THE COURT OF APPEAL

CIVIL

Peart J.
Irvine J.
Cregan J.

Appeal No.: 2014 1332
[Article 64 transfer]

Northern Bank Limited t/a Danske Bank

Plaintiff/Respondent

- and -
Michael Quinn and Brigid Quinn

Defendants/Appellants

Judgment of Ms. Justice Irvine delivered on the 18th day of March 2016

1. This is the defendants' appeal against the Order of the High Court (Hedigan J.) of 23rd June 2014, whereby he granted summary judgment in favour of the plaintiff ("the bank") in the sum of STG£500,000 together with interest from 3rd December 2012.

Background facts
2. By summary summons dated 19th December 2012 the bank instituted proceedings seeking summary judgment against the defendants in the sum of STG£500,000 together with contractual interest on foot of a guarantee in writing dated 27th April, 2004 ("the Guarantee") said to cover the liabilities of Cloughvalley Stores (N.I.) Ltd ("Cloughvalley") of which company the defendants were directors.

3. Following the entry of an appearance by the defendants on 7th March 2013, the bank sought liberty to enter final judgment by notice of motion dated 27th March 2013.

4. The bank's grounding affidavit was sworn by Mr. Blackwood Hall, recoveries manager. In that affidavit he confirmed that as of 18th October 2000 Cloughvalley was indebted to the bank in the sum of STG£4,595,752. 93. He exhibited letters of demand of 17th October 2011 and 3rd December 2012 sent to the defendants seeking repayment of the sum due on foot of the guarantee and went on to advise that these demands had not been met.

5. In his replying affidavit of 10th June 2013, the first named defendant, Mr Quinn, sought to raise the following potential grounds of defence to the proceedings, namely:

> (i) That as Cloughvalley had no contractual relationship with the bank they, the defendants, could have no liability in respect of its liabilities under the guarantee.
>
> (ii) That as no consideration had passed from the bank to the defendants the guarantee was void and unenforceable.
>
> (iii) That as the guarantee had been executed in Northern Ireland and Cloughvalley traded in Northern Ireland the proceedings had been instituted in the wrong jurisdiction.
>
> (iv) That they had not received appropriate legal advice prior to executing the guarantee and had not waived their right to such advice.
>
> (v) That the proceedings were statute barred.

6. In reply, Ms Amanda Brown on behalf of the bank by affidavit of 28th June 2013 advised:-

> (i) That the guarantee on its face demonstrated privity between the bank and the defendants.
>
> (ii) That the defendants had not denied Cloughvalley's indebtedness nor their execution of the guarantee.
>
> (iii) That the guarantee was valid as the consideration provided by the bank to Cloughvalley amounted to good consideration.
>
> (iv) As to jurisdiction, the defendants resided in this jurisdiction and further had submitted to the jurisdiction by entering an appearance.
>
> (v) As to legal advice, the defendants had each signed a letter on 22nd April 2004 which demonstrated clearly that they had been advised to seek legal advice and each had acknowledged receiving that advice but had chosen to waive their entitlement to it.
>
> (vi) Finally, the statute had not run given that demand for repayment had not been made until 17th October 2011 and that time only began to run on that date.

7. In a supplemental affidavit sworn on 25th November 2013, Mr Quinn sought to rely upon the following matters: –

> (i) He reiterated his submission that the proceedings ought to have been instituted in Northern Ireland because:-
>
> > (a) Cloughvalley traded in Northern Ireland,
> >
> > (b) Cloughvalley was incorporated in Northern Ireland, and

(c) they, the defendants, had instituted proceedings in Northern Ireland against the bank and Mr Tom Keenan, who had been appointed administrator to Cloughvalley on 17th October 2011.

(ii) That the proceedings were premature in that the administrator was selling the assets of Cloughvalley and until such time as the proceeds of sale had been ascertained there could be no proper call on the guarantee.

(iii) The full guarantee had not been exhibited and the missing pages demonstrated that the guarantee had been with Northern Tailored Financial Solutions, rather than with the plaintiff bank.

8. Mrs. Brigid Quinn also swore an affidavit on 11th February 2014. She repeated and in some cases further elaborated upon arguments earlier raised by her husband in his affidavit. She sought to rely upon the following additional facts and submissions:-

(i) She called for the summary summons to be struck out for lack of clarity.

