

**THE HIGH COURT****COMMERCIAL****[2012 No. 26 S]****BETWEEN****BANK OF SCOTLAND PLC.****PLAINTIFF****AND****JERRY BEADES****DEFENDANT****JUDGMENT of Mr. Justice Kelly delivered on the 20th day of July, 2012****Claim**

1. In these proceedings, the plaintiff (the Bank) seeks to recover summary judgment against the defendant (Mr. Beades) for a sum of €9,684,987.04. The claim is made on foot of four facility letters, the first of which was dated 18th May, 2005, and the last, 11th February, 2008. The loans were made by Bank of Scotland (Ireland) Ltd., which, as of 31st December, 2010, merged with the Bank in a cross-border merger by absorption pursuant to EU Directive 2005/56. Under the terms of that merger and on foot of an order of the Court of Session in Scotland made pursuant to that Directive and its implementing Regulations in this jurisdiction and in the United Kingdom, all of the assets and liabilities of Bank of Scotland (Ireland) Ltd. transferred to the Bank.

**Procedural History**

2. The summary summons was issued on 4th January, 2012.

3. On 20th February, 2012, Peart J. made an order permitting service of the summons on Mr. Beades to be effected by ordinary pre-paid post. That was done.

4. On 23rd March, 2012, the Bank issued a motion seeking to transfer this litigation to the Commercial List and also sought summary judgment.

5. I heard that application on 16th April, 2012, and Mr. Beades appeared in person. He opposed the application for entry to the List. Notwithstanding his opposition, I was satisfied that it was a case that ought to be transferred and I so ordered. He sought a longer than usual time within which to file a replying affidavit to the summary judgment application and I afforded him that opportunity. I gave him until 18th May, 2012, to do so and I fixed the hearing of the application for summary judgment for 23rd May, 2012.

6. The motion for summary judgment came on before Peart J. on 23rd May, 2012. Notwithstanding my order of 16th April, 2012, Mr. Beades failed to file a replying affidavit. Peart J. gave him a further opportunity to do so in support of his defence and possible counterclaim. He was given until 15th June, 2012. The Bank was given until 22nd June, 2012 to respond to such affidavit. Peart J. fixed 26th June, 2012, as the date for the hearing of the Bank's application for summary judgment.

7. Notwithstanding that order of Peart J., Mr. Beades again failed to file a replying affidavit within the time allowed. Ultimately, a replying affidavit was sworn by him on 21st June, 2012. At that stage, the week afforded to the Bank within which to respond would have expired after the date fixed for the hearing of the application for summary judgment. Furthermore, whilst Mr. Beades served his affidavit on the Bank, he did not furnish it with the exhibits. Indeed, the exhibits were not furnished to the Bank until during the hearing of the application for summary judgment which has given rise to this judgment.

8. Given this unsatisfactory state of affairs, the solicitors for the Bank wrote to Mr. Beades at the address within the jurisdiction which he had supplied to them, indicating to him that they would make an application to me on 25th June, 2012, in respect of his failure to comply with the order of Peart J. and the consequent inability of the Bank to have its replying affidavit filed prior to the hearing which was to take place the following day. Mr. Beades did not appear on 25th June, 2012. Counsel for the Bank applied for one of two orders on that occasion. He asked either to have the hearing date of 26th June, 2012, vacated and an opportunity provided to the Bank to respond to Mr. Beades' affidavit or, alternatively, sought that the hearing would proceed as scheduled and that Mr. Beades would be disallowed from relying on his replying affidavit. I took the view that to proceed with the hearing on the following day and to disallow Mr. Beades from relying on his replying affidavit would not be in the interests of justice and might work hardship on him notwithstanding his failure to comply with two previous orders. In those circumstances, I vacated the hearing date of 26th June, 2012, and re-fixed the matter on a peremptory basis for Friday 6th July, 2012. I allowed the Bank a week within which to file and serve any response to Mr. Beades replying affidavit. I also directed the solicitors for the Bank to write to Mr. Beades at his address within the jurisdiction and also at an address which he gave in his replying affidavit in Stoneyford Road, Lisburn, County Antrim, Northern Ireland to inform him of this order.

