Neutral Citation [2013] IEHC 178

THE HIGH COURT

[2012 No. 2858 S.]

BETWEEN

IRISH BANK RESOLUTION CORPORATION LIMITED

PLAINTIFF

AND

NIALL HIGGINS AND VALERIE HIGGINS

DEFENDANTS

JUDGMENT of Mr. Justice Cooke delivered the 23rd day of April 2013

1. In this action commenced by summary summons on the 27th July, 2012, the plaintiff ("the Bank") seeks to recover payment from the defendants of a sum of €2,805,116.47 which is claimed to be due and owing as the balance outstanding on foot of four loan agreements. The loan agreements are particularised in the summons and are dated the 20th December, 2004; 17th October, 2006; 18th June, 2007 and 7th February, 2008. The total amounts drawn down amounted to €3,282,550.66, and credit is given for total repayments made by the defendants in the sum of €477,434.19 leaving the balance outstanding in the amount claimed. The defendants, who appear personally without legal representation, have entered a conditional appearance for the purpose of contesting the jurisdiction of this Court.

2. The defendants are husband and wife and have been permanently resident in France since 2004 and it is not disputed that the loan agreements in question were made with them by the plaintiff's predecessor Irish Nationwide Building Society Limited ("INBS") for the purpose of enabling the defendants to finance the purchase of apartments and commercial properties by way of investment in France. Nor is it disputed that the amounts of the loans in question have been secured by charges taken in accordance with French law upon the properties concerned.

3. In evidence given by affidavit on their behalf, the first named defendant has explained that he and his wife sold their house in Ireland in 2004 and moved permanently to France where they acquired their current principal private residence which forms part of the security for the loans in question. They have been both resident and domiciled in France since and have no presence or business interests in Ireland.

4. The first named defendant explained that they had originally borrowed funds from a French bank but were encouraged in 2004 to transfer the borrowings to INBS which was at the time endeavouring to build up its loan book in France and had been licensed there as a bank for the purpose of carrying on banking business.

5. The defendant claims that until 2008 relations with INBS were good and the rental incomes from their investments were applied to service the loans. In 2008, however, it became apparent that INBS was facing financial difficulties and the defendants began to come under what he described as "extreme pressure" with constant telephone calls from INBS insisting that loans should be repaid. Furthermore, INBS imposed a series of increases in the rates of interest charged upon the loans.

6. According to the first named defendant he and his wife made repeated attempts to resolve the situation with INBS as demonstrated by the large volume of correspondence and emails exchanged, but without success. Ultimately, the defendants were obliged to seek legal advice in France with the result that in 2010 a proceeding was commenced by them against I.N.B.S. before the Tribunal de Grande Instance de Grasse, (the "French Tribunal"). It is the initiation and existence of this pending proceeding in France which gives rise to the issue as to jurisdiction now before this Court.

7. Briefly stated, the defendants contend that in accordance with the provisions of Council Regulation 44/2001 of the 22nd December, 2000, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (O.J. L 12, of 16.1.2001) (the "Brussels Regulation") this Court is obliged to stay the present proceeding in accordance with Article 27 because the same cause of action between the same parties is the subject of the French proceedings and the French Tribunal is "the Court first seised". The Bank, on the other hand, submits that the position is to be determined primarily by reference to Article 23-Prorogation of Jurisdiction, because each of the loan agreements contains a specific clause conferring exclusive jurisdiction upon the Irish courts and submitting all disputes to be determined in accordance with Irish law. The Bank also submits that, in any event, Article 27 does not apply because the causes of action before this Court and the French Tribunal are not the same within the sense of Article 27. In the alternative, the Bank argues that even if Article 28 of the Brussels Regulation could be said to apply upon the ground that the two sets of proceedings constitute "related actions", this Court then has a discretion as to whether grant or refuse the stay sought. It is argued that in that event there are strong reasons for refusing to exercise the discretion in favour of the defendants having regard particularly to the fact that the proceedings in France have been commenced in clear disregard of the jurisdiction clauses in the loan agreements.