(ii) As to the jurisdiction of the court, she emphasised

(a) the fact that Cloughvalley's accounts were held in the Crossmaglen branch of the plaintiff bank,

(b) that other proceedings concerning Cloughvalley were before the courts of Northern Ireland, and

(c) that the loan facility, the subject matter of the guarantee, was governed by the laws of Northern Ireland.

(iii) She recalled the meeting at which the guarantee was signed, and maintained that they had been advised that it was not necessary to take legal advice and that most people signed without such advice. Thus, the guarantees were legally invalid.

(iv) As no demand had been made by the bank for payment of the sums outstanding by Cloughvalley, the proceedings were premature.

(v) They did not have the documents they required to mount their defence. By letter dated 24th January 2014 the bank had been requested to make available, *inter alia*, all bank statements, facility letters, agreements, correspondence. These had not been furnished.

(vi) The borrowings of Cloughvalley had been restructured with the consent only of her husband in February 2005 and this, she maintained, rendered the earlier guarantee invalid.

(vii) Ms Brown was not an officer of the bank for the purposes of the Bankers' Books Evidence Act, 1879.

9. Mr Hall, in his supplemental affidavit of 19th February 2014 agreed that property belonging to Cloughvalley had been sold in December 2013. However, this had realised only STG£600,000. Thus the liability of the defendants remained far in excess of the limit of the guarantee. Further, contrary to what had been asserted by Mrs Quinn, he confirmed that the bank had sought payment of all sums outstanding from Cloughvalley prior to the issue of these proceedings. In this regard he exhibited the relevant letter of 30th November 2011.

10. On 26th May 2014, the President of the High Court fixed 20th June 2014 as the date for the hearing of the bank's motion.

11. On 12th June 2014 the defendants served a Notice of Cross-Examination pursuant to order 40 r. 31 of the Rules of the Superior Courts directed to Mr. Hall and Ms. Brown.

12. In his affidavit sworn on the day of the hearing, i.e. 20th June 2014, Mr. Quinn exhibited correspondence that he had written to the bank, the bank's solicitors, Messrs. Mason Hayes and Curran and Messrs Elliott Duffy Garrett, solicitors, Belfast, seeking documentation which he maintained had been withheld from him. This documentation, he averred, was material to his consideration of the validity of the bank's claim.

Decision of the High Court

13. Commencing at para 6 of his judgment, the High Court judge considered each of the potential grounds of defence that had been advanced by the defendants in their affidavits. It is not necessary to refer to these as they have already been detailed in my summary of the affidavits. Suffice to state that the trial judge found against the defendants on each and every argument which they advanced. He was not satisfied that they had raised an arguable defence to the proceedings on foot of the guarantee. Thus, he found the bank entitled to judgment in the sum claimed.

The Appeal

14. By notice of appeal dated 25th July, 2014, the defendants have appealed from the judgment and Order of the High Court. While the notice of appeal was confined to a relatively modest number of grounds, the written and oral submissions delivered by the defendants canvassed a number of additional arguments. Having regard to the fact that the defendants are lay litigants and the plaintiffs will not be prejudiced by my intended approach, I intend to deal with each of these in turn following a brief consideration of the principles to be applied by the court when considering an application for summary judgment.

Principles

15. There is no dispute between the parties as to the principles to be applied by the court on an application for summary judgment. To the forefront of the court's mind must be the test laid down by Hardiman J. in *Aer Rianta v. Ryanair Limited* [2001] 4 I.R. 607 where he described the test in the following terms:-

"In my view the fundamental question to be posed on an application such as this remains: 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 defendants' affidavits fail to disclose even an arguable defence?"

16. Of importance also, in the context of the legal issues raised by the defendants on this appeal, is the decision of Clarke J. in

McGrath v. O'Driscoll [2007] 1 ILRM 203, where he stated, in the context of a summary judgment application:-

> "So far as questions of law or construction are concerned the court can, on a motion for summary judgment, resolve such questions (including, where appropriate, questions of the construction of documents), but should only do so where the issues which arise are relatively straightforward and where there is no real risk of an injustice being done by determining those questions within the somewhat limited framework of a motion for summary judgment."