9. The Bank availed itself of the opportunity to swear and file a replying affidavit to that of Mr. Beades.

10. The application for summary judgment was heard by me on 6th July, 2012. This is my judgment on that application.

11. Before departing from this narrative of the proceedings, I ought, for the sake of completeness, to refer briefly to what occurred at the outset of the application on 6th July, 2012.

12. Apparently, before the case was called on before me, Mr. Beades applied to Kearns P. asking him to direct that the application not proceed before me, but rather that it should be listed before Peart J. That application was made on two bases. First, it was asserted that Peart J. had *seisin* of the case, and second, Mr. Beades alleged subjective bias on my part. His application was refused by Kearns

P. and he was told that if he wished to make it, he should make it to me.

13. I heard Mr. Beades fully in respect of his application and gave a ruling upon it. It is not necessary that I rehearse the details of that *ex tempore* ruling, save to say that during the course of it, I pointed out that Peart J. did not have *seisin* of the case. On 23rd May, 2012, he had done no more than provide Mr. Beades with a further opportunity to file a replying affidavit and he also re-fixed the date for the hearing of the application for summary judgment. That hearing could not go on on that date because of Mr. Beades' failure to comply with the order of Peart J. The case then returned to be dealt with by me as the judge in the charge of the Commercial List.

14. On the allegation of bias, Mr. Beades, alleged that this subjective bias was evidenced by "*comments and actions*" of mine on 16th April and 25th June, 2012. Mr. Beades was in Court on 16th April, 2012, and was heard fully on that occasion. His request for a longer than usual time within which to file a replying affidavit was granted. He put no evidence of any sort before me to support his allegation of bias on that occasion.

15. Insofar as the events of 25th June, 2012, were concerned, he, of course, admitted that he was not in Court then. He indicated, however, that he had been "*told by people who were*" that I had said or done something to indicate actual bias. He gave no evidence or information of what it was alleged I had said or done. In the course of my ruling on this allegation, I pointed out that on 25th June, 2012, I had, in fact, in ease of him, not acceded to the Bank's application to disallow his affidavit and to proceed with the application for summary judgment the following day. On the contrary, I had re-fixed the hearing so that he would be able to rely on the contents of his affidavit. That was hardly indicative of bias against Mr. Beades. For these and the other reasons which I gave in the course of my *ex tempore* ruling on that occasion, I refused to recuse myself from hearing the matter, as the allegations made by Mr. Beades were unsupported by any evidence of any sort. I also declined to direct that a transcript of the hearings on 16th April and 25th June, 2012, be made up and provided to him, given that he adduced no evidence to warrant such order.

16. During the course of the hearing on 6th July, 2012, Mr. Beades appeared to have no hesitation in making allegations, including allegations of criminal wrongdoing, against parties not before the Court. He persisted in those allegations despite evidence demonstrating that they were simply wrong. Many of these allegations had nothing to do with any substantive defence to the case which Mr. Beades might have. He appeared to be of the view that he was at liberty to make such allegations of wrongdoing, not merely against the Bank, but against non-parties to this case with little or nothing by way of evidence to support his wide-ranging criticism.

17. A single affidavit was sworn by Mr. Beades in support of his alleged defence to these proceedings. A good deal of it is irrelevant to any defence which he might have to this action. But he went through it in detail in the course of his submissions. He used it as a springboard to make the allegations which I have alluded to against persons not before the Court. In fairness to them, I ought to deal with his contentions. Before doing so, however, I wish to turn to the legal principles which are applicable to an application for summary judgment.

### **Principles**

18. The principles which this Court must apply on an application such as this are now well established in jurisprudence from the Supreme Court and this Court.

19. The threshold of proof which a defendant has to surmount in order to avoid summary judgment is low.

20. In *Harrisrange Ltd. v. Duncan* [2003] 4 I.R. 1, McKechnie J. analysed what the approach of the Court should be on an application of this sort. He said as follows:-

*"(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 not be 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. In providing that analysis, McKechnie J. took into account previous jurisprudence on the topic and in particular the views of the Supreme Court in *Aer Rianta cpt. v. Ryanair Ltd.* [2001] 4 I.R. 607.

