Neutral Citation No. [2010] NIQB 117 | *Ref:* **McCL7980**

Judgment: approved by the Court for handing down | *Delivered:* **22/10/10**

*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

_____

QUEEN'S BENCH DIVISION

_____

BETWEEN:

ANGLO IRISH BANK CORPORATION LIMITED

Plaintiff:

-and-

RODNEY WILLIAMSON
and
WINSTON LYNESS

Defendants:

_____

McCLOSKEY J

I THE PLAINTIFF'S CLAIM

[1] This is a claim by Anglo Irish Bank Corporation Limited ("*the Bank*") against the Defendants for the repayment of a loan plus contractual interest. By the specially endorsed Writ of Summons issued on 9th July 2009, the Bank asserts its entitlement to repayment on the basis of a so-called "facility" letter dated 19th March 2008. It is pleaded that, pursuant to this letter, the sum of £404,000 is repayable by the Defendants to the Bank on demand.

[2] Prior to the trial, the Bank brought an application for summary judgment, the outcome whereof was that the Defendants were given leave to defend on certain terms. In the event, only the first-named Defendant, Mr. Williamson, actively defended the action, albeit in a limited way (*infra*).

II MR. WILLIAMSON'S DEFENCE

[3] Bearing in mind the contents of two affidavits sworn by Mr. Williamson in resisting the Order 14 Application, it appeared to the court that the terms of his Defence were unsatisfactory, having regard to the requirements of Order 18. This

resulted in the service of an amended Defence after the trial had begun. This incorporates the following elements in particular:

(a) Mr. Williamson's acknowledgement of the letter of facility dated 19th March 2008 and his acceptance thereof in writing, on 8th April 2008.

(b) An assertion that the letter of facility was not comprehensive of the agreement between the Bank and Mr. Williamson.

(c) Allied to (b), an assertion that one Mr. O'Neill, on behalf of the Bank's predecessor, had provided to Mr. Williamson –

> "*…assurances …verbally at this Defendant's home and elsewhere, in the early months of 2008, to the effect that the repayment charge which is and was a penalty would be waived and that the security held over three other properties owned by this Defendant would be released. He would not otherwise have signed the said facility letter.*"

The pleading continues:

> "*10. This Defendant relied upon those assurances. He did so to his detriment in signing the said facility letter of 19th March 2008, on 8th April 2008. This facility letter and its acceptance constituted only part of the contract for banking facilities between the parties, which was partly written and partly oral, by reason of the said assurances …*
>
> *11. In breach of the assurances, the Plaintiff … has not released the other properties which it holds as security, nor has it waived the repayment penalty. These were and are breaches of the entire contract.*"

These assertions give rise to two pleaded contentions in particular:

(i) Mr. Williamson has suffered detriment, since the properties secured have not been released to him and the balance penalty payment of £21,133 has not been waived.

(ii) The Bank "*is disentitled to rely upon the contract … by reason of the vitiation of the entire terms properly understood …*".

III THE TRIAL

[4] The trial began on 19th May 2010. Both the Bank and Mr. Williamson were represented by solicitor and counsel. The second-named Defendant, Mr. Lyness, did not appear and was not represented. Evidence was given by Mr. James O'Neill, who holds a managerial post in the Bank and appears to be the Mr. O'Neill who features in the amended Defence. Mr. Williamson was in attendance throughout this phase of the trial.

[5] Following the luncheon recess, Mr. Coyle, counsel on behalf of Mr. Williamson, informed the court that his client had not reattended because he was unwell. The court agreed to adjourn the trial until the following day. From that date, a succession of adjournments ensued and some medical reports were produced. These included, for example, a fairly cryptic written communication from Dr. Turtle, dated 24th June 2010, containing no definitive diagnosis of Mr. Williamson's condition but suggesting, on the basis of reported anxiety and panic attacks, that he "*… remains unfit to attend court at present*", while anticipating that "*… this situation will resolve over the next few months*". This followed a short report from Dr. Henry, dated 27th May 2010, containing a diagnosis of "*Chronic Fatigue Syndrome*" and advising that due to impaired concentration and cognitive abilities, Mr. Williamson was "*unfit for **jury service** (on medical grounds)*". [My emphasis].

[6] Ultimately, Mr. Williamson was assessed by Dr. Bell, a respected consultant psychiatrist. Dr. Bell's ensuing report, dated 25th September 2010, was presented to the court in support of an application for a continued adjournment of the trial. This contains a diagnosis of adjustment disorder, mixed anxiety and depressive reaction. Notably, in the "Opinion" section it does not address directly the key, concrete question of Mr. Williamson's ability to give evidence on his own account in these proceedings. The report contains the following indirect and vague conclusion:

> "*Possibly with the passage of time he will just get used to this type of stress and will be able to attend such court action without precipitating panic attacks. It is hard to say when that will be, possibly six months.*"

This report had the following noteworthy features:

(a) It was a pure "medico-legal" report.

(b) It did not suggest that Mr. Williamson had been referred to any consultant, whether in the specialised field of psychiatry or any other specialty.

(c) It did not document any ongoing medical/psychiatric treatment, therapy or attention of any kind.

(d) It documented an extremely vague history from Mr. Williamson about the onset of certain symptoms of a psychological nature.

(e) It was not based on any of Mr. Williamson's medical records.

(f) It made no reference to the above-mentioned medical "reports".

(g) It did not address Mr. Williamson's previous, fairly recent, ability to attend court.

(h) It gave no consideration to the question of whether an apparently experienced and active businessman is working in any capacity at present or has done so during the recent past.

(i) It failed to specifically address the purpose for which Mr. Williamson would be attending court and what precisely this would entail.

(j) The prognosis contained in the report is framed in extremely vague terms.

(k) The final sentence in the report proclaims that Mr. Williamson has been suffering from an "*anxiety experience*" for several years. This is unsupported and - in critical analysis terms - probably contradicted by the three earlier "reports" submitted to the court. Furthermore, it has no demonstrated objective basis in medical records.

(l) The penultimate paragraph of the report raises the issue of the bank's culpability for the current economic crisis. This suggests some lack of objectivity on the part of the author, is entirely unrelated to the author's expertise and qualifications and has nothing whatever to do with the purpose of the examination and report.

[7] For the aforementioned reasons, I concluded without hesitation that Dr. Bell's report was wholly inadequate to justify yet another adjournment of the trial and I refused Mr. Williamson's application accordingly.

IV MERITS AND CONCLUSIONS

[8] The cornerstone of the Bank's case is the aforementioned letter dated 19th March 2008. This is addressed to both Defendants. It is signed by Mr. O'Neill and another Bank employee. It recites, in material part:

> "*We refer to our recent discussions and confirm that we … have agreed to make available to Mr. Rodney Williamson and Mr. Winston Lyness ('the Borrowers') the loan facility*

specified below ('the facility') on the following terms and conditions.

This letter of offer replaces and supersedes all previous letters of offer from the Bank to the Borrowers.

1. Amount of facility

A cash advance facility in the amount of £404,000.

2. Currency of facility

Sterling pounds.

3. Borrowers

Mr. Rodney Williamson and Mr. Winston Lyness care of …l …

4. Nature of facility

Cash advance facility repayable on demand.

5. Purpose of facility

£404,000 currently fully drawn under loan account and utilised in the finance of … the Hamiltonsbawn site".