Decision

17. The following are the reasons why the defendants maintain that the High Court judge erred in law in failing to remit the proceedings to plenary hearing. They contend:-

> (a) that the proceedings were instituted in the incorrect jurisdiction,
>
> (b) there was no privity of contract between the parties,
>
> (c) there was no consideration for the guarantee,
>
> (d) that they did not receive independent legal advise prior to executing the guarantee,
>
> (e) that the claim was statute barred,
>
> (f) that the claim was not properly particularised,
>
> (g) no demand was made of Cloughvalley prior to the institution of the proceedings,
>
> (h) that the grounding affidavits were not sworn by proper officers of the plaintiff,
>
> (i) that they were entitled to be furnished with certain documentation which they maintain was relevant to their potential defence of the proceedings,
>
> (j) that the court should not have granted judgment against them in light of their entitlement to cross-examine on oath the deponents of the bank's affidavits.

18. Insofar as the defendants' submissions concerning jurisdiction are concerned, I am satisfied that the proceedings are properly maintained in this jurisdiction. The relief sought by the bank is against the defendants personally and they reside in this jurisdiction thus making them amenable to the jurisdiction of the court in what is, in effect, a breach of contract action. The only circumstances in which they would not be so amenable would be if the guarantee contained a jurisdiction clause that required any potential dispute be resolved in another jurisdiction. In these circumstances it is unnecessary to consider the legal effect of the defendants' entry of an unconditional appearance to the proceedings. It is accordingly irrelevant that the plaintiff's branch office, where the guarantee was executed, is in Northern Ireland. It is likewise immaterial that Cloughvalley was incorporated, has its registered offices and traded in Northern Ireland as is the fact that the defendants have instituted proceedings against the bank and Cloughvalley's administrator in the courts of Northern Ireland. Likewise, it is irrelevant that any loan agreement entered into between Cloughvalley and the plaintiff was to be governed by the laws of Northern Ireland. The effect of any such clause is not to afford jurisdiction to the country whose laws are to be imposed. It merely means that the law of that country is to be applied to the dispute wherever it is lawfully pursued.

19. I also reject the defendants' submission that they have made out an arguable defence on the basis that they were not privy to any contract of guarantee with the bank. Firstly, the guarantee on its face, which the defendants accept they executed, makes clear that the parties thereto are Northern Bank Ltd as lender, Cloughvalley Northern Ireland Ltd as principal and Mr and Mrs Quinn as sureties. Secondly, it is clear from Mr. Quinn's second affidavit and Mrs. Quinn's affidavit of 11th February 2014 where they record their dealings with the bank on the day they executed the guarantee, that each accepts that they entered into the guarantee with the plaintiff and, in my view, it is simply not credible for them to seek to otherwise argue.

20. Insofar as the defendants would seek to raise the possibility that Cloughvalley's borrowings were arguably with Northern Tailored Financial Solutions, all of the correspondence written by the defendants concerning the liabilities of Cloughvalley and the actions of its administrator are addressed to Mr. Gerry McEntee, senior business banking manager of the Northern Bank. Examples of such correspondence are the letters of 19th May 2014 and 24th January 2014. The latter letter actually requests copies of three identified bank accounts. Further, the letter from Northern Tailored Financial Solutions to Cloughvalley of 6th February 2005 makes clear that it is the plaintiff bank that is intending to advance the loan therein specified. Finally, it is the plaintiff that the defendants have sued in the courts of Northern Ireland in respect of the actions of the administrator appointed by the plaintiff having regard to Cloughvalley's liabilities to that bank.

21. I also reject the defendants' submissions that they may reasonably argue that the guarantee is void due to the fact that no consideration moved to them from the bank. It is certainly correct as a matter of law that a guarantee which is not under seal must be supported by consideration. While that consideration must move from the creditor i.e. the bank in this particular case, the same need not benefit the surety although it often does, either directly or indirectly. However, this is not necessary. In the present case the consideration is stated on the face of the guarantee, namely the bank's stated willingness to make or continue to make advances or otherwise give credit or afford further banking facilities to Cloughvalley.