22. The most recent statement on the topic from the Supreme Court is that of Denham J. in the case of *Danske Bank v. Durkan New Homes* [2010] IESC 22, which disagreed with the proposition that there was an obligation on a trial judge on a motion for summary judgment to resolve any question of law that arose. That Court took the view that there was no obligation to do so but that it was a question of discretion for the trial judge. Of importance is the endorsement which that Court gave to the observations of Clarke J. in *McGrath v. O'Driscoll* [2006] IEHC 195, where he said the following in relation to factual issues on an application of this sort:-

*"So far as factual issues are concerned it is clear, therefore, that a mere assertion of a defence is insufficient but any evidence of fact which would, if true, arguably give rise to a defence will, in the ordinary way, be sufficient to require that leave to defend be given so that that issue of fact can be resolved."*

23. It is the principles expounded in these cases that I apply on this application.

#### **The Bank's Evidence**

24. The Bank has placed evidence before the Court of four facilities which were offered to and accepted by the defendant.

25. The first of these was dated 18th May, 2005. It offered a sum of up to €3.3m (the first loan) for a term of twelve months for the purpose of purchasing a site and house and related costs. That facility was accepted by Mr. Beades on 25th May, 2005.

26. The second facility was dated 25th July, 2007. It was by way of amendment to the first loan and was in respect of a sum of €3,650,000. It included an additional interest facility of €350,000. It was accepted by Mr. Beades, although there is no date appended by him to the acceptance document.

27. The third facility letter was dated 25th July, 2007. This agreed to make available to Mr. Beades a facility of up to €7,750,000 (the second loan) that was provided for in the form of two loans designated Loan A, which was for up to €2,375,000 including a capitalised interest facility of €225,000, and Loan B of up to €5,375,000 including a capitalised interest facility of €275,000. The term of this loan was eighteen months. Insofar as repayment of principal was concerned, this was to be payable from the proceeds of 48 apartments to be constructed by Mr. Beades at Richmond Avenue, Fairview. In any event, however, repayment in full was to be made from whatever source at the end of the facility term or to be made on such other later date as the Bank might determine at its sole discretion. This facility was accepted by Mr. Beades on 17th September, 2007.

28. The fourth facility letter was dated 11th February, 2008. It was by way of amendment to the second loan which was provided for in the third facility letter. It changed the terms of the second loan relating to security. This facility letter was accepted by Mr. Beades on 14th March, 2008.

29. The grounding affidavit of the Bank, in addition to proving the above matters, averred that Mr. Beades went into arrears in April 2009 following the expiry of his first loan facility in January of that year. It then set out various dealings between the Bank's representatives and Mr. Beades and concluded by exhibiting a letter of demand dated 13th December, 2011, addressed to Mr. Beades, seeking immediate payment of €4,213,503.77 in respect of the first loan and €5,471,483.27 in respect of the second loan. It averred that Mr. Beades has failed to pay any of that sum.

30. The principal grounding affidavit was sworn by Caoimhe Treacy who is a case manager in a firm called Certus. That firm was appointed by the Bank following the transfer of the assets and liabilities of Bank of Scotland (Ireland) Limited to it. Certus provides customer support and administration services to the Bank in this jurisdiction and in Northern Ireland. Ms. Treacy swore as to the facts of this case, but her affidavit was supplemented by one sworn by Clare Wrightson, a senior credit risk manager with the Bank. She referred to Ms. Treacy's affidavit and said that it set out in detail the basis for the Bank's claim against Mr. Beades. She dealt with the transfer from Bank of Scotland (Ireland) Limited to the Bank on foot of the order of the Court of Session to which I have already referred. She averred that Certus had been engaged by the Bank to provide customer support and administration services. She averred that it was necessary and appropriate that a representative of Certus should swear the grounding affidavit because Certus has assumed the customer management functions of Bank of Scotland (Ireland) Limited and has first hand and intimate knowledge of Mr. Beades' loan facilities.

31. The *jurat* of Ms. Wrightson's affidavit demonstrated that it was sworn at Augustine House, Austin Friars in London EC2N 2HA before Jack Sheehy, a practising solicitor.

#### **The Replying Affidavit**

32. Mr. Beades swore a single replying affidavit some thirty paragraphs in length. I will deal with each of them in turn.

33. Nowhere in that affidavit did Mr. Beades deny that he executed acceptances of the four facility letters in question. Neither did he deny that he received the monies in suit. When in the course of the hearing I asked him if he had received the monies, he responded, *"I refuse to answer that question"*. However, his affidavit made no denial of him having received the monies on the terms which were set out in the facility letters. I am satisfied that he got the monies and has had the benefit of them.