8. It is necessary, accordingly, to examine these arguments in greater detail. Before doing so it should be pointed out that there is some uncertainty in the evidence placed before the Court as to the precise scope and effect of the pending proceedings before the French Tribunal. Affidavit evidence in that regard has been provided from Maitre Sichov, avocat of the Bar of Grasse, whose firm represents the defendants in that proceeding. That evidence has been replied to on behalf of the Bank by affidavit evidence of Maitre Pernot of the firm representing the Bank. In addressing the Court in person, the first named defendant sought to explain his understanding of the purpose of the French proceedings and the possible effects of the orders which the French Tribunal might make. It must be pointed out however, that such information is not admissible as evidence upon which the Court could assess the nature and effect of the French proceedings. The Court is confined for that purpose to the evidence given on affidavit by the French lawyers and to the terms of the summons and other papers in the French proceeding so far as made available to this Court in translation.

9. The primary rule as to jurisdiction in the Brussels Regulation is that contained in Article 2.1 namely, that persons domiciled in a Member State are to be sued in the courts of that Member State whatever their nationality. In this case, in the absence of any

evidence to the contrary, it would appear clear that the defendants are now domiciled in France having become personally resident there and severed all contact with this Member State. Moreover, as explained below, the defendants may be deemed to be domiciled in France under Article 15.2 of the Brussels Regulation if it should be held that the loan agreements are "consumer contracts" in the sense of that Regulation.

10. According to Article 3.1, persons domiciled in a Member State may be sued in the courts of a different Member State only where one of the rules set out in Sections 2 to 7 of that Chapter (that is, Articles 2 to 24) of the Regulation apply. As already indicated, the rules relied upon by the Bank to justify the present proceeding in this Member State are those contained in Articles 23, 27 and 28. It seems apparent that the defendants' law firm intend to rely on the consumer contract provisions of the Brussels Regulation although they do not appear to have been invoked explicitly before the French Tribunal as yet.

11. Article 23 - Prorogation of Jurisdiction provides in para. 1:

> "If the parties, one of more of whom is domiciled in a Member State, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which may have arisen or which may arise in connection with the particular legal relationship, that court or those courts shall have jurisdiction. Such jurisdiction shall be exclusive unless the parties have agreed otherwise."

The paragraph also stipulates that an agreement conferring jurisdiction in that regard must be either in writing or evidenced in writing.

12. Each of the loan agreements upon which the Bank's claim is based is in a standard INBS form and each contains a "Governing Law" clause in the same terms:

> "This offer letter should be construed in accordance with and subject to the laws of Ireland and the borrowers hereby irrevocably submit (for the benefit of the Society) to the excusive jurisdiction of the Courts of Ireland (it being acknowledged that the Society may take action or proceedings in any jurisdiction it considers appropriate in connection therewith)."

On the face of it, therefore, these clauses operate so as to bring the loan agreements within the scope of Article 23.1 of the Regulation. It should be noted however that the clause is both a choice of the substantive law to apply to the interpretation of the loan agreements and a "choice of court" or jurisdiction clause for the resolution of disputes.

13. The rule contained in Article 27 *lis pendens* – related actions, provides in para. 1 as follows:-

> "Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established."

Paragraph 2 provides:

> "Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that Court". (Emphasis added).

14. Clearly, the proceeding now pending before the Tribunal de Grande Instance de Grasse means that the French Tribunal is the "court first seised" in point of time for the purpose of the present case and that this Court is accordingly "secondly seised". If it were to be definitively established that, notwithstanding the "governing law" clauses of the loan agreements, the French Tribunal has jurisdiction for the purposes of Article 27, this Court would be obliged to decline jurisdiction in favour of that Court in accordance with paragraph 2 if the two cases are held to involve the "same cause of action".

15. It is also clear, however, that the issue as to jurisdiction has not yet been definitively decided by the French Tribunal. It has been raised on behalf of the Bank, but after some adjournments due to "major procedural irregularities" that issue is now apparently to be addressed by the French Tribunal at a hearing fixed for the 24th June, 2013. That being so, the question posed for the French Tribunal by Article 23 in the light of the admitted presence in the loan agreements of a "choice of court" clause, has not yet been addressed or decided so that the basis of jurisdiction of the French Tribunal is not yet "established" in the sense of that paragraph. That being so, the mandatory obligation for this Court in para. 2 of the Article 27 has not yet arisen. The Court would, however, nevertheless be obliged to stay the present case at least until the hearing in France in June has taken place unless it is satisfied that the obligation contained in para. 1 of Article 27 is clearly inapplicable. That would depend upon the question as to whether the two sets of proceedings involve "the same cause of action".

