

THE HIGH COURT

[2015 No. 1282 S.]

BETWEEN

ALLIED IRISH BANKS PLC

PLAINTIFF

AND

GERARD MAHON

AND

RAYMOND MCCARTHY

DEFENDANTS

JUDGMENT of Mr. Justice Twomey delivered on the 29th day of March, 2019

1. This is a case in which the plaintiff ("AIB") seeks summary judgment against the second named defendant ("Mr. McCarthy") of Portlaoise, County Laois, in the sum of €833,289.60 in respect of a loan account and overdraft account. Judgment has already been obtained against the first named defendant ("Mr. Mahon") who was Mr. McCarthy's partner as the owner of the Continental Bar in Portarlinton, in respect of which these sums were borrowed.

2. Mr. McCarthy was unrepresented before this Court and he does not deny that the sums were borrowed from AIB and that they were not repaid but he does seek to defend the application for summary judgment on a number of grounds.

3. He avers in his affidavit how in 2008 he and his partner got into difficulties with the Revenue Commissioners which led to the bar they owned not being in a position to trade. He alleges at this time that an agreement was reached between himself and Mr. Mahon and AIB whereby, in essence, Mr. Mahon would take over the ownership of the Continental Bar and assume liability for the borrowings and that Mr. McCarthy would have no further obligations in this regard.

4. On the basis that this was Mr. McCarthy's understanding in 2008 one can have a certain amount of sympathy for him when nine years later in 2017 he was surprised to be served with a summons on the basis of his liability for the borrowings. However, what must concern this court is not sympathy for Mr. McCarthy but whether as a matter of law he has any defence to these summary proceedings.

5. In this regard the law is clear, namely that assertion of a ground of defence is not enough (*Harrisrange Limited v. Duncan* [2002] IEHC 14). It is clear that where facts are asserted without cogent evidence or any realistic suggestion that there might be such evidence, then this does not amount to a defence to summary judgment (*IBRC v. McCaughey* [2014] IESC 44). The key question being is there a fair or reasonable probability of the defendant having a real or *bona fide* defence (*Aer Rianta v. Ryanair* [2001] 4 I.R. 607)?

6. As regards Mr. McCarthy's defences, he claims that:

- The Summary Summons was served on him outside the 12-month time limit. However, while the Summary Summons is dated 1st July, 2015 and he was served in July 2017, it is clear from the stamp on the bottom of the Summary Summons that it was extended for 6 months from the 22nd June, 2017 and so was not served on him outside the time limit.
- The proceedings are statute barred as they were made outside a six-year time period that Mr McCarthy says runs from 2008. However, there is no evidence that any demand was made in 2008 and the relevant date for the Statute of Limitations is the date when demand is made. The earliest that the demand was made was on the 5th December, 2014, which is well within the six-year time limit. So, the Statute of Limitations defence does not avail Mr. McCarthy.
- Mr. McCarthy's main defence is that he had an agreement with AIB that he was to be relieved of his liability for the loan. The problem with this defence is that it amounts to a mere assertion. There is no evidence to support the existence of such an agreement. The only document produced by Mr. McCarthy, in support of the existence of an agreement with AIB, is a document dated 18th December, 2008 on the letterhead of a solicitors' firm, Power Stephens & Co, which is signed by him and Mr. Mahon and states:

"This is to confirm that it has been agreed between Gerard Mahon and Raymond McCarthy that as and from this date, Mr. Mahon is taking over the debts due on the business with the intent to having the Licensed Premises transferred into his name for a nominal consideration. In consideration of this agreement it is also agreed that Mr McCarthy will have no future interest or involvement in the premises or the running of it."

However, this is not evidence in support of the alleged agreement with AIB, since first it is not signed by AIB and therefore is not in any sense legally binding on them, secondly, it does not make reference to any alleged oral agreement with AIB- which is Mr McCarthy's alleged defence to these proceedings.

Conclusion

7. For all of these reasons, the claim by Mr. McCarthy, that he had an agreement with AIB whereby his liability to the bank would be released, amounts to a mere assertion and he does not have a fair or reasonable probability of having a real or *bona fide* defence. Hence summary judgment will be granted.