34. I turn now to the detailed contents of his affidavit.

35. In the second paragraph, he alleged that the proceedings contain a *"fraudulent sworn affidavit of Clare Wrightson, a senior official of Lloyds Banking Group plc."* He said that the contents of her affidavit were *"at variants (sic) with the facts regarding the behaviour of insolvent Bank of Scotland Ireland (BOSI) in the two years prior to its demise and subsequent collapse and close down prior to its merger with another insolvent bank, Bank of Scotland plc. on 1st January 2011"*. I will return to the allegation of the alleged fraudulent sworn affidavit shortly. The remainder of this paragraph was by way of comment and contained nothing to demonstrate a defence on the part of Mr. Beades.

36. The third paragraph of his affidavit alleged that the Bank was merged with Lloyds Banking Group *"after being bailed out by the British taxpayer"*. He said that the boards and senior personnel of all three banks had been replaced in the last two years because of alleged mismanagement. Again, this provides no material suggestive of a defence to this claim.

37. His fourth paragraph read as follows:-

*"I say and believe the information that has been supplied to me by Solicitors Regulation Authority for England and Wales is true and correct. I beg to refer to a copy of the said correspondence (which he exhibits). I further say and believe that the said regulatory authority and the Confidential Intelligence Bureau of the said Authority have advised me that the address at EC2N 2HA in London was de-registered as a solicitor (sic) office in January 2011 and Jack Sheehy is not a registered solicitor in England or Wales."*

38. Paragraph 5 of his affidavit read as follows:-

*"I say and believe that I have received an email confirmation from the Irish Law Society confirming that Jack Sheehy is not registered in this jurisdiction as a practicing solicitor."*

He exhibited a copy of that correspondence.

39. Paragraph 6 of his affidavit read as follows:-

*"I further say and believe that the said Solicitors Regulation Authority has advised that Clare Wrightson and Jack Sheehy have most likely committed a criminal offence under English law and asked me to report the matter to the London City Fraud Squad. I say that I prepared and forward (sic) a statement to the London City Fraud Office along with a copy of the Clare Wrightson statement."*

40. The exhibits referred to in paras. 4 and 5 of Mr. Beades' affidavit consist of the following. First, there is an email to him from a Mrs. Angelique Winglarz of the Solicitors Regulation Authority which reads as follows:-

*"Having checked our records and made further enquiries, I can confirm that Mr. Jack Sheehy is not a solicitor in England and Wales."*

*Mr. Sheehy applied for the status of Registered European Lawyer (REL) on 01 04 2011, but this was not granted by the Solicitors Regulation Authority due to insufficient documentation submitted."*

*Mr. Sheehy is currently in the process of reapplying for the status of REL but this status has not been granted yet."*

*Thank you for reporting this matter to the Solicitors Regulation Authority."*

41. The second exhibit consisted of an email sent by Mr. Beades to an addressee described as 'Complaints Public Address'. It reads:

*"Hi. Somebody call me back regarding Jack Anthony Sheehy of post address EC2N2HA London. I need to know if he is registered in the Republic as a solicitor."*

*Regards*

*Jerry Beades."*

To that, there is a response from a Sorchá Hayes with an email address at lawsociety.ie. She wrote:

*"Dear Mr. Beades,*

*I confirm that Jack Anthony Sheehy is not registered in this jurisdiction as a solicitor."*

*Kind regards,*

*Sorchá Hayes."*

42. It was on the basis of this material that Mr. Beades made an allegation of the Bank having placed a fraudulent sworn affidavit of Clare Wrightson before the Court and the likely commission of a criminal offence under English law. He provided no evidence of having been asked to report the matter to the London City Fraud Squad, nor did he exhibit his alleged statement to that entity.