16. In the judgment of the Court this does not, in the particular circumstances of the present application, constitute the essential question which the Court is required to answer in order to resolve the immediate issue as to jurisdiction as between this Court and the French Tribunal. For the sake of completeness however the Court will first outline the arguments actually advanced in the application by reference to Articles 27 and 28.

17. In addressing those issues the first named defendant has understandably urged the Court to have regard to the fact that both sets of proceedings arise out of the same loan agreements and concern monies claimed by the plaintiff to be due from the defendants and secured upon the same properties all of which are located in France. Both actions, he insists, involve the same arithmetical exercise of calculating the correct amount due to the plaintiff when credit is allowed for payments made and when adjustments are made for the amount of interest properly allowable by law. One of the central issues identified in the French proceedings is directed at the compatibility of the amounts of interest claimed with the limitations imposed by French consumer legislation on bank borrowing and mortgage transactions of this kind.

18. On behalf of the Bank on the other hand, it is urged that the causes of action are manifestly distinct. The present case is concerned only with establishing the plaintiff's entitlement to repayment of the outstanding capital sums due as principal. The claim explicitly excludes any entitlement to recover interest in express deference to the claims made in the French proceedings. There is no dispute, it is said, as to the amounts which have been repaid by the defendants and credit for those amounts has been allowed in calculating the sum claimed. It is submitted that according to the procedural papers in the French proceedings as translated and explained by the French lawyers, that proceeding is concerned exclusively with the defendants' entitlement to resist payment of interest upon the uncontested amount of the capital debt by reference to the particular statutory provisions of the consumer legislation in question. Accordingly, it is argued, even if an order was made by the French Tribunal, granting the defendants the relief they claim in full, it would have no bearing upon the plaintiff's claim for payment of the amount of principal sought to be recovered in

the present action.

19. The approach which the Court should adopt in discharging its obligation under Article 27, where the same parties are concerned in an earlier proceeding commenced before a Court of another Member State has been considered by the High Court (Finlay Geoghegan J.) in the case of *Popley v. Popley* [2006] 4 I.R. 356. In that case the jurisprudence of the Court of Justice of the European Union in a number of cases was applied. These are *Gubish Machinen Fabrik KG v. Palumbo* case C– 144/86 [1987] E.C.R. 4861; case C-406/92 *The Tatry* [1994] E.C.R. 1-5439 and case C-111/01 *Gantner Electronic Gmbh v. Basch Exploitatie Maatshappij BV* [2003] E.C.R. 1-4207.

20. In *Popely* it was pointed out that while the English text of Article 27 refers to proceedings "involving the same cause of action" other language versions such as French use the phrase "*le meme objet et la meme cause*" so that it is appropriate to consider both the nature of the cause of action and the object or purpose of the litigation. In the case of *The Tatry* the Court of Justice ruled that the "cause of action" comprises the facts and the rule law relied upon as the basis of the action and that the "object of the action" means "the end the action has in view". It is also clear that the question as to whether the same cause of action is involved in the two sets of proceedings must be considered by reference to the claims made in the proceedings as commenced, not by reference to any defences subsequently raised.

21. So far as the action before this Court is concerned, there is no problem in identifying the cause of action and the object or end which the action has in view. The plaintiff's claim is to recover payment of the sum of €2,805,116.47 due and owing to it under the four loan agreements as the outstanding balance after payments in the sum of €477,434.19 have been excluded. The claim is for the principal or capital amounts only and no claim for interest is made.

22. While it is conceded that there are some obvious areas of common subject matter between the present case and the French proceedings, there are also some obvious discrepancies. According to the English translation of the originating summons before the French Tribunal, the action concerns the finances involved in six loans taken out with INBS, but the dates given do not correspond to those listed in the summary summons in this action as recited in paragraph 1 above. Some of the dates given coincide with the dates appearing opposite the signatures of the defendants in the agreements concerned and it is possible to co-relate the transactions by reference to the addresses given for the properties secured and in some instances by reference to the capital amounts drawn down.

23. It is nevertheless clear that the claims advanced in the French proceedings are essentially based upon allegations that none of the listed loans complies "with the provisions of the Consumers Code derived from the Act dated 13th July 1979," and according to the explanations given by the French lawyers the law in question imposes certain mandatory obligations upon bank lending transactions in the nature of consumer protection measures. More specifically the complaint raised relates to unlawful increases in rates of interest imposed by INBS; a failure to provide certain statutory information to the borrower in relation to the terms, costs and effective interest rates of the transaction and the failure to refer to a cancellation period of ten days. Further obligations as to the provision annually of information relating to the outstanding capital are claimed not to be complied with.

