Neutral Citation: [2015] IEHC 376

THE HIGH COURT

[2013 No. 88 S.]

BETWEEN

ULSTER BANK IRELAND LIMITED

PLAINTIFF

AND

MICHAEL QUINN AND BRIDGET QUINN

DEFENDANTS

JUDGMENT of Mr. Justice McDermott delivered on the 15th day of June, 2015

1. This is an application by the plaintiff seeking summary judgment in the sum of €97,574.73 which is claimed to be due and owing on foot of a guarantee furnished by the defendants to the plaintiff as security for an overdraft facility furnished by the plaintiff to Clough Valley Stores Limited, which is now in receivership.

2. An appearance was entered to the summary summons on 31st May, 2013, and the motion seeking judgment issued on 15th August, 2013.

3. In an affidavit sworn on 9th August, 2013, Mr. Eoin O'Shea, a senior manager of the plaintiff, claims that the defendants have no defence to the claim either at law or on the merits and that the appearance has been entered solely for the purpose of delay. The defendants appeared but were unrepresented at the hearing of this motion.

4. The court has a jurisdiction to refuse leave to defend and to grant summary judgment but this must be exercised sparingly on the basis of the well established principles set down in *Aer Rianta c.p.t. v. Ryanair (No. 1)* [2001] 4 I.R. 607, in which Hardiman J. stated that the fundamental questions to be posed on an application such as this are:-

> "Was it very clear that the defendant had no case? Was there either no issue to be tried or only issues which were simple and easily determined? Did the defendant's affidavits fail to disclose even an arguable defence?"

5. A fair and reasonable probability of the defendants having a real or *bona fide* defence is not to be regarded as the same thing as a defence which will probably succeed or even a defence whose success is not improbable (per Hardiman J. at p. 621).

6. McKechnie J. in *Harrisrange Limited v. Duncan* [2003] 4 I.R. 1, summarised the principles applicable in the following way:-

> "(i) the power to grant summary judgment should be exercised with discernible caution;
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> (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;
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> (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;
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> (iv) where truly there are no issues or issues of simplicity only or issues easily determinable, then this procedure is suitable for use;
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> (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;
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> (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;
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> (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;
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> (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;
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> (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;
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> (ix) leave to defend should be granted unless it is very clear that there is no defence;
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> (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;
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> (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."

7. The effect of the authorities was also summarised by Ryan J. (as he then was) in *Allied Irish Banks Public Limited Company v. Farrell* [2014] IEHC paras. 32 and 33.

8. The documentary evidence exhibited by the parties in the case establishes the following facts:-

> (a) On 28th October, 2010, the board of Clough Valley Stores Limited considered the terms of a facility letter from Ulster Bank Ireland Limited dated 15th October, 2010 and a copy of the bank's standard terms and conditions governing business lending to companies known as "general conditions" which were produced at the meeting. It was noted that under the facility letter the bank agreed to make available to the company the overdraft facility set out in the letter. The meeting had been called to approve the acceptance by the company of the terms of the facility letter and a resolution to that effect was adopted. The defendants were each authorised to sign the facility letter to indicate acceptance of the terms on behalf of the company. The extract of the Board minutes exhibited is signed by Bridget Quinn as director/company secretary.
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> (b) Pursuant to the terms of the facility letter of 15th October, the Bank had agreed to provide and provided an overdraft facility in respect of account No. 10706499 to the company at the bank's Dundalk branch to a limit of €100,000 for the purpose of working capital. Repayment was subject to the bank's right to demand repayment at any time with a right to "review by 15th January, 2011" and the bank was not obliged to continue the facility after that date. The letter was addressed to Clough Valley Stores Limited and the defendants, and it was indicated that if the facility letter was accepted, it should be returned, signed and dated by authorised persons together with a certified copy of a resolution of the board of directors. Both defendants signed the acceptance of the offer of loan facility on 28th October, 2010, the same date as the passing of the company resolution required.
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> (c) The defendants signed the guarantee, the subject matter of these proceedings, on 28th October, 2010. Under paras. 1.1 and 1.2, in consideration of the bank providing the overdraft facility to Clough Valley Stores Limited, the defendants irrevocably guaranteed to discharge on demand the debtor company's obligations with interest from the date of demand, the liability not to exceed €100,000 together with interest on that sum. Under para. 2, the guarantors provided an indemnity for costs to the bank. Paragraph 9.2 provides that the bank shall not be obliged before making demand under the deed to take any action or obtain judgment against the debtor company, to make or file any claim in the insolvency of the debtor or to exercise diligence or make demands of the debtor under the facility letter. Paragraph 20.4 provides that the guarantors consented to service when required by post at their last known address and undertook to enter an unconditional appearance within fourteen days of the service of the proceedings.