43. The Bank responded to those allegations in a replying affidavit sworn by Ms. Treacy. In that affidavit, she averred that Ms. Wrightson swore her affidavit on 21st March, 2012, at the offices of A&L Goodbody, solicitors, at Augustine House, Austin Friars, London EC2N 2HA. Ms. Wrightson swore that affidavit before Mr. Jack Sheehy, a solicitor who works in the London office of that firm. She exhibited a copy of Mr. Sheehy's Practising Certificate issued from the Law Society of Ireland for the year ending 31st December, 2012. That certified that Jack Sheehy is entitled to practise as a solicitor from the date of that certificate, which was 1st January, 2012, until 31st December, 2012. She also exhibited a certificate issued by the Registrar of Solicitors and Director of Regulation of the Law Society of Ireland certifying that Mr. Sheehy was admitted to the Roll of Solicitors by the President of the High Court on 29th April, 2005. It further confirmed that he is the holder of a Practising Certificate for the current practice year 2012. It concludes:

*"I also confirm that the solicitor is in good standing in that as at the date of this certificate, a search of the Society's records in relation to discipline discloses no orders or findings of misconduct or reprimands to the discredit of the solicitor."*

44. This affidavit evidence demonstrates quite clearly that Mr. Jack Sheehy was indeed a practising solicitor when the affidavit of Ms. Wrightson was sworn before him and that he was perfectly entitled so to do.

45. One might have thought that in the light of this evidence, Mr. Beades would withdraw his allegations against Ms. Wrightson and Mr. Sheehy. On the contrary, he persisted in them. Indeed, he went further. Without a shred of evidence, he alleged that Ms. Wrightson's affidavit had not been sworn in London at all. He alleged that Mr. Sheehy was not entitled to take the affidavit because he was not a solicitor registered with the English Law Society. He attempted to implicate Mr. Sheehy's employers, A&L Goodbody, in wrongdoing. He alleged that they act as solicitors for Certus and were therefore what he described as a "connected party" to the proceedings. He went on to allege, again without producing any evidence, that A&L Goodbody were the holders of the initial shareholding in Certus which was then, he said, "transferred to secret nominees in the Isle of Man (clearly a tax evasion plan)" in what he described as a "unusual setup when British taxpayers' money is expected to be recovered". These allegations were not supported by any evidence. Even if there was evidence to demonstrate that A&L Goodbody act for or had the initial shareholding in

Certus, that could not in any way implicate them in these proceedings. Neither could it raise any suggestion that Mr. Sheehy acted in any way improperly in taking the affidavit of Ms. Wrightson.

46. I reject these allegations of Mr. Beades. I find no wrongdoing on the part of Ms. Wrightson or Mr. Sheehy or A&L Goodbody. It is indeed regrettable that he persisted with these claims in the way he did.

47. His affidavit went on at para. 7 to allege that Certus is a debt collection agency which he alleged was "*chosen as a means of distancing the parent bank Lloyds Banking Group plc. from the disastrous behaviour of mismanagement and losses at its Irish division*". He alleged that Bank of Scotland (Ireland) Limited was in financial difficulties in 2008 and all through 2009 up to an announcement on 19th August, 2010, when Lloyds Banking Group took the decision to close the Bank. I fail to understand what any of this has to do with any defence which Mr. Beades might have to these proceedings.

48. At para. 9 of his affidavit he alleged that the Bank was unable to meet its contractual commitments which it had entered into with him due to the insolvent position of the Bank from 2008, up to the time Lloyds Banking Group announced its closure. This was an extraordinary allegation to make in circumstances where at no stage did he deny in his affidavit that he received the monies. When I asked him about this, he refused to admit that he received the monies. When I pressed him further and asked him if he was now denying receipt of the monies, he said he was not so denying. Paragraphs 10, 11, 12, 13, 14 and 15 of his affidavit contained material which has no relevance to any defence which he might have. They dealt with matters such as the resignation of a senior lending manager at the Bank after 27 years service; Mr. Beades' awareness of rumours of financial instability associated with the Bank; his approaches to other banks and contacts which were made by the Bank to him concerning its desire to have his business. Paragraph 16 of his affidavit concerned reassurance which he said he obtained to the effect that the Bank was financially sound and that it was its intention to fund his project through to completion.

49. Paragraph 17 of the affidavit alleged delays which he said he experienced in drawdowns of the construction money from the Bank. He gave no details whatsoever of these alleged delays.

50. Paragraph 18 alleged a breach of Condition 9 of the loan offer letter which he quoted from. The condition which was allegedly breached read:-

*"The borrower shall give to the Bank three days prior written notice (or shorter notice as the Bank may accept) of the intended date of drawdown, the amount thereof and the payee details."*

This clause provided for notice to be given by the borrower but there was no evidence adduced of any breach by the Bank by reference to it.

