

THE HIGH COURT

[2012 No. 507 S.]

BETWEEN

ULSTER BANK IRELAND LIMITED

PLAINTIFF

AND

PETER REANEY

DEFENDANT

[Record No 2013/126CA

Circuit Court RecordNo.2013/000053]

BETWEEN

ULSTER BANK LIMITED

PLAINTIFF

AND

PETER REANEY AND TERESA REANEY

DEFENDANTS

JUDGMENT of Mr. Justice McDermott delivered on the 15th day of February, 2017

1. The plaintiff seeks judgment in the amount of €1,056,698.48 pursuant to a summary summons issued on the 9th February, 2012 as money due and owing pursuant to facility letter dated 28th March, 2008. The defendant denies liability and seeks to offset any amount due based on a counter claim for breach of contract and also claims damages. Mr. Reaney was not legally represented and conducted his own defence.

2. Mr. Reaney was originally self-employed as a plasterer who worked as a sub-contractor. He then became a developer. He purchased a site at Ballaghaderreen County Roscommon using his own funds and a loan of €50,000. He obtained planning permission for the construction of three blocks of two and three bedroom residences. The bank provided ongoing funding for the construction of Phase 1 of the development. Mr. Reaney hoped to use the bank facilities to the minimum during construction. In addition, he embarked on construction of the second and third phases. Additional funding was required and provided by the bank between 2006 and 2008 when difficulties arose which ultimately led to these proceedings. Circuit Court proceedings seeking a well-charging order on the development site were transferred to the High Court and the two actions were adopted and travelled together thereafter. The issues and facts set out in the affidavits of Mr. Reaney in the Circuit Court proceedings are substantially the same as those which arise in the High Court summary proceedings. The court heard evidence over a number of days in relation to these matters.

3. The facility letter in issue was issued on the 28th March 2008 and covers three facilities. Its terms were accepted by Mr. Reaney on 17th April.

Overdraft Facility

4. An overdraft facility was provided to account number 0417141 at the bank's Claremorris Branch with a limit of €35,000.00 for the purpose of working capital. The advance was subject to the bank's right to demand repayment at any time and the facility would be available until notification by the bank of its intention to cancel it. Otherwise the facility was subjected to review at least on an annual basis.

Loan

5. A facility was offered in the amount of €50,000.00 for the sole purpose of funding the purchase of 1.6 acres of development land at Ballaghaderreen, Co. Roscommon subject to review by 30th April, 2008. The repayment terms were that monthly interest was to be provided based on a rate of €292.24 per month charged to the defendant's current account. The principal would be repaid from the sale proceeds of the first unit within the development.

Loan (2)

6. A facility amount of €797,620.00 was provided. The purpose was to refinance an existing loan balance of €625,620.00 and supplement it with a further advance of €172,000.00 approved in the following way:

- €105,000.00 to complete Block B (of the development)
- €20,000.00 to build a perimeter wall
- €15,000.00 to assist in bringing Block A to same stage as Block C i.e. roofed, slated, windows and external doors, plastered and painted externally.
- €25,000.00 to cover interest roll up
- €5,000.00 for arrangement fee
- €2,000.00 marketing budget

This advance was subject to a monthly review with first review due on 30th April, 2008. The monthly interest was to be rolled up with the loan and would amount to €4,590.83 per month. Repayment would be from the full sale proceeds of units under construction when sold.

7. A number of "special conditions" were applied to the terms of the loan facility as follows:

- "(1) Jackie McMahon Cost and Consultancy Ltd. (JMMCCL) to be appointed to confirm proposed costing, supervise works and provide sign off for loan draw downs.
- (2) Detailed costing to be provided by JMMCCL and a fixed price contract entered into in relation to having a subcontractor carry out the proposed works on Block B and associated ground works (costing €105,000.00) and a proposed spend of €20,000.00 on the perimeter wall.
- (3) PLI/ELI insurances for Peter Reaney to be reviewed and confirmed by JMMCCL as satisfactory in relation to employing subcontract labour on site.
- (4) In the event that the above insurances are not satisfactory the appointed subcontractor is to hold individual insurance cover to the bank's satisfaction.
- (5) Draw down of funds will only be permitted against JMMCCL certificates confirming value of work completed and that same is in line with budget and in line with building, health and safety and planning regulations.
- (6) Bank to appoint local Sherry Fitzgerald agent to market the properties at national and local level."