24. The sanction sought to be ordered by the French Court is requested pursuant to Article L312-33, para. 4 of the Consumers Code providing that, at the discretion of the judge, the lender will forfeit his right to interest in full or in part. The French Tribunal is requested to pronounce total forfeiture of the right of INBS to interest in the case. The reliefs claimed in the summons ask the Tribunal to "rule and say that the provisions of articles L312-1 et seq of the Consumers Code apply to the various loans taken out by Mr and Mrs Higgins with INBS," and as a result, "to rule and say that INBS shall be forfeited of its right to interests in full, for all loans taken out by Mr and Mrs Higgins". It is further pleaded that the applicants in the case have incurred "irrecoverable costs" which they ought not to have to bear with the consequence that the bank should be ordered to pay them an amount of €3,000. A further claim is made for an order directing INBS to pay an amount of €5,000 plus VAT namely €5,980 pursuant to article 700 of the relevant law.

25. If the issues are approached, accordingly, upon the basis of the respective claims as made in the two sets of proceedings, it is clear that the French proceeding has as its object the obtaining of a court order which will disallow the recovery by the present plaintiff of all interest upon the amounts of the loans which are the subject matter of that case. The proceeding includes, of course, ancillary claims relating to the statutory awards mentioned above, but it is clear that the cause of action is essentially one based upon the particular statutory provisions of the Consumers Code in question and the end sought to be achieved is the forfeiture of the bank's entitlement to interest and an award of compensation or damages. The validity of the underlying bank loan transactions and the liability to repay the capital amounts do not appear to be disputed. The case appears to be confined to the invocation of French consumer/borrower protection laws only.

26. On the other hand, as already indicated, the summons before this Court is concerned exclusively with recovery of the balance outstanding on the loan agreements by way of principal only and it is asserted that all interest has been excluded. It is therefore agruable that although the parties in the two sets of proceedings are the same, the claims do not involve the "same cause of action" so that Article 27 of the Brussels Regulation does not apply.

27. It is nevertheless apparent from the elements that are common to the proceedings that there is a degree of relationship between them so that the question arises as to whether Article 28 of the Regulation applies. Paragraph 3 of Article 28 provides that actions are deemed to be related "where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings". This does not involve application of an objective criterion as does the application of the "same cause of action" provision but an assessment as to what is expedient for the purpose of hearing and determining the issues that will arise in the respective causes of action and with avoiding the possibility of irreconcilable or inconsistent judgments. In the latter regard it is necessary for this Court to bear in mind that if the French Tribunal has jurisdiction to apply the distinct provisions of the Consumers Code relied upon in the claim before it, not only will it be better placed to do so but it may also award damages and such sums, if they fall to be credited against the outstanding debt, could be argued to affect the amount this Court would calculate as recoverable principal under the loan agreements especially if it is held that some of the payments for which credit has been allowed by the Bank included interest which was not lawfully due under the Consumers Code.

28. It is necessary therfore to return to the issue as to how this Court should approach the question raised by the possible application of Article 23 in circumstances where that question has not yet been considered by the French Tribunal as the "court first seised". The summons before the French Tribunal recognises and refers to the governing law provision of the loan agreements where the claim is asserted (as translated): "In this instance the parties chose to subject the loan contracts to the laws of Ireland (as allowed by Article 3 of the Rome Treaty)". The summons in question was, of course, formulated and issued in 2009, before the present proceeding was commenced so that the French Tribunal has not yet had to consider the possible application of Article 23 of Regulation 2001/44.

29. As already indicated, the plaintiff relies upon Article 23 as conferring on this Court a jurisdiction which is "exclusive" and that the

Court should therefore exercise its discretion under Article 28 to decline to stay the case because the proceeding before the French Tribunal has been brought in obvious disregard of the governing law clauses in the loan agreements.

30. In the judgment of the Court, this approach is not compatible with the objective of the Brussels Regulation and with this Court's obligation of cooperation with the French Tribunal as explained in the case law of the Court of Justice of the European Union.

31. In the first place, while it is clear that the loan agreements do contain the governing law clauses quoted above and that these would be valid and effective in Irish law to confer jurisdiction on this Court and to require the loan agreements to be construed in accordance with Irish law, it does not follow that all jurisdiction on the part of the French Tribunal under the Brussels Regulation is excluded as a consequence.