51. Paragraph 19 alleged that during late 2008 and into 2009, the rumour of Bank of Scotland (Ireland) Limited's demise grew with constant delays in drawdown and other customers experiencing the same delays. He alleged that it became clear that Bank of Scotland (Ireland) Limited was running out of money.

52. He alleged at para. 20 that in June 2009, his fears and concerns were confirmed when the sum of €32,460 was withheld.

53. He went on to say that he firmly held the belief that the Bank's actions in "*delayed payments and then deductions of money contributed to difficulties with the main contractor and subcontractor and suppliers and it became clear I was asking persons to carry out work and I could not rely on Bank of Scotland Ireland to guarantee payments on time or at all*". It is, I think, of some significance to point out that on the evidence before me, the Bank continued to support Mr. Beades' activities by continuing to release funds despite the expiry of the first loan.

54. He then went on to allege that when he requested the last drawdown payment, there was still over €2.5m of the loans to be drawn down.

55. He alleged that between August and December 2009, Bank of Scotland Ireland was in meltdown and that no decisions were being made and customers were being abandoned. He then exhibited a letter of 23rd December, 2009, which he sent to a Mr. Tomás Donohue in the Bank which he said met with no meaningful response. This letter informed the Bank that he was provisionally putting his workmen on notice that they would be resuming work on completing the development after 11th January 2009.

56. In the final part of his affidavit, there were general allegations of alleged breach of contract on the Bank's part and a failure to observe its duty of care to Mr. Beades. No details, particulars, or specifics of these were given.

57. Finally, he made the point that no requests or demands were served or delivered to his "*confirmer*" (sic) address at 30, Richmond Avenue, Fairview. He alleged that no proof of a registered letter was produced of personal service of the demand. He said this constituted a failure to comply with the Bank's general conditions.

58. The Bank's general conditions were produced by Mr. Beades and the Bank agreed to their admission in evidence. On this aspect of the matter, they provide as follows:-

*"26.1 Every notice, request, demand or other communication under the loan agreement shall:-*

*(i) be in writing delivered personally or by registered letter or by facsimile transmission;*

*(ii) be deemed to have been received, subject as otherwise provided in the loan agreement, in the case of a letter delivered by hand at the time of dispatch, or two days after it has been put into the post and, in the case of a facsimile transmission, at the time of dispatch; and*

*(iii) be sent to the borrower or the Bank at their respective addresses as set out in the facility letter or to such other address or facsimile number as is notified by the borrower or the Bank to the other.*

*26.2 Any notice, request, demand or other communication under the loan agreement delivered to the Bank shall be effective only when received by the Bank and only if the same is expressly marked for the attention of such department or officer as the Bank shall specify for that purpose."*

59. Insofar as this contention is concerned, there was evidence placed before me of a demand of 13th December, 2011, seeking

repayment of the monies in suit. That demand was addressed to Mr. Beades at 30, Richmond Avenue, Fairview, Dublin 3. The demand was sent for delivery by DHL Express. There was evidence of the delivery in question having been effected. Even if Mr. Beades did not get the demand, or if there was any defect in service, I am satisfied that the service of the summary summons in these proceedings constituted a sufficient demand.

#### **Conclusions on the Replying Affidavit**

60. Nowhere in his affidavit did Mr. Beades deny executing the agreements in question. Neither did he deny receiving the monies. He made a number of allegations which have nothing to do with any defence which he might have to the proceedings. Insofar as he alleged any form of defence, it was nothing more than mere assertion. It was mere allegation or averment of an alleged situation without any information being given to sustain it. Even if there is a defence, it appears to me that at most it could only amount to some form of counterclaim. That would not constitute a defence to these proceedings. In this view, I am fortified by the general conditions which Mr. Beades put in evidence and which expressly provide at para. 25.13 as follows:

*"All sums payable in respect of principal interest or otherwise shall be payable gross without deduction on account of taxes, any set-off or counterclaim or on account of any charges, fees, deductions or withholdings of any nature . . ."*

Thus, even it could be said that there is some form of intangible counterclaim, it cannot serve as a defence to these proceedings.

61. I am satisfied that Mr. Beades has not demonstrated any triable issue or arguable case to warrant summary judgment being refused. In my view, it is very clear that he has no defence to this claim and I enter judgment against him for the full amount claimed.