8. The loan facility was signed by Mr. Aidan Benson, Manager of Business and Corporate Banking and by Mr. Reaney on the 17th April, 2008.

9. By letter dated 28th June, 2011 the plaintiff sought repayment of monies due and owing to them by the defendant but he failed to discharge same and these proceedings then issued. A number of affidavits were exchanged between the parties and the matter was sent for plenary hearing by order made 24th June, 2013 (O'Malley J.) who directed that the plaintiffs deliver a statement of claim within four weeks and that a defence be delivered four weeks from the date of delivery thereof.

10. In a statement of claim delivered on the 6th December, 2013 the plaintiff outlined the history of its dealings with the defendant. In June 2006 the plaintiff advanced a number of loan facilities:

- (a) €35,000.00 by way of an overdraft facility;
- (b) €50,000.00 by way of loan to assist with the purchase of 1.6 acres of development land in Ballaghaderreen in Co. Roscommon; and
- (c) €440,000.00 by way of loan to assist in the construction of Phase 1 (Block B) of a development comprising 4 units of a planned 12, initial site works and county council contributions of €50,000.00.

11. The plaintiff claimed that its servants or agents attended on a number of occasions at the development site at Ballaghaderreen, Co. Roscommon from in or about May 2006 to November 2006. The works undertaken by the defendant at that time were not allegedly within the parameters of the agreement for further finance between the parties. Specifically, the plaintiff contended that works had been carried out on Blocks A and C of the development. The bank was concerned that the work on Block B be completed and that its units be brought to market. However, the defendant assured the plaintiff that he was able to sustain the additional cost himself. In addition, the defendant advised that he was dissatisfied with the engineering firm overseeing the work and had engaged another firm, Patrick J. Tobin, Castlebar to review the works undertaken and the costing of same.

12. Mr. Reaney had by this stage drawn down monies advanced under previous loan facilities. However, difficulties arose in respect of substandard block work on site of which the bank was made fully aware. Mr. Reaney took steps to ensure that this substandard work was rectified and, having settled issues with his architect, remedial work was completed thereby enabling further funding to be supplied pursuant to the terms of the agreement and a further loan facility to be advanced on the 7th March, 2007.

13. By facility letter dated the 7th March, 2007 and accepted on the 21st March, credit facilities already in place were further extended as follows:

- (a) An overdraft in the sum of €35,000.00;
- (b) A committed loan facility in the sum of €50,000.00 for the purchase of the site at Ballaghaderreen; and
- (c) A committed loan facility in the sum of €620,000.00.

14. It is claimed that the loan facility of €620,000.00 included sums made available under the previous facilities and additional sums in relation to the completion of Phase 1(Block B) of the development. The advance also included €20,000.00 towards necessary remedial works and €20,000.00 to enable interest roll up until the next review.

15. Mr. Benson called to the site and met Mr. Reaney on the 6th July, 2007. In a note of that meeting he set out his impressions of the site and the progress that had been made. He thought it would be very difficult to sell any of the houses due to the presence of an eight foot high wooden fence surrounding the site which blocked a view of the houses from the main road. It gave the impression that the site was closed up and that no work was going on there. Mr. Reaney conceded this but noted that the wooden fence was insisted upon by the County Council because the site was on the main road and a strong barrier was needed. He could only remove the perimeter fence when all the blocks (A, B and C) under construction were roofed and externally plastered at which stage scaffolding would no longer be required and the fencing could come down.

16. Mr. Benson also noted that Mr. Reaney had commenced work on the two other blocks on the development and funded same from his own labour and cash resources. The second block of four townhouses was built to wall-plate level. The next stage required the insertion of windows, roofing and external plastering. The third block of four apartments was at a similar stage save that the windows were already in. It required roofing and external plastering.

