

THE HIGH COURT

2017 No. 1261 S

Between:

BAC FLORIDA BANK

Plaintiffs

– and –

MAURICE McILWRAITH AND ANNE MARIE McILWRAITH

Defendants

JUDGMENT of Mr Justice Max Barrett delivered on 6th June, 2019.

1. The summary summons in these proceedings issued on 10.07.2017. The plaintiff's claim was for the euro equivalent of US\$96,442.14, being the balance due by the defendants under a loan agreement of 05.09.2006 (as modified by later agreements). The loan was secured by a mortgage on a property in Orlando. The defendants defaulted on the repayments due under the loan agreement. Thereafter, in February 2014, the plaintiff obtained a judgment of foreclosure. In accordance with the laws of Florida, the defendants were credited with the assessed value of the property, which left a balance of US\$93,831.14. A final judgment for the amount of US\$96,442.14 (which consisted of a sum of US\$93,831.14 plus interest and costs) issued on 21.10.2014. On 08.01.2018, judgment was obtained in the Central Office against Mr McIlwraith in default of appearance in the sum of €80,149 (being the euro equivalent of US\$96,442.14 on that date) and €396 for costs. Enforcement proceedings ensued with various delays which were caused by, or done to accommodate, Mr McIlwraith. On 19.10.2018, a notice of motion issued whereby Mr McIlwraith seeks to set aside the summary judgment obtained on 08.01.2017. It is that motion on which the court now gives judgment.

2. Mr McIlwraith claims that the summons in the within proceedings was not duly served upon him. But it is clear from his correspondence with the solicitors for the plaintiff that he received a copy of the summons and has acted by reference to same over a protracted period. The only issue seems to be whether, on 19.07.2017, Mr McIlwraith was, consistent with O.9, r.2 RSC, shown the original summary summons with the seal of the High Court when served with the copy summons. Mr McIlwraith avers that he was not; the summons server avers that he was, stating, *inter alia*, "I am satisfied that I showed it to him and that it was visible to him but it was clear that he did not want to see it or examine it". The court is satisfied on the evidence before it that, to echo Morris J. in *Lancefort v. An Bord Pleanála* [1997] IEHC 83, the purpose and object of proper service has been met here by such service as was effected: Mr McIlwraith has been adequately informed of the matters contained in the summons so as to suffer no prejudice. That being so, the court, acting pursuant to O.9, r.15 RSC is satisfied to declare sufficient such service as was effected.

3. Mr McIlwraith claims that the plaintiff has not complied with the Brussels I Regulation (recast). But all that is happening here is that a third-country bank is suing an Irishman in Ireland. So there is no cross-EU dimension to the proceedings. Hence Mr McIlwraith's arguments by reference to the Brussels I Regulation (recast) must fail.