22. The defendants in their respective affidavits submit that they may credibly argue that they have a potential defence to these proceedings on the grounds that the guarantee was entered into by them without the benefit of independent legal advice. Mr. Quinn's evidence is to be found at paras (d) and (e) of his affidavit of 10th June 2013 and Mrs. Quinn's evidence at paras (10) and (11) of her affidavit of 11th February 2014. Each of them maintains that they were told by the relevant bank official that legal advice was unnecessary.

23. What is not disputed by the defendants is that the bank sent to each of them a letter dated 22nd April 2004 which refers to the proposed guarantee to secure Cloughvalley's liabilities. Those letters, which they duly signed, are exhibited at Exhibit MQ1 to Mr. Quinn's affidavit of 10th June 2013. The relevant parts of each letter reads as follows:-

> "We understand that you are willing to enter into a Letter of Guarantee for STG£500,000 to secure the liabilities of our above named customer.

In accordance with the Code of Banking Practice we wish to advise you that:-

(1) As a consequence of giving the Guarantee you may become liable instead of or as well as the principal debtor.

(2) We recommend that you seek independent legal advice before entering into the Guarantee.

If you wish to seek independent advice please detail the name and address of your solicitor on the attached copy of this letter before signing the acknowledgement at the bottom and returning the letter to this Department. The Guarantee will then be forwarded to your solicitor with whom you should arrange to call.

Yours sincerely

*I do not wish to obtain independent legal advice and I will call at the branch to sign the Guarantee in the presence of two Bank Officials.

Signed…… ”

24. Not only do the defendants not deny receiving letters in the aforementioned terms, but it is to be inferred from their affidavits that having received these letters they then attended at the bank on 27th April 2004 where they signed a further document in the following terms: -

“When the Guarantors called at Branch on 27/4/04 to complete guarantee they were interviewed not in the presence of the principal debtor and the documentation was fully explained including the amount and risks involved and the Guarantors were again offered the opportunity to take independent legal advice.

I/we have read and confirm the above

Signed Michael Quinn

Signed Brigid Quinn

25. The advice in the letters of 22nd April 2004 could not have been clearer. Notwithstanding the receipt of these letters, the defendants did not approach a solicitor but rather attended at the bank on 27th April 2004. It can reasonably be inferred that before they ever spoke to anyone in the bank on that day they had already decided that they did not need legal advice. Further, they do not deny that when they attended at the bank on 27th April 2004 their entitlement to legal advice was again discussed with them and they were offered the opportunity, for the second time, to take such legal advice regardless of whether or not they may have been advised that customers regularly signed guarantees without independent legal advice.

26. Nowhere in the defendants’ affidavits do they state that they did not understand the advice furnished in the letter sent to them on 22nd April 2004 or that they did not fully understand the legal implications of signing the guarantee. Neither do they allege that their decision to waive their entitlement to legal advice was overborne or influenced by anything said to them by the relevant bank official. Further, neither avers that had they received such independent legal advice they would not have signed the guarantee.

27. In the aforementioned circumstances I am not satisfied that the defendants can credibly maintain that the guarantees are void or unenforceable based upon the fact that they did not seek independent legal advice.

28. As to the defendants’ submission that they might reasonably argue that the claim is statute barred, I am afraid that this argument must also fail. As a matter of law the bank has six years from the date of default on the part of the creditor or six years from the date of demand upon the guarantors within which to commence its proceedings. The first demand made of the defendants in this case was made on 17th October 2011.

29. I also reject the defendants’ submission that the claim made against them was not particularised adequately and should be struck out as being unclear. Order 4, r.4 provides that the indorsement of claim on a summary summons must state specifically and with all necessary particulars the relief claimed and the grounds thereof. What is required in such an indorsement was identified by Kingsmill Moore J. in *Bond v. Holton* [1959] I.R. 302 where he stated that “unless an indorsement on a summary summons states the cause of action or states facts which, if true, unequivocally constitute a cause of action which may be brought by summary summons, it is a bad indorsement”.