17. Mr. Benson accepted that the fencing could not be removed until the roofing and plastering had taken place on the two other blocks. He noted that the bank would have to consider advancing additional monies to enable the other two blocks to be roofed and plastered so that the fencing could come down. He believed it to be essential that this occur so that people could see that it was a

working site with decently finished houses available at reasonable prices. Mr. Reaney had been doing a lot of the work himself in recent weeks. Mr. Reaney stated that the work was under budget and that he might only require an additional €50,000.00 to what was already approved to bring the other two blocks to the stage outlined. Mr. Benson was disinclined to accept that estimate and asked Mr. Reaney to contact his engineer and obtain a detailed costing to include the roofs, the fitting of windows and the plastering in Blocks A and C. He noted that while he did not indicate to Mr. Reaney that the bank would advance any additional funds he was of the view that it would be in the interest of the bank to do so.

18. Mr. Benson held a further meeting with Mr. Reaney at the site in Ballaghaderreen on the 26th September, 2007. He reviewed the position in relation to the development and in his summary noted that various estimates had been given to him by Mr. Reaney of costs involved to fully finish Phase 1(Block B) and bring the Blocks A and C to a stage where the scaffolding could be taken down. This would allow the perimeter fence to be taken away and the opening of the site. The following costings were supplied:

Block B: Final costing to finish houses one and two €5,000.00

Kitchens and wooden flooring to houses

three and four €10,000.00

Other works to finish houses three and four €10,000.00

Ground works, footpaths, walls labour cost €25,000.00

Material cost €30,000.00

Total: €80,000.00

Block A: Roof €6,000.00

Tiles and roof €4,000.00

Facia and soffit €4,000.00

Stone work €5,000.00

Sundry €1,000.00

Total €20,000.00

Block C: As above(i.e. €20,000 on Block C) plus

Re windows €5,000.00

Total €25,000.00

Overall Total: €125,000.00

Mr. Benson noted that the bank was in a difficult position with the development because there were no contracted sales for units and it was being asked to lend additional monies in the hope of attracting sales. The site continued to be unattractive to the passerby because of the perimeter fence which blocked any proper view of completed houses which were nicely finished but not on display. Mr. Benson considered that the spending of €125,000.00 was absolutely essential so that this development could be marketed locally. He considered that without this advance the site would have to remain as it was and in those circumstances sales would be difficult to obtain.

19. In those circumstances he recommended the approval of an application for an additional credit facility noting the existing limit of €575,000.00. He suggested a top up of €125,000.00 as per the estimated costs furnished by Mr. Reaney and an interest roll up over thirty-six months of €25,000.00 being a total of €725,000.00 plus a loan fee of €5,000.00 to be charged. When an application for further credit was submitted arising from this meeting a number of issues were raised with Mr. Benson in respect of the account by Mr. Gallagher his superior.

20. On the 7th December, 2007 Mr. Benson attended the site and had a further meeting with Mr. Reaney and his engineer. The purpose of the meeting was to obtain an update on costing and try to establish the minimum value of works that were required to be done to permit removal of the perimeter fencing. Though expecting to be provided with a detailed breakdown of costs, he regarded the information provided as inadequate. He informed Mr. Reaney that he intended to get an independent surveyor to carry out a report on behalf of the bank and subsequently contacted Mr. Jackie McMahon of Jackie McMahon Construction and Cost Consultancy Ltd. Mr. McMahon had been used by the bank with excellent results in the past. He then met with Mr. McMahon on the 17th December and furnished him with details of the case. Mr. McMahon carried out a site visit before Christmas and issued a report on the 17th January, 2008. Mr. McMahon concluded that the total amount to complete Block B and associated site works was €104,733.78. This included a provision for hoarding around Blocks A and C of €10,000.00 and the removal of an existing hoarding at a cost of €3,000.00. Landscaping was also included at a cost of €10,000.00. At this stage the plaintiff was concerned about the manner in which the project was being managed by the defendant and claims that it had lost faith in his ability to complete the project successfully in conjunction with his then engineer.