32. It appears from the translated terms of the summons taken out on behalf of these defendants before the French Tribunal that, although the inclusion of the governing law clauses is recognised, the jurisdiction of the French Tribunal is invoked upon the basis that the loan agreements are "consumer contracts" and that the provisions of the French Consumer Code which are quoted are of mandatory application or, in French law, *mesures d'ordre public*.

33. As already mentioned, the provisions of the Brussels Regulation have not been referred to in that summons or apparently raised before the French Tribunal up to this point. Instead, the summons makes reference in relation to the jurisdiction issue to "Application of the Rome Treaty". This is clearly a reference to the Rome Convention of 1980 on the Law Applicable to Contractual Obligations. That Convention, however, is a measure of private international law dealing with the choice of law for substantive purposes in contracts and not with the question of choice of jurisdiction as between the courts of Member States of the EU. Issues as to allocation of jurisdiction between courts of the Member States in civil matters now fall to be dealt with and determined, as in the present case, exclusively by the application of the Brussels Regulation.

34. The information available to this Court in the summons, correspondence and rulings that have taken place before the French Tribunal up to this point suggests that the French Tribunal has not yet been asked to consider the precise question as to whether, notwithstanding the presence of the governing law clauses in the loan agreements, the French Tribunal has jurisdiction to adjudicate upon the particular claim before it as a claim based upon a consumer contract within the meaning of Article 15 of the Brussels Regulation. Section 4 of the Brussels Regulation comprising Articles 15, 16, and 17 constitutes one of the categories of cases (see paragraph 10 of this judgment above), for the purpose of Article 3.1 where a person may be sued in the courts of a Member State other than the one in which he or she is domiciled and concerns "Jurisdiction over Consumer Contracts" as that term is defined in Article 5.1. Article 15.2 provides:

> "Where a consumer enters into a contract with a party who is not domiciled in the Member State, but has a branch, agency or other establishment in one of the Member States, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State."

35. While the particular issue does not yet appear to have been pleaded and argued before the French Tribunal, it is not unreasonable to suppose that this is the basis upon which the defendants' legal representatives will ultimately seek to maintain the jurisdiction of the French Tribunal to deal with the claim set out in the summons.

36. The possibility that the French Tribunal might exercise such jurisdiction is not inconsistent with the exclusive jurisdiction conferred by the governing law clauses in the loan agreements. This is because the reference to "exclusive jurisdiction" in Article 23 is somewhat misleading, insofar as it conveys the impression that such a clause could permit a Court secondly seised (such as this one) to treat a proceeding pending before a court first seised in another Member State as non-existent and therefore capable of being ignored.

37. This issue was settled in the judgment to the Court of Justice of the EC of 9th December, 2003, in case C-116/02 *Erich Gasser GmbH v. MISAT srl,* [2003] ECR I- 14721 at p. 14738, a case decided under the corresponding articles of the Brussels Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters of 1968. (Article 17 of the Convention – Prorogation of Jurisdiction, corresponds to Article 23 of the Brussels Regulation and its Articles 21 and 22 *Lis pendens*, *Related Actions*, to Articles 27 and 28 of the latter.) The case was also concerned with the approach to be adopted by the Court secondly seised where its jurisdiction was invoked upon the basis of a choice-of-court clause in the contract while the case before the court first seised was based upon the primary rule of the defendant's domicile.

38. The Court of Justice held that the Court secondly seised is not entitled to ignore the existence of the prior proceedings between the same parties. The fact that the prior proceeding had apparently been commenced in disregard of the choice-of-court agreement, does not oust the jurisdiction which might be exercised by the court first seised and does not remove the obligation of the court secondly seised to permit the issue of jurisdiction to be "established" by the Court which has seisin of the prior proceeding. The relevant passages in the judgment of the Court of Justice are to be found at paras. 42 – 51 as follows:

> "42. From the clear terms of Article 21 it is apparent that, in a situation of *lis pendens*, the court second seised must stay proceedings of its own motion until the jurisdiction of the court first seised has been established and, where it is so established, must decline jurisdiction in favour of the latter.
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> 43. In that regard, as the Court also observed in paragraph 13 of *Overseas Union Insurance*, [CaseC-351/89 [1991]ECR I-3317] Article 21 does not draw any distinction between the various heads of jurisdiction provided for in the Brussels Convention.
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> [. . .]
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> 46. In this case, it is claimed that the court second seised has jurisdiction under Article 17 of the Convention.
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> 47. However, that fact is not such as to call in question the application of the procedural rule contained in Article 21 of the Convention, which is based clearly and solely on the chronological order in which the courts involved are seised.
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> 48. Moreover, the court second seised is never in a better position than the court first seised to determine whether the latter has jurisdiction. That jurisdiction is determined directly by the rules of the Brussels Convention, which are common to both courts and may be interpreted and applied with the same authority by each of them (see, to that effect, *Overseas Union Insurance*, para. 23).