30. Textbooks such as Curran on Debt Recovery advise as to the manner in which a claim on foot of a guarantee should be pleaded and the special indorsement of claim in the present case, when assessed in the context of such advice, is not to be found wanting. All of the essential ingredients are identified. The indorsement of claim may well appear rambling or unstructured to the defendants, but that is due to the fact that it mirrors the material provisions of the guarantee itself. The indorsement makes clear:-

(i) that the claim is on foot of a guarantee for GBP£500,000 made on 27th April 2004,

(ii) That the consideration supporting the guarantee is the provision of ongoing credit and other banking facilities to Cloughvalley,

(iii) that the claim is in respect of the liabilities of Cloughvalley,

(iv) that they, the defendants, are being sued in their capacity as guarantors of Cloughvalley’s liabilities,

(v) that Cloughvalley was indebted to the plaintiff in the amount of STG£4,595,752.93 as of 18th October 2011,

(vi) that demand had been made of Cloughvalley for payment of its outstanding liabilities on 18th October 2011 and this was unsuccessful,

(vii) that demand was made of the defendants for payment of their liabilities under the guarantee on 3rd December 2012 and that this was unpaid.

31. Thus, I am quite satisfied that the plaintiff's claim was more than adequately particularised and was not lacking in clarity.

32. While the defendants initially maintained that demand had not been made of Cloughvalley prior to the institution of these proceedings, such that the claim against them was premature, Mr Hall, in his supplemental affidavit of 19th February 2014 has denied that assertion and has exhibited the letter of 30th November 2011 making demand of the principal debtor. That averment has not been challenged. In any event, as a matter of law, whether or not such a demand is necessary depends upon the provisions of the contract itself and there is nothing in the guarantee requiring that prior demand be made on the principal debtor. Here, all that was required of the bank was to make demand on the sureties themselves. Accordingly this line of potential defence does not withstand scrutiny.

33. Whilst not specifically referred to in the notice of appeal, I also reject the defendants' submission to the effect that the bank's claim was premature because the administrator was in the process of selling assets belonging to Cloughvalley with the result that its ultimate liability to the bank could not be ascertained. The fact that an administrator might be engaged in realising the assets of a principal debtor does not, as matter of law, disentitle the lender from pursuing its rights against the guarantors of that debt. The sum in respect of which the lender seeks judgment must, of course, take into account all credits lawfully due to the guarantors as a result of any such realisations. In the present case, Mr Hall, in response to the charge made by the defendants that their liability under the guarantee was uncertain because of the ongoing realisation of Cloughvalley's assets, has deposed to the fact that only STG£600,000 has been realised since the demand for payment was made of the defendants. Thus, having regard to Cloughvalley's liabilities of circa STG£4.5m., receipt of that sum has had no effect on the lawfulness of the bank's claim made against the defendants for STG£500,000.

34. In his affidavit of 20th June 2014 Mr. Quinn maintained for the first time that the guarantee was unenforceable insofar as further advances had been made to Cloughvalley which post-dated the guarantee and that these were not caught by its terms. That submission, however, is not sustainable as a matter of contractual construction. The guarantee was stated to be in respect of "all and every the sum and sums of money which now are or shall at any time be owing to the bank". Thus the terms cover any later facilities granted to Cloughvalley. Further, clause 6 provides that the bank should be at liberty, without affecting the rights of the guarantors, to enlarge or vary any credit to the principal. For the same reason, the submission made by Mrs. Quinn, based on the fact that only her husband had signed the agreement between the bank and Cloughvalley for the provision of additional facilities after the execution of the guarantee, can afford her no potential ground of defence to the present claim.

35. As to the defendants' assertion that the court should not have relied upon the affidavit of Ms. Browne, as she was not an officer of the bank for the purposes of the Bankers' Books Evidence Act 1879, I reject that submission. Firstly, she states that she is an officer of the bank. It is regrettable that in response Mrs. Quinn has made such a vicious personal and professional attack on Ms. Brown. However, even accepting Mrs Quinn's hearsay evidence as to Ms Brown's status within the bank, the Bankers' Books Evidence Act 1879 has, in my view, no role to play in these proceedings.

36. The purpose of the Bankers' Books Evidence Act 1879 was to amend the law as it then stood to relax the strict requirements of the "best evidence" rule and also to relax the equally stringent requirements of the hearsay rule. The effect of the Acts of 1879-1989 has been to allow a bank to prove an entry in one of its books by producing a copy of such a document as *prima facie* evidence of that entry.

37. Section 3 provides as follows:-

> "Subject to the provisions of this Act, a copy of any entry in a bankers' book shall in all legal proceedings be received as *prima facie* evidence of such entry, and of the matters, transactions and accounts therein recorded.