21. The plaintiff claims that in March 2008 its representatives met with the defendant on site with Mr. McMahon and advised him that they were agreeable to provide additional finance as had been requested in October 2007 on condition that Mr. McMahon be appointed to supervise the works. The plaintiff then agreed to advance the facilities contained in the letter dated 28th March, 2008 and accepted on 17th April. The loan facility of €797,620.00 consisted of the existing loan balance of €625,620.00 together with a further €172,000.00 approved as follows:

(a) €105,000.00 to complete Block B;

(b) €20,000.00 to build a perimeter wall;

- (c) €15,000.00 to assist in bringing Block A to the same stage as Block C;
- (d) €25,000.00 to cover interest roll up;
- (e) €5,000.00 for arrangement fee; and
- (f) €2,000.00 marketing fee budget.

22. As appears from the loan facility letter the facility was subject to a number of special conditions, the most important of which were that Jackie McMahon Cost and Consulting Ltd. be appointed to confirm proposed costings, supervise works and provide sign off for loan draw downs. A detailed costing was to be provided by Jackie McMahon Cost and Consulting Ltd. and a fixed price contract entered with a subcontractor to carry out the proposed works on Block B and associated ground works (costing €105,000.00) and the proposed cost of €20,000.00 on the perimeter wall.

23. Mr. Reaney complained that he was "blackmailed" into accepting the terms of the loan facility in March 2008 because the plaintiff insisted that it would not advance any further money unless Mr. McMahon was given the contract for the site. From this time onwards the evidence is that Mr McMahon took over the works on the site. This does not form any part of the original written agreement between the parties and was not specifically part of the terms of the loan facility of March 2008. There was an increasing disengagement from the site by Mr. Reaney who agreed that works should be undertaken by Mr. McMahon and sub-contractors retained by him to bring Block B to completion and carry out other works on the site. I am satisfied that Mr McMahon's role and involvement was more extensive than originally envisaged in the agreement. While some further work was carried out by Mr. Reaney he felt forced off the site by the plaintiff who used Mr. McMahon to carry out most of the remaining work. The bank was happy that the works proceeded in order to achieve completion and sale of Phase 1(Block B) thereby ensuring that much of its exposure on the loans would be met. It did so without procuring Mr. Reaney's agreement to any specific expenditure over and above the facility of 2008. It also assumed a liability to Mr. McMahon for any works carried out by him or under his direction and supervision. The bank had simply lost faith in Mr. Reaney's ability to provide any sensible business plan to complete the project or at least complete and sell Phase 1. Thus it accepted a liability to Mr. McMahon for any costs in excess of agreed works or for any additional works which were carried out beyond what Mr. Reaney agreed under the terms of the special conditions. The bank also assumed the task of bringing the units to market and was willing to spend whatever Mr. McMahon thought to be appropriate and reasonable to that end. The bank wrongly assumed that Mr. Reaney would simply accept these additional costs by accepting and assuming a further loan for any additional sums spent in the course of the McMahon works. The problem for the bank was that Mr. Reaney was becoming increasingly unhappy at what he regarded as excessive cost assessments and overruns by Mr. McMahon. He was also unhappy with his treatment by Mr. McMahon and the bank and what he regarded as his exclusion by both from his site and project. When presented with additional loan facility agreements to meet these costs, he declined to execute an acceptance of any further extension of the facilities which included these additional costs.

24. It is also alleged that Ms. Marie Brehony, manager of the plaintiff's branch, had elected to purchase one of the houses on the development site with her husband. Mr. Reaney was satisfied to give a contract to Mr. Brehony to execute all ground works and services for the 12 units on the site within five weeks at a cost of €25,000.00. The works would include the provision of all ESB, Eircom, waste facilities, cable television, broadband facilities, and a perimeter wall foundation together with sewers, footpaths, drainage and landscaping to complete the development. He stated that Roadstone provided an estimate for all cement necessary for the footpaths for the 12 units and foundation for the perimeter wall of €11,000.00 and kerbing to a value of €1,750.00. This gave a total value for works to be completed of €37,750.00. This he claimed, was the amount which he required by way of additional loan facility from the bank. Though Mr. Reaney advanced these facts as evidence of wrongdoing, Mrs. Brehony disagreed with the contention that she and her husband agreed to purchase a house or that there was any express or implied link between Mr Reaney's interest in retaining her husband on the site, the purchase of a house or the provision of finance by the bank. I am satisfied to accept her evidence in that regard. It does not appear to me that these matters have any bearing on the 2008 facility or the later engagement between Mr. Benson and Mr. Reaney or the engagement of Mr. McMahon.