9. The guarantee stated at the top of the first ***page "warning: as a guarantor of this loan, you will have to pay off the loan, the interest and all associated charges if the borrower does not. Before you sign this guarantee you should get independent legal advice"***. At the conclusion of the terms and prior to the space provided for signature, it is stated:-

> **"Important – you should read this carefully.**
>
> **Your rights.**
>
> **You are recommended to take independent legal advice before signing. The limit of your liability will be as provided in clauses 1 and 2."**

10. On the same date, 28th October, 2010, each of the defendants signed documents headed "waiver of legal advice – fully involved director". The defendants separately signed waivers acknowledging the obligations incurred under the guarantee and that they might have to pay the bank instead of the borrower. They acknowledged that they had been advised to take independent legal advice, were directors of the company named as the borrower and played an active role in the running of the company. They accepted that they had a full understanding of its financial affairs including the liabilities of the bank covered by the securities. The waivers acknowledged that the guarantors had adequate time to read and consider the terms of the guarantee and had not been placed under any pressure to sign the security, and were well aware of their rights not to take the risks associated with it.

11. On 13th January, 2011, a receiver was appointed over Clough Valley Stores Limited, now operating as Clough Valley Stores Limited (in receivership).

12. On 27th September, 2012, the plaintiff's solicitor by letter demanded payment of the claimed sum from the company. On the same date, a letter of demand was sent to the defendants.

13. On 15th March, 2012, further letters were sent to each of the defendants for payment of €93,816.32, due to the bank by Clough Valley Stores Limited (in receivership) on foot of the guarantee. They were informed that interest would commence to run against this liability from that date.

14. To date, the amount claimed has not been discharged by either defendant.

15. The defendants have filed a number of affidavits:-

> (i) affidavit of Bridget Quinn sworn 12th December, 2013,
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> (ii) supplemental affidavit of Michael Quinn sworn 31st July, 2014, and
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> (iii) supplemental affidavit of Michael Quinn sworn 24th November, 2014.

16. Apart from the grounding affidavit of Mr. Eoin O'Shea of 9th August, 2013, the court also received two supplemental affidavits from him sworn 3rd June, 2014 and 15th January, 2015.

17. The points raised by way of proposed defence by the defendants are as follows:-

> (a) The defendants have not seen or been furnished with the facility documents concerning the overdraft facility given to Clough Valley Stores Limited. This is factually incorrect as the documents are clearly signed by the defendants who have not contested that fact.

(b) It is said that no letter of demand was ever issued to the defendants of which they were aware, and it is not accepted that two letters of demand issued to each of the defendants. However, the two letters of demand have been exhibited and the second letter of 15th March, 2012, is quite specific and is addressed to the defendants at the address agreed in accordance with the terms of the guarantee.

(c) The defendants claim that the receiver was appointed on 13th January, 2011, and the debt is to be discharged by the receiver. They contend that there is no evidence of any recourse by the bank to the receiver or the company in respect of monies due on foot of the overdraft facility, or any attempts made by the bank to obtain judgment for same against the borrower. The letter of 27th February seeks payment from the company of the amount due. Furthermore, it is clear that the terms of the guarantee specifically excludes any requirement or obligation on the part of the bank to take any action or obtain judgment against the company or make any demand of it under clause 9.2 before seeking to invoke the terms of the guarantee. However, in this case, the bank made a demand to the company.