38. Section 4 provides as follows:-

> "A copy of an entry in a bankers' book shall not be received in evidence under this Act unless it be first proved that the book was at the time of the making of the entry one of the ordinary books of the bank, and that the entry was made in the usual and ordinary course of business, and that the book is in the custody or control of the bank.
>
> Such proof may be given by a partner or officer of the bank, and may be given orally or by an affidavit sworn before any commissioner or person authorised to take affidavits."

39. In the present case the bank does not seek to prove any entry in any of its books. It is suing the defendants on foot of a guarantee which they executed. The bank has exhibited a copy of that document which the defendants accept they executed. Neither does the bank seek to exhibit a copy of any document in its books referable to the accounts of Cloughvalley. Thus, in my view, the defendants' reliance upon any provisions in the Bankers' Books Evidence Act, 1879 is simply misplaced.

40. It is true to say that the High Court judge, for reasons which he does not specify in his judgment, declined the defendants' application to cross-examine the banks deponents on foot of a Notice of Cross-Examination served on 12th June 2014 and that it would have been preferable had he identified why he refused the application, in that his failure to do so has made the review of his decision by this court somewhat difficult. However, the following are but some of the reasons which may have informed his decision:-

> (i) The Notice of Cross-Examination was invalid because it sought incorrectly to rely upon the provisions of Order 40 r. 31 as opposed to Order 37 r. 2 of the Rules of the Superior Courts.
>
> (ii) The application was made very late in the day having regard to the date upon which the proceedings had issued and the fact that the motion was peremptorily listed for hearing on 20th June 2014.
>
> (iii) The fact that the Notice of Cross-Examination was addressed to individuals residing outside the jurisdiction.
>
> (iv) That, having regard to the relatively minimal proofs required of a bank on an application for judgment on foot of a guarantee and the matters not credibly in issue in the proceedings, the cross-examination was simply unwarranted.

41. I have had the benefit of considering all of the material which was before the High Court judge when he proceeded to grant summary judgment without permitting the defendants to cross-examine Mr. Hall and Ms. Brown and having done so, I am quite satisfied he was entitled to exercise his discretion in the manner in which he did. There was no factual dispute on the affidavits which would have justified such a cross-examination. Indeed, the defendants do not state what issues would be resolved in their favour by

permitting them to cross-examine Mr. Hall and/or Ms. Brown. Apart from the matters referred to in the last preceding paragraph and having regard to the uncontested evidence to which I will now briefly refer, I am quite satisfied that it was not necessary for the proper administration of justice that the defendants be permitted to pursue the cross-examination sought.

42. It has to be remembered that Notices of Cross-Examination were served in the context of affidavits delivered by the defendants wherein they accept that they signed the guarantee the subject matter of the proceedings, and that it was intended to support the liabilities of Cloughvalley. The documentation exhibited is only consistent with the liability of Cloughvalley arising from its banking relationship with the plaintiff as opposed to any relationship with Northern Tailored Financial Solutions. There are constant references to the various loan arrangements between Cloughvalley and the bank. In addition, the defendants do not dispute that STG£4,595,752.93 was due by Cloughvalley to the bank on 18th October 2011 and the principal concerns of Mr and Mrs Quinn, as expressed in their affidavits, relate to the possibility that their liability to the bank under the guarantee may have been reduced as a result of monies received by the bank following upon the sale by the administrator of certain assets of Cloughvalley. They do not deny Mr Hall's averment that the only sum recovered since the issue of the proceedings was STG£600,000 and that this did not have the result of reducing Cloughvalley's liabilities below the sum guaranteed by them in the guarantee STG£500,000. In light of these facts it was perfectly within the discretion of the High Court judge to refuse the defendants' belated application.

43. As to the defendants' contention that the High Court judge should not have proceeded to determine the motion because documentation which they had sought from the plaintiff had not been furnished, once again I reject their submission. I cannot see how the non-availability of the documentation referred to in their affidavits could have had any material bearing on their ability to establish the possibility of a *bona fide* defence to these proceedings.

44. Firstly, if such documentation was viewed as material to their consideration of their likely defence to the proceedings, one might have expected that it would have been sought before Mr Quinn filed his first two replying affidavits. Secondly, the only documents material to the claim are, in truth, the guarantee and the letters of demand, all of which have been exhibited.