25. Mr. Reaney acknowledges that he held four meetings with senior management of the bank and Mr. McMahon before obtaining the additional facility in March 2008. He was informed that additional funding would be provided only if Mr. McMahon, who was the contractor favoured by the bank was appointed to oversee the completion of the works. This was because of the banks confidence in him from previous experience in the satisfactory completion of outstanding works in similar circumstances. He initially refused and sought funding elsewhere to complete the works. When this was not forthcoming, he agreed to the terms imposed by the bank in respect of Mr. McMahon.

26. Mr. McMahon surveyed the site including Block B. Mr. Reaney states that he made it clear to him that all first fittings were paid for and second fittings had yet to be commenced. Block B needed to be taken to turn-key finish and all services needed to be provided to it. A perimeter wall and footpath had to be completed. Mr. Reaney wanted all services for Blocks A, B and C to be installed at the same time to avoid retrenching and duplication of work at a later stage. It seems that all were agreed that the latter was a sensible suggestion.

27. In a note on progress of 1st May 2008 Mr. Benson stated that Mr. McMahon had furnished an update on works on the site. Sub-contractors were on site carrying out internal works on Block B. It was then expected that those works would be completed within two weeks. The council had not provided a specification of the type of perimeter wall which it required once the perimeter fence was removed. He noted that Mr. McMahon had paid the subcontractors to date from his own account. Mr. Benson requested that a claim be sent to the bank and indicated that "we would settle that for him".

28. In a further note on the 11th June 2008, Mr. Benson stated that €63,000.00 was recently drawn down on the loan and paid to Mr. McMahon. One block was nearing completion. Mr. McMahon was happy with progress. His strategy was to fully complete one block and associated ground works and fence off the other two blocks which were still under construction. Mr. McMahon agreed that it would be more cash efficient to complete all ground works for the three blocks at the same time. However, he noted that the original quantified estimate would not now be sufficient because he discovered that works that Mr. Reaney advised had been completed, had not been completed, for example, a number of pipes were not properly laid. There were also outstanding matters such as payments to a subcontracting plumber and electrician which had not been paid by Mr. Reaney.

29. A progress report and a letter seeking payment was issued by Mr. McMahon on the 19th of June 2008. It contained a renewed cost plan of €208,463.78 including a claim for €112,979 for works completed to date. Mr. Reaney's solicitor wrote on the 26th of June objecting to the imposition of Mr. McMahon as contractor on the site. He complained that the sum now estimated was in excess of what it would have cost his client to carry out the works had he been permitted to do so. He also complained about a number of site safety issues and health and safety matters.

30. In July 2008 Mr. Benson received an irate telephone call from Mr. Reaney as he was going on holidays complaining that Mr. Benson had not given him a chance to complete his development and had imposed Mr. McMahon on him against his will. Mr. Reaney again raised health and safety issues. Mr. McMahon also received a number of calls from Mr. Reaney but ultimately referred him to the bank as he now deemed himself to be employed by the bank in executing the works. A fence was ordered and was to be erected on the perimeter of the site. The wall was under construction and following completion of footpaths external to the wall within the following few days, the perimeter fence would be erected.

31. In July 2008 following completion of the wall it was indicated that within a few weeks one block would be completed following the erection of wooden fencing at the end of each house. It was reported that by 18th of July a perimeter wall had been constructed as far as the entrance to the site and had been plastered. Mr. Benson noted that "works to the stage that we have agreed" should be finished by the end of the week. Mr. Benson reported that he had explained to Mr. Reaney's solicitors the reason for the introduction of Mr. McMahon onto the site to complete the works even though Mr. Reaney had indicated he could complete them for a lower price. He informed them that Mr. Reaney had initially proposed a twelve-month development which was now three years on and not near finished.