> 49. Thus, where there is an agreement conferring jurisdiction within the meaning of Article 17 of the Brussels Convention, not only, as observed by the Commission, do the parties always have the option of declining to invoke it and, in particular, the defendant has the option of entering an appearance before the court first seised without alleging that it lacks jurisdiction on the basis of a choice-of-court clause, in accordance with Article 18 of the Convention, but, moreover, in circumstances other than those just described, it is incumbent on the court first seised to verify the existence of the agreement and to decline jurisdiction if it is established, in accordance with Article 17, that the parties actually agreed to designate the court second seised as having exclusive jurisdiction."

39. It is accordingly clear that as the French Tribunal is the court first seised in point of time and the possibility cannot be excluded that it has jurisdiction to deal with a claim based upon a consumer contract pursuant to Article 15 of the Brussels Regulation, it falls to the French Tribunal to "establish" whether that jurisdiction can properly be exercised in this specific case and also what the extent of that jurisdiction may be. The French Tribunal will for example be concerned to decide whether the loan agreements are "consumer contracts" for the purpose of Article 15 of the Brussels Regulation having regard to the terms of the loan agreements and the investments apparently made with the borrowed funds. These are questions which the French Tribunal is clearly best placed to determine. This Court as the court secondly seised, must await the outcome of that determination. Because the issue of jurisdiction has not yet been addressed by the French Tribunal and because it is not obvious that the two cases "involve the same cause of action" in the sense of Article 27.1, the mandatory obligation for this Court to decline jurisdiction in accordance with para. 2 of that Article does not yet arise. The Court's obligation is to stay the existing proceedings until the issue of jurisdiction on the basis of Article 15 of the Regulation has been addressed and determined by the French Tribunal.

40. In these circumstances the Court considers that its obligation of cooperation with the French Tribunal within the framework of the Brussels Regulation is best met by adjourning the present proceedings temporarily to await the outcome of the hearing before the French Tribunal on the 24th June, 2013. The matter will accordingly be re-listed before this Court on Tuesday, 23rd July, 2013 for reconsideration in the light of such decision as may be taken by the French Tribunal.

Conclusion

41. To facilitate the parties and the French Tribunal this Court would summarise its conclusions on the issues before it at this point in the present action as follows:

> (a) Under Irish law the "governing law" clauses of the loan agreements are valid and have the effect of conferring jurisdiction on the Irish Courts for the purpose of Article 23 of the Brussels Regulation.
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> (b) Because the case before the Tribunal de Grande Instance de Grasse appears to concern only the application of the provisions of the Consumers Code in question as to recoverable interest in consumer borrowing agreements and possible liability for damages for infringement of the Code by the lender, the case brought before that Tribunal by these defendants does not appear to this Court to put in question the validity under Irish law as the substantive law of the contracts, or the entitlement of the Bank to recover the amounts of principal debt, the latter being the cause of action before this Court.
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> (c) In accordance to the above case law of the Court of Justice of the EU, it is the obligation and entitlement of that Tribunal as the "court first seised", to consider and to establish the basis and extent of its jurisdiction in respect of the particular claim before it in accordance with the provisions of the Brussels Regulation including Article 23.
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> (d) Subject to the precise terms and effect of that determination and, particularly, to the assumption that it establishes that the claim before the French Tribunal is confined to the application of the Consumer Code and does not affect the Bank's entitlement to repayment of the correct balance due for principal, this Court would propose to rule that the two cases do not involve "the same cause of action".
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> (e) In that event this Court would, subject to proof of the correct amount due after excluding any sums disallowed or required to be credited as the result of the ruling of the French Tribunal, grant the application of the Bank for judgment.

42. There will be liberty to either party to apply in the event of the ruling of the French Tribunal being unavailable but otherwise the case will be re-listed before this Court on 23 July 2013.