(d) The defendants claim that it is unclear whether the plaintiff is pursuing the defendants as guarantors or borrowers because the affidavit of Mr. O'Shea refers to them as borrowers on behalf of Clough Valley Stores Limited. Paragraph 5 in Mr. O'Shea's first affidavit states "the money claimed is due and owing on foot of the guarantee furnished by the defendants to the plaintiff as security for a facility furnished by the plaintiff to Clough Valley Stores Limited". I am satisfied that the defendants are clearly sued in these proceedings on foot of the guarantee.

(e) It is claimed that para. 1.1 and 2.1 to 2.3 of the guarantee constitute an unconscionable arrangement and are impossible terms and conditions and furthermore, that there was inherent and latent pressure to sign the guarantee placed upon the defendants. They claim that they were given no choice to amend or confirm the terms or conditions at the time of signing. The plaintiff contends that paras. 1.1 and 2 simply provide for the provision of the overdraft facility on condition of the guarantee being entered by the defendants and were in standard form. In addition, it is submitted that the parties were advised to seek independent legal advice prior to the execution of the guarantee which was declined. The defendants signed the guarantee and detailed waivers were furnished in relation to legal advice on the same date. Paragraph 5 of the waiver also confirms that no pressure had been exerted on the defendants at the time of signing. I am not satisfied that the contents of the defendant's affidavits disclose any possible or credible basis upon which they might base a defence of duress or undue influence or unconscionable behaviour on the part of the bank. There are unsubstantiated assertions which do not provide any basis for an arguable defence.

(f) The plaintiff contends that Ulster Bank Limited is not the proper plaintiff in the proceedings. No basis is advanced for this assertion and the plaintiff was the party which offered the overdraft facility and is clearly, on the face of the facility letter, correspondence and the guarantee, the appropriate plaintiff. I am not satisfied that this assertion amounts to an arguable defence to the plaintiff's claim.

18. The defendants submit that there are a number of features of the conduct of the present proceedings by the Bank which have been unfair and prejudice them in the preparation of their defence:-

(a) Complaint is made that counsel for the plaintiff also appeared in other proceedings representing another financial institution against the same defendants. In a letter of 9th December, 2013, to the plaintiff's solicitors the defendants express concern that their position concerning their personal affairs might be compromised if they submitted an affidavit in the course of the proceedings, because counsel engaged in these proceedings also acted against them for another financial institution in other pending proceedings which arose in different circumstances. No further particulars are given of the alleged prejudice to the defendants in the preparation of their defence or the conduct of these proceedings arising out of the representation provided by counsel for the plaintiff. This is no more than an assertion and is not supported by any express or implied allegation of impropriety by counsel who has, in presenting this case, discharged his professional duty to the court and has also presented both sides of the case in a balanced and fair way.

(b) It is claimed that counsel for the plaintiff admitted in the Master's Court that there was a contest between the parties and that the matter should be sent to the judges list. Paragraph 7 of Mr. O'Shea's supplemental affidavit is relied upon by the defendants, in which it is stated that the Master of the High Court was informed that a contest existed on the affidavits such that the motion ought to be transferred into the judge's list under O. 37, r. 6. I am satisfied that this was the appropriate order in the circumstances because the motion was contested by the defendants (see *Grace v. Molloy* [1927] I.R. 405). The process facilitated the defendants in making their submissions to this Court as to why the matter should be sent for plenary hearing. The defendants did not thereby admit that there was an arguable defence that should or could only be determined by an order sending the matter for plenary hearing. There is no merit in this point.

19. The defendants contend in the supplemental affidavits sworn by Mr. Quinn on 31st July, 2014, that they disagreed with a number of matters in Mr. O'Shea's original affidavit, and served a notice requiring his production for cross examination in the Master's Court on 31st July, 2014, pursuant to O. 37, r. 2 of the Rules of the Superior Courts. A letter was sent by registered post and email requiring Mr. O'Shea to attend the Master's Court for cross examination on that date in respect of his affidavits of 9th August, 2013, and 3rd June, 2014. The Master transferred the matter to the judges list on 31st July, 2014. The case was then adjourned to the judges list of 10th November, and further adjourned to 24th November, 2014. The defendants state that they wrote again to A.B. Wolfe & Co. Solicitors on 13th and 19th November requesting that the deponent be made available for cross examination on that date. An email was received from Ms. Bolger, solicitor, dated 19th November, 2014, stating that the Rules of the Superior Courts had not been complied with in the service of the notice to cross examine. Mr. Quinn states that he filed a notice to cross examine Mr. O'Shea under O. 40, r. 31 on 21st November, 2014 (a Friday), in the Central Office and emailed and posted a copy of this notice to the plaintiff's solicitor, Ms. Bolger, of A C Wolfe & Co Solicitors on the same date.