32. Following completion of the first block Sherry Fitzgerald were retained to market the houses as it was hoped that this would proceed in the near future. By this stage a sum of €128,231 had been drawn down and paid to Mr. McMahon. This was €3,231 more than the agreed advance. In a summary of 21st July Mr. Benson noted Mr. McMahon was to prepare further costings for the remainder of the ground works in respect of all three blocks and for the roofing and plastering of one of the blocks to bring it to the same stage as the remaining block. By mid-August 2008 Mr. Benson noted that "the agreed works are now completed and the market process was to proceed".

33. The account submitted by Mr. McMahon on 11th September 2008 was for the sum of €284,739. It was noted on review by Mr. Benson that the original estimate for completion of the block and making it ready for sale was €105,000. However, there was an additional gross spend of €194,945.22. Mr. Benson submitted an application for an increase in loan facilities to cover the cost of the cost overruns on the works carried out and overseen by Mr. McMahon, additional works carried out and not in the original proposal and monies owed to tradesmen which came to light when Mr. McMahon engaged them to finish other works on the development.

34. At a meeting on the 13th October 2008 Mr. Reaney was given a draft letter of facility by which the Plaintiff proposed to continue the loan and which included an additional amount to cover works carried out by Mr. McMahon. Mr. Reaney had a number of complaints about escalating costs. He complained about the removal of a perimeter fence, the remains of which should have been left for him to sell. Mr. McMahon informed him that the fencing was available should he wish to collect it. He also complained about the fact that a container which contained his tools and other materials was broken into and items removed. Mr. McMahon explained that the container had been removed from site to facilitate works and had been moved to a location nearby. This remained a source of dispute between Mr. McMahon and Mr. Reaney at the hearing of the action. Mr. Reaney declined to sign the facility letter at that time but took it away with him. This letter was never signed by Mr. Reaney.

35. On the 9th January 2009, a further draft letter of loan facility was submitted to Mr. Reaney by the bank for completion. The main facility was to be increased to €1,016,967.00 to cover additional costs of €229,904.00 for works carried out on the site by Mr. McMahon. Mr. Reaney's solicitor suggested at a meeting in December 2008 that any additional costs should be borne by the bank as they had not been agreed in advance with Mr. Reaney. Mr. Benson indicated that the expenditure had resulted in an enhanced value accruing to the site at reasonable cost. Mr. Reaney complained that damage had been caused to a neighbour's sewer pipe by Mr. McMahon's workers which had rendered him and his wife liable to proceedings. Mr. McMahon at all times denied any responsibility in respect of this matter. Mr. Benson requested that Mr. Reaney address the matter of the existing loan which expired on the 9th February and sought proposals for renewal of same. None were forthcoming at that stage. The proposed letter of offer of the 9th January was never executed by Mr. Reaney.

36. The issues between the bank and Mr. Reaney were further discussed at a meeting on the 20th July 2009 attended by Mr. Boland and Mr. Benson for the bank and Mr. Reaney and his solicitor. While Mr. McMahon was accused of going on a "solo run" in carrying out works, Mr. Reaney accepted that Mr. McMahon's main task was to bring four units to completion and supply all services on site to that block. Any outstanding liabilities to the sub-contractors were to be discharged by Mr. McMahon. Mr. Benson's impression was that Mr. Reaney was of the view that it was the bank's responsibility now to market the units. He had last spoken to the auctioneers two months previously and believed that the incomplete nature of the development prevented him from marketing the units. It was agreed that the full financial position in respect of the development as understood by Mr. Reaney would be supplied to the bank in writing. Mr. Benson noted his own impression that Mr. Reaney was not making an effort to market the units and now wished to pursue the bank for what he perceived to be its liability to him in respect of the manner in which the development was funded through works done by Mr. McMahon.