45. Thirdly, while the defendants did write to Mr. McEntee of the bank on 24th January 2014 and to the firm, Messrs Elliott Duffy Garrett, solicitors, Belfast, on 17th February 2014, requesting the delivery of a significant amount of documentation, I do not accept that these letters were written in the context of the present proceedings. The letter to Mr McEntee is stated to be:

> "Re: Bank Account numbers:
>
> 95 – 02 – 85 2104443
>
> 95 – 02 – 8511044346
>
> 95 – 02 – 85 5000 0191"

The letter reads as follows:

> "Please make all bank statements, facility letters, agreements and correspondence available to us for the above bank account numbers at your earliest convenience. Please let us know when the above will be available for collection."

46. It is obvious that the aforementioned letter, if it had been written in the context of the present proceedings, would have been addressed to the bank's solicitors, Messrs Mason Hayes and Curran. It was not. Neither does it refer to the proceedings on foot of the guarantee. The letter, in my view, was destined to provide information to the defendants in the context of the proceedings in Northern Ireland. That this is so is clear from two letters which they wrote to Mr Leo Brown of Elliott Duffy Garrett, solicitors, Belfast, on 17th February 2014. The shorter of these letters is stated to be Re: "Our High Court proceedings". It is clear that the proceedings referred to are those which were at that time before the courts of Northern Ireland. This is what the letter states:–

> "Dear Mr Brown,
>
> We have had some correspondence with you in relation to unresolved issues regarding the administration of our premises in Crossmaglen by Tom Keenan of Keenan Corporate Finance.
>
> I had forward (sic) a letter to Gerry McEntee of Northern Bank/Danske Bank dated 24th of January 2014 and I enclose a copy for your convenience. We have not received a reply to this letter for reasons best known to Mr McEntee. As there are matters yet to come before the Court we need answers to our queries. I have prepared a prelude for a notice for Particulars and/Discovery which I require answers to in addition to the queries sent to Mr McEntee.
>
> It is my intention to vent this case fully before the <u>High Court in Belfast</u> [emphasis added] and it is in the interest of expediency that I require this information now……"

47. The longer of the two letters written to Mr Brown on the same date sought 18 categories of documents which were clearly designed with the proceedings in the High Court in Belfast in mind. A letter in similar terms was written to Mr McEntee on 9th of May 2014.

48. While it is correct to state that Mr Quinn wrote to the bank's solicitors on the 3rd, 9th and 20th June 2014 seeking copies of various documents, it has to be remembered that by the time he did so the bank's motion had been peremptorily fixed for 20th June. Further, the documents he sought were precisely the same as those that he had sought from Mr McEntee in his earlier letter of 19th May 2014, regardless of the fact that it is difficult to see how any of these documents could have had any potential bearing upon the defence of the present proceedings in light of the uncontested evidence.

49. Consequently, I do not believe that any injustice was visited upon the defendants by reason of the fact that the documentation which they belatedly sought in the context of these proceedings was not in their possession prior to the hearing on 20th June 2014.

50. I readily accept that the implications of these proceedings for the defendants are very grave indeed. Further, their right of access to the courts and to a fair hearing are indisputable. However, those rights are not unfettered as the court is obliged to exercise its jurisdiction and carry out its obligations in accordance with the rules of court and the relevant prevailing jurisprudence.

51. Notwithstanding the submissions made by Mr and Mrs Quinn in the course of this appeal, I am quite satisfied, for the reasons earlier expressed in this judgment, that the High Court afforded them all of the rights to which they were entitled for the purposes of

enabling them demonstrate that they might reasonably argue that they had a bona fide and credible defence to these proceedings.

52. As already advised, the threshold to be met by a defendant who maintains that he or she has an arguable defence to make in summary summons proceedings is a low one. They need only convince the court that it is not very clear that they have no defence. For my part, having considered all of the evidence advanced by the defendants on affidavit and having considered carefully their submissions on this appeal, I am not satisfied that they have demonstrated that the High Court judge was in error when he concluded that it was very clear that they had no case to make by way of defence to the plaintiff's claim. Accordingly, I would dismiss the appeal.