20. Mr. O'Shea in his second supplemental affidavit sworn 15th January, 2015, states that the notice to cross examine did not comply with the Rules of the Superior Courts as it failed to give the required notice period prior to the hearing of the matter. Furthermore, the plaintiff submits that no conflict of fact existed in relation to any relevant matter in respect of the plaintiff's claim. The plaintiff contends that the only issues of fact that emerged concerned, firstly, whether letters of demand had been sent and secondly, whether the defendants had seen letters of demand or other relevant documents, namely the overdraft facility letter, the letter of acceptance, the company resolution, or the guarantee. These documents have now been exhibited and bear the signatures of the defendants, which are not contested. However, it is submitted by the defendants that Mr. O'Shea should be put forward for cross examination prior to the determination of this and other unspecified aspects of the case.

21. Order 37, r. 2 is specifically directed towards the hearing of proceedings commenced by summary summons. It provides that:-

> "Save and insofar as the court shall otherwise order, a motion for liberty to enter judgment under this order shall be heard on affidavit: provided that any party desiring to cross examine a deponent who has made an affidavit filed on behalf of the opposite party may serve upon the party by whom such affidavit has been filed a notice in writing requiring the production of the deponent for cross examination, and unless such deponent is produced accordingly his affidavit shall not be used as evidence unless by the special leave of the Master or the court as the case may be. In cases in which the Master has jurisdiction, he shall have the same powers as the court to hear oral evidence."

The defendants in the letter of 28th July, 2014, required the attendance of Mr. O'Shea for cross examination in the Master's Court on 31st July. This matter was not pursued by the defendants in the Master's Court before the matter was transferred to the judges list, but instead a notice to cross examine under O. 40 issued. Though the court is asked to adjourn the matter now to ensure the attendance of Mr. O'Shea and allow him to be cross examined, I am not satisfied at this stage that I am entitled to do so since the particular relief under O. 37, r. 2 was not pursued, though the rule envisages an application to cross examine in the High Court as well as the Master's Court in respect of affidavits filed on a motion for liberty to enter judgment. I am satisfied that it is appropriate to serve a notice to cross examine in writing under O. 37, r. 2 and that a failure of the person required to attend may give rise to the consequence that their affidavits may not be used in the course of the motion. I am also satisfied that the court retains a discretion in those circumstances, had notice to cross examine been served in proper form and with due and reasonable notice, to allow the affidavits to be used.

22. If there is a failure to attend on receipt of a notice to cross examine, a deponent's affidavits shall not be used without "special leave" of the court. This term is to be understood in accordance with the decision of the Court of Appeal in *Haltson Street Credit Union Ltd v. Raymond Costello & Emberton Finance* Ltd [2015] IECA 91, in which the phrase "special leave" in O. 55, r. 36 was held not to elevate the threshold at which the court should grant relief. Irvine J. stated:-

> "39. …The term "special leave" is one which appears elsewhere in the Rules of the Superior Courts, not least in the context of the admission of new evidence on appeal: see e.g. O. 58, r. 30(c) (formerly O. 58, r. 8). It is nevertheless implicit from the case law dealing with the admission of new evidence on appeal from *Lynagh v. Mackin* [1970] I.R. 180 onwards, that the reference to "special leave" was simply a convenient term to describe a procedure where the applicant was required to proceed by motion on notice to all relevant parties so the court might have before it all relevant material which might govern the exercise of the discretionary power it is called upon to apply. It is in this sense that the reference to the "special" nature of the leave should be understood. It simply means that the leave ought not to be granted save where the applicant has complied with the appropriate formalities and procedures involved in a application brought by way of notice of motion. As I have just indicated, the term does not, however, imply or suggest that such leave should only be granted in exceptional or unusual circumstances or by reference to some otherwise elevated standard."