37. On 18th November 2009 Mr. Reaney who was then in China advised that he had a number of Chinese investors who were interested in buying all the houses on the site. He requested that the houses be placed on the auctioneer's web-site for viewing by these potential purchasers. Mr. Reaney indicated that he had been in China for a month trying to establish a trading agency. He anticipated that he would be there until Christmas 2009. Nothing came of this proposal which Mr. Reaney clearly believed had some merit. The auctioneer did not share his optimism.

38. The plaintiff does not seek to recoup any sum over and above that due on foot of the loan facility granted in March 2008. In effect, the bank bore the loss incurred arising from the expenditure on the additional works carried out by Mr. McMahon in 2008.

39. The defendant in his "Reply to Banks statement of claim" dated the 17th October 2014 sets out at great length what the court will treat as his Defence and Counterclaim to the Plaintiff's claim. I emphasise at this stage that the document is not in the standard form and does not comply with the Rules of the Superior Courts. It is undoubtedly prolix and contains many allegations of a disjointed nature. The plaintiff requested clarification of the proposed defence on a number of occasions which were not forthcoming. I have addressed a number of these allegations in the summary set out above and Mr. Reaney gave evidence substantially in accordance with the contents of this document. I considered his evidence to be at times incoherent and unconvincing though as already noted on a number of matters, there was little disagreement. In particular, it is clear and accepted that the bank advanced Mr. Reaney the money set out in the various letters of loan facility up to and including that of March 2008. The money was drawn down at various stages. Interest was charged in accordance with the agreements. That is not in dispute and is established on the evidence. A demand was made and the money has not been repaid. The defendant accepted that he obtained bank loans to assist in the development of the site. He used his own funds to finance the project and carried out much of the work himself. He claims that the repayment was to be on the sale of the units and not upon demand. This is clearly not borne out by the terms of the facility. The General Terms and Conditions to which the facilities were subject provided that an overdraft was repayable on demand (clause 3.2) and the loan facility was repayable on demand (clause 4.2) and this term could not be "prejudice(d)" by the inclusion of other

conditions. The term loan was subject to review but once it was not renewed the loan became repayable on demand.

40. The defendant submits that the loans were repayable only upon the sale of the units and that this is supported by the terms of the loans and the repeated reviews of same to achieve that end. I am not satisfied that this is so. The loans remained repayable on demand under the facility agreement though if the development was completed and the units sold the loans would then have been repaid. It does not follow that that understanding negatives the term that the loans were repayable on demand (*Lloyds Bank plc v. Lampert* [1999] 1 All.E.R. (Comm) 161 per Kennedy L.J.). The court also accepts the evidence of the plaintiff's witnesses and based on the many notes and memoranda submitted in evidence, that the bank had lost confidence in the defendant's ability to complete the project and repay the loans.

41. Mr. Reaney was seriously aggrieved by the fact that the bank returned a number of cheques on his account unpaid which caused him embarrassment and distress because amongst other things, it prevented him from providing for and paying basic family bills and necessary weekly expenditure. The bank contends that Mr. Reaney exceeded the credit limits allowed resulting in failure to honour cheques which, though regrettable, arose from the terms upon which the accounts were operated. From his evidence he was in serious financial difficulty and this led to his leaving Ireland to seek opportunities in China in 2009.

42. The defendant has repeatedly stated that he is entitled to damages for what I interpret to be negligence and breach of contract and trespass to goods by the plaintiff its servants or agents and all money lost by him on this project. His most conservative estimate of this loss appears to be between €400,000 to €500,000 on the papers submitted. Though there are elements of this claim discernible from the pleading delivered, I am not satisfied that what is stated or alleged in the document constitutes a recognisable claim that could possibly succeed. I am also satisfied that no evidence emerged during the hearing upon which the court could make an award of damages against the plaintiff based on any of the assertions made by the defendant in submissions or when giving evidence.

