

## THE HIGH COURT

[2013 No. 4073 S.]

BETWEEN

ACC LOAN MANAGEMENT LIMITED

PLAINTIFF

AND

OLIVER KELLY AND MARGARET KELLY

DEFENDANTS

**JUDGMENT of Mr. Justice Eagar delivered on the 10th day of July, 2017**

1. This Court gave judgment on 15th May, 2017, in relation to an application by way of notice of motion for discovery by the defendants dated 3rd November, 2014.
2. The question now before the Court is whether or not a defence has been raised by the defendants, Oliver Kelly and Margaret Kelly. The Court notes the summary summons issued on 5th December, 2013, seeking judgment in the sum of €671,097.14, being the sum demanded as owing by the defendants as of 23rd October, 2013.
3. The Court also notes that the plaintiffs are not seeking interest arising from this matter.
4. An appearance was entered by the defendants and by way of notice of motion dated 1st April, 2014, an application was made for an order pursuant to O. 37, r. 1, granting the plaintiff to enter final judgment against the defendants in the sum of €671,097.14.
5. The affidavit of Edmund Pierce was dated 3rd March, 2014, and he refers to the two loan facilities.
6. The first loan facility is the subject of account 10037928 and on or about 2nd August, 2006, pursuant to a loan agreement, the plaintiff provided a loan facility to the defendants of up to €300,000 and the amount required to redeem the loan as of 27th February, 2014, was €150,788.47.
7. By deed of appointment dated 21st October, 2010, Simon Coyle of Mazars (the receiver) was appointed by the plaintiff as receiver over No. 3 St. Laurence's Park, Wicklow Town and No. 9 Glenside Road, Wicklow Town, pursuant to a mortgage dated 22nd March, 2007 and a mortgage dated 15th November, 2007, made between the defendants and the plaintiff.
8. The properties were sold by the receiver and the net proceeds of sale in the amount of €191,744.34 were applied against the first loan facility as was the payment by the borrowers in the sum of €37,158.22 in reduction of the amount owing by the defendants to the plaintiff pursuant to the loan facility. A letter of demand was sent by the plaintiff's solicitors to the defendants on 23rd October, 2013, seeking repayment of €71,097.44 which remained due and owing by the defendants pursuant to the first loan facility. He noted that the defendants had failed, refused or neglected to pay this sum.
9. He exhibits the loan facility which identifies that the purpose of the loan facility was to purchase a residential investment property at 5 St. Laurence's Park, Wicklow Town and the loan agreement was signed and accepted by Oliver Kelly and Margaret Kelly on 16th August, 2006.
10. The Court also notes the exhibit ROF3 of the affidavit of Ronan O'Flaherty sworn on 3rd July, 2014, which includes the statement of the accounts with the date of the draw down of the loan on 13th September, 2006, to 16th June, 2014. A number of regular payments were made by the defendants from 13th October, 2014, until 13th November, 2008, and the sum and inter-account transfer of €188,787.28, reduced the loan by that amount.
11. Mr. Kelly agreed in court that this was a proper analysis of the accounts.
12. Mr. Pierce then deals with the second loan facility, Account No. 10039663. On or about 22nd November, 2006, pursuant to a loan agreement, the plaintiff provided a loan facility to the defendants of €600,000. The amount required to redeem the loan as of 27th February, 2014, is €963,764.93. Some payments including one of €72,115.37 was made on 8th August, 2008. Mr. Pierce in his affidavit exhibits the loan sanction, which was to assist with the purchase of a residential investment property located at 67 Marlon Court, Wicklow Town. The security existing under the legal mortgage was a charge over residential investment property located at 67 Marlon Court, Wicklow Town, No. 9 Glenside, Wicklow Town, and over residential investment property located at 5 St. Laurence's Park, Wicklow Town. The security also included an assignment over ACC's deposit accounts containing €95,000.
13. This loan agreement was accepted by Oliver and Margaret Kelly by the signatures on respectively 24th November, 2006.
14. Exhibited to the affidavit of Ronan O'Flaherty sworn on 3rd July, 2014 is an interim statement of the loan account, dated from 14th December, 2006 to 20th August, 2013. A credit transfer in the sum of €72,115.37, is noted on 8th August, 2008. A write off of €35,940.46 is noted on 16th September, 2001. An inter-account transfer in the sum of €6,922.14 is also noted. No other payments were made by the defendants.
15. The purported defences as claimed by Oliver and Margaret Kelly are set out in their affidavit of 1st May, 2014. They lay out what they describe as their defence and counterclaim.
16. The first issue which they take issue with are inaccurate descriptions of properties: for example, St. Laurence's Road is described as St. Laurence's Park. They also referred to various monies, however these are not the subject of the loan facilities. They say they had a forensic report compiled by a forensic accountant. They also make reference to a number of accounts in December 2006 and 2008, where further loans and facilities were advanced by the plaintiff. They claim that the bank was colluding with Byrne Wallace Solicitors with the intention of committing fraud. They further state that they had, at least €800,000 invested with ACC Bank, which has since disappeared. They suggest that the bank is responsible for this disappearance.
17. The Court is satisfied that no defence has been advanced by the defendants in respect of the two matters which are the subject

matter of this application for summary judgment. The court is prepared in those circumstances to rule that the bank is entitled to summary judgment in the sum of €671,097.14.