at para.3. The court has sympathy for the position in which Mr Murray now finds himself. However, it is very clear that Mr Murray has no case, that there are no issues to be tried or only issues which are simple and easily determined, with the affidavit evidence before the court not even disclosing an arguable defence. Even that "*discernible caution*" which McKechnie J. indicates should be brought to bear in an application such as the within does not suffice for the court to refuse the summary judgment sought.

6. ***Conclusion***. The court will grant the summary judgments sought, in the above-titled proceedings, against Ms and Mr Murray respectively.