43. The court is satisfied on the evidence adduced that the plaintiff is entitled to recover the sum of €1,056,698.48 pursuant to the terms of the facility letter signed by Mr. Reaney on the 17th April 2008. I am not satisfied that the plaintiff is in breach of any of the terms of the letter or the special conditions thereof. It is also clear that Mr. Reaney agreed that Mr. McMahon and his company should supervise the ongoing and continuing works. This was intended to ensure that Phase 1 of the development might be brought to market and sold using Sherry Fitzgerald as selling agents. The works progressed to a stage in August- September 2008 when it became possible to bring that part of the site to the market. Though various attempts were made to achieve sales this was not possible for a number of reasons including the onset of the recession. The economic climate deteriorated to the extent that such interest as was expressed was on the basis of very low price levels. Sales were not achieved. However, I am satisfied that the works carried out were of a sufficient standard to enable Phase 1 to be brought to the market, notwithstanding the issues raised by Mr. Reaney concerning the cost of the works done and what he regards as substandard finish in respect of a number of matters which he outlined in evidence. I do not accept that the issues which he raises affect his liability to discharge his obligations to the bank under the loan facility. I am also satisfied that he agreed, as acknowledged in his solicitor's correspondence that works could be executed by and under the supervision of Mr. McMahon's company and those retained by it.

44. I have considered Mr. McMahon's evidence, which I accept, in respect of the works carried out, payments made and the bills of costs which were produced during the course of his work on the site and am satisfied that such costs were reasonably incurred in bringing the project to the stage agreed. I am also satisfied that costs were incurred which were not anticipated prior to his engagement such as outstanding obligations to subcontractors and works which had not been satisfactorily completed but which he had been informed had been carried out to the appropriate standard.

45. I have also considered the defendant's evidence and the claim made by way of set off and counterclaim insofar as that can be understood from the pleadings. I am satisfied that judgment should be entered for the plaintiff and that insofar as there is a counterclaim or claim by way of set off, it should be dismissed.

46. There remains the second limb of this case which travelled with this action by order of Mac Eochaidh J., namely *Ulster Bank Ireland Limited, Plaintiff v. Peter Reaney and Teresa Reaney*, Defendants (High Court Record No. 2013/126 CA, Circuit Court Record No. 2013/00053). This case started out in the Circuit Court in proceedings which issued on 11th February 2013 seeking a well charging order in respect of property comprised in Land Registry Folio 27159F of County Roscommon. Initially these proceedings were adjourned until the conclusion of the Summary Summons proceedings against Mr. Reaney by the Circuit Court because the court was informed that issues pertaining to the Circuit Court proceedings might have a bearing on their outcome. The claims arose from the same loan facility agreements. The second defendant in the Circuit Court proceedings was sued as a guarantor of the loan facilities in issue. The High Court adjourned the summary proceedings for plenary hearing on 24th June 2013. The plaintiff appealed the adjournment order granted by the Circuit Court by Notice of Appeal dated 21st June 2013. That appeal was allowed by Mac Eochaidh J. on 28th July 2014 who on the same date consolidated the Circuit Court proceedings with the plaintiff's claim against Mr. Reaney and directed that the two should proceed as a single action. The affidavits delivered in the Circuit Court proceedings by Mr. Reaney raised substantially the same issues and grievances against the bank as have been the subject of the plenary hearing. It should be noted that the original order was made on the mistaken belief that the entirety of the Circuit Court proceedings were before the High Court on appeal. They were not. Subsequently an application was made to Mac Eochaidh J. who on 18th November 2015 made an order that the proceedings pending in the Circuit Court be adopted within the High Court as if they had been commenced by Plenary Summons. This followed an Order made by the Circuit Court on 16th November that the action be transferred to the High Court. The court has considered all issues of fact relating to the loans raised in both sets of proceedings and is satisfied that its findings of fact are equally applicable to both cases. The court will hear further submissions in relation to the orders now sought in the light of those findings in respect of the matters raised by Mr. Reaney in the well charging proceedings.

47. By way of addendum I wish to make clear that the only order which will issue on the basis of this judgment is an order granting judgment to the plaintiff in the amount claimed and dismissing the defendant's counterclaim or claim for a set off against the Plaintiff. The court will adjourn the issue of costs until the determination of the adopted Circuit Court proceedings.