I am satisfied that in this context "special leave" does not place an onus upon the plaintiff to demonstrate exceptional or unusual circumstances, if it is not to be deprived of the opportunity under O. 37, r. 2, from relying upon the affidavits of Mr. O'Shea. That could only arise if it was in the interests of justice so to rule.

23. I am not satisfied that the original notice to cross examine under O. 37, r. 2 was in proper form or served within a reasonable time such as to justify reliance upon it by the court in excluding the plaintiff from reliance upon the affidavits. Even if I were satisfied that the notice was served within time or was otherwise reasonable, or that service should be deemed good, I am not satisfied that it would be in the interests of justice to make an order depriving the plaintiff of the opportunity to rely upon the affidavits. Apart from the fact that the defendants made no application in relation to the notice to cross examine in the Master's Court, the notice was clearly regarded as spent in the High Court where on the transfer of the case to the judges list a notice to cross examine under O. 40 was issued and served. In addition, I am also satisfied that there is no issue of fact that is identifiable from the affidavits, the understanding or resolution of which could reasonably give rise to an arguable defence.

24. The additional notice to cross examine issued under O. 40, r. 31 which states:-

> "When the evidence is taken by affidavit, any party desiring to cross examine a deponent who has made an affidavit filed on behalf of the opposite party may serve upon the party by whom such affidavit has been filed a notice in writing, requiring the production of the deponent for cross examination at the trial, such notice to be served at any time before the expiration of fourteen days next after the end of the time allowed for filing affidavits in reply, or within such time as in any case the court may specially appoint; and unless such deponent is produced accordingly, his affidavit shall not be used as evidence unless by the leave of the court… the notice shall be in the form No. 21 in Appendix C."

Order 40 applies to trial on affidavit. Order 40, r. 1 provides that the court may, on the application of either party, order the attendance for cross examination of a person who made an affidavit in any motion. The defendants submit that the plaintiff should not be allowed to rely upon the affidavits of 16th August, 2013, or 4th June, 2014, because of the failure of Mr. O'Shea to attend for cross examination. On 24th November, 2014, this motion to enter judgment was adjourned, because another supplemental affidavit was delivered by Mr. Quinn sworn on that date. A number of additional adjournments were granted culminating in an adjournment on 4th February when the matter was listed for hearing by this Court on 13th April, 2015. Though it is quite clear that the notice to cross examine issued and filed on 21st November, 2014, gave entirely inadequate notice to the plaintiff and Mr. O'Shea to attend for cross examination on the 24th, the court has ample discretion under O. 40, r. 1 or O. 122, r. 7 either to direct Mr. O'Shea's attendance or to enlarge or abridge the time in respect of the service of the notice if that is required in the interests of justice. The final affidavit was not delivered in this case until 15th January, 2015, sworn by Mr. O'Shea. It is envisaged under the rule, (if properly applicable), that the notice to cross examine would issue within fourteen days "next after the end of the time allowed for filing affidavits in reply, or within such time as in any case the court may specially appoint". Thus, having regard to the course of the exchange of affidavits the service of notice to cross examine was somewhat premature. However, the court is satisfied that the procedure under O. 37 is the appropriate procedure to be invoked in summary procedure whereby the plaintiff seeks to enter final judgment rather than that provided under O. 40.

25. On the basis of the evidence put forward by the defendants to date, I am not satisfied, leaving aside the issue of whether the summons was served within time or pursuant to the proper procedure, that I should direct Mr. O'Shea's attendance for the purpose of cross examination and adjourn the motion for that purpose pertaining to the issue on this motion. I am satisfied in this case to permit the plaintiff to rely upon the affidavits submitted and opened to the court. I do not consider that the court would be in any way assisted by the cross examination of Mr. O'Shea in the absence of a relevant conflict of fact.

26. The defendants complain that they are not in a position to formulate a defence because the bank has failed to supply bank statements in respect of the overdrawn account from the date of the opening of the account on 1st October, 2010. The defendant wish to obtain copies of all bank statements for a company called "Bank Check" in order to conduct a review of the entire account.

