

BETWEEN

ALLIED IRISH BANKS PLC

PLAINTIFF

AND
JAMES O'BRIEN**Judgment of Mr. Justice Robert Eagar delivered on the 12th day of December, 2018**

1. This is the plaintiff's motion to enter judgment in the sum of €229,846.19 on foot of credit facilities entered into between the plaintiff and the defendant.

2. On the 28th May 2003, the plaintiff advanced and continued to afford banking loan facilities to the defendant in the sum of €47,000, subject to the terms set out in the said credit agreement. The defendant accepted the credit agreement in writing and drew down the credit facility on the 28th May 2003. Pending repayment, the facility was subject to monthly payments towards interest, commencing on the 1st July 2003. The funds were secured against a property owned by the defendant and the assignment of an Ark Life PIP investment fund. The plaintiff claims that at various times the defendant has defaulted on his payment obligations to the plaintiff and, as of the 6th May 2016, the defendant was indebted to the plaintiff in the sum of €49,950.25, plus continuing interest accruing.

3. Further, by credit agreement dated the 17th September 2010, the plaintiff advanced and continued to afford banking facilities to the defendant in the sum of €110,000, subject to the terms set out in the credit agreement. On the 23rd September 2010, the defendant accepted the credit agreement in writing and drew down the monies advanced according to the credit agreement. The facility was repayable on the 5th May 2011 by single payment sufficient to clear the loan in full and, pending repayments, the facility was subject to consecutive monthly payments towards interest commencing on the 5th November 2010.

4. According to the credit agreement, the funds advanced were secured against a property owned by the defendant. Interest was to be payable on said loan facility at the plaintiff's standard variable A – Loan rate, minus 1.68%, being a credit rate of 9.72% on the date of the credit agreement.

5. The loan facility expired on the 5th May 2011, and the plaintiff avers that the sum from both accounts remains owing to the plaintiff totally €229,846.9.

Defence

6. The defence puts forward two grounds of defence: -

(a) That the plaintiff's claims against the defendant were statute barred, having arisen more than six years before the commencement of these proceedings;

(b) The relevant loans are old ones and both were the subject of longstanding defaults which he believed caused an acceleration of his obligations.

(c) He also complains that in each case AIB, in its application for summary judgment, has not exhibited the applicable general terms and conditions.

Tests to be applied

7. The test to be applied in an application such as this is well established. I refer to the judgment of Murphy J. in *First National Commercial Bank plc. v. Anglin* [1996] 1 IR 75 where Murphy J. stated: -

"For the court to grant summary judgment to a plaintiff and to refuse leave to defend it is not sufficient that the court should have reason to doubt the *bona fides* of the defendant or to doubt whether the defendant has a genuine cause of action (see *Irish Dunlop Co. Ltd. v. Ralph* (1958) 95 I.L.T.R. 70).

In my view the test to be applied is that laid down in *Banque de Paris v. de Naray* [1984] 1 Lloyd's Law Rep. 21, which was referred to in the judgment of the President of the High Court and reaffirmed in *National Westminster Bank Plc v. Daniel* [1993] 1 W.L.R. 1453. The principle laid down in the *Banque de Paris* case is summarised in the headnote thereto in the following terms: —

"The mere assertion in an affidavit of a given situation which was to be the basis of a defence did not of itself provide leave to defend; the Court had to look at the whole situation to see whether the defendant had satisfied the Court that there was a fair or reasonable probability of the defendants having a real or bona fide defence."

In the *National Westminster Bank* case, Glidewell L.J. identified two questions to be posed in determining whether leave to defend should be given. He expressed the matter as follows: —

"I think it right to ask, using the words of Ackner L.J. in the *Banque de Paris* case, at p. 23, 'Is there a fair or reasonable probability of the defendants having a real or bona fide defence?'

8. The first defence the court will consider is the question of whether or not the proceedings are statute barred.

9. In the supplemental affidavit of Brian McGuinness, senior manager of Allied Irish Banks plc., sworn on the 4th April 2018, he says that the plaintiff's claim in respect of the loan account is not statute barred in circumstances where payments were paid into the account up to and including the 4th January 2011 in respect of loan account ending 033. In respect of loan account ending 491, payments were made in respect of this account up to and including the 28th July 2011. The statement of accounts in relation to the loan account ending 033, show repayments in June of 2011, in July of 2011 and in August of 2011 and in respect of account ending 491, the court notes a payment dated the 28th July 2011 in the sum of €2,124.12.

10. Mr. McGuinness asserts that this is clearly an acknowledgment of debt and that the matter is not statute barred.

11. The second defence raised by the defendant relates to the acceleration of his obligations. Mr. McGuinness states that no acceleration of obligations occurred in accordance with the loan facilities in circumstances where no letters of demand issued which would have caused the debt to become due and owing in full.

12. The third defence raised by the defendant complains that the plaintiff has not in his application for summary judgment exhibited the applicable general terms and conditions. In the supplemental affidavit of Mr. McGuinness, he attaches the terms and conditions applicable to the loan account ending 033 and the account ending 491. The court is satisfied that the claims are not statute barred, that there was in fact no acceleration of his obligations and the plaintiff has remedied its default in respect of the terms and conditions by serving same by way of exhibits to the supplemental affidavit of Brian McGuinness.

Conclusion

13. By reason of the foregoing I am satisfied that the defendant has not established a defence as would oblige me to refer these proceedings to plenary hearing. Therefore, the plaintiff is entitled to judgment in the sum of €229,846.19 as against the defendant.