The bank's solicitors in a letter of 8th April, 2015, indicated that all relevant documentation had been furnished. By letter dated 10th April, the defendants acknowledged that they had received all bank statements in respect of the account from 1st October, 2010 to 14th December, 2012. On 1st October, 2010, the account was overdrawn to the amount of €77,800.66. The letter made an allegation that fraudulent activity had been carried out on the account without any particulars of the alleged fraud. This allegation is not contained in any of the affidavits filed by the defendants. The bank statements sought predate the granting of the overdraft facility and the date of the guarantee. I am not satisfied that the defendants in the affidavits furnished have set out any basis upon which the preparation of the defence is prejudiced, or may be prejudiced, by the absence of bank statements prior to 1st October, 2010. The defendants seek an adjournment until these statements are furnished. I am not satisfied to grant an adjournment for that reason.

27. An order for substituted service was granted to the plaintiff on 13th May, 2013, (Peart J.) on the basis of an affidavit of Liam Fitzgerald. Proceedings were served in accordance with that order to which the defendants now object. The defendants having been so served entered an appearance. The defendants' unhappiness at the issuing of the order for substituted services is irrelevant to this application.

28. The defendants submit that the proofs in respect of the plaintiff's claim in the first grounding affidavit of Mr. O'Shea were defective in that a complete true copy of the guarantee was not exhibited. This is so. However, in a supplemental affidavit a full true copy of the guarantee was exhibited and the court is entitled to act upon that evidence: O. 37, r. 1 permits the plaintiff to verify the claim if necessary in a supplementary affidavit (see *Masterson v. Scallan* [1927] I.R. 453).

29. The defendants contend that it cannot be liable for any further amounts due and owing on the account following the appointment of the receiver on 13th January, 2011, to the debtor company. I am satisfied that the appointment of the receiver and the fact that the company in receivership continued in operation is not relevant to the liability of the defendants pursuant to the terms of the guarantee. The obligations which apply in respect of the guarantee exist as a matter of law. This is not an arguable defence.

30. The defendants are aggrieved that despite the fact that they wrote to Mr. Liam Fitzgerald, Solicitor, and also to Ulster Bank Ireland Ltd attempting to arrange a meeting in relation to issues surrounding the guarantee, they received a reply from the bank's solicitors requiring a proposal in writing before such a meeting could be scheduled. It stated that the consideration of the proposal would be subject to the Bank obtaining judgment. The Bank, therefore, requested that the defendants consent to judgment at a hearing on 12th December, 2013. This was referred to as blackmail in Ms. Bridget Quinn's affidavit of 12th December, 2013. The allegation of blackmail is unsubstantiated and amounts to a mere assertion. This matter is irrelevant to the issue on this motion.

31. The defendants allege "an unwitting collusion between Ulster Bank, the receiver and Allied Irish Banks Plc to systematically destroy us maliciously". This is denied and no evidence of any kind is offered by way of substantiation of the assertion made. It is irrelevant to the issue in this motion.

32. I am mindful of the caution that must be exercised in the granting of summary judgment and of the court's obligation to look at the entirety of the situation and the facts set out in the affidavits before the court. A number of the averments made by the plaintiffs in relation to the issuing of letters of demand or the suggestion that they never had sight of the original letter of facility have been addressed and were clearly demonstrated to be incorrect. The defendants must have known this at the time of the swearing of the respective affidavits and no explanation has been furnished to the court as to why these incorrect averments were made. There is a complete lack of cogency in the evidence presented by the defendants and the affidavits submitted by them contain many assertions which are unsubstantiated or not particularised. It would appear that the core documents in the case were furnished to and signed by them. What they say in relation to these matters is demonstrably incorrect. I am not satisfied that the defendants demonstrated a fair or reasonable possibility of a real or *bona fide* defence. The threshold is very low, but I am satisfied that there is no arguable defence other than the series of assertions set out above. I am not satisfied that the defendants have been impeded from stating or mounting a defence by reason of the non-availability of the bank statements prior to 1st October, 2010, or any of the other matters of which they complain. I am not satisfied to grant an adjournment for the purpose of directing Mr. O'Shea to appear for cross examination or, indeed, Mr. Fitzgerald in relation to the order for substituted service for the reasons set out above.

33. In the circumstances, I am satisfied that the plaintiff has adduced the necessary proofs and to grant judgment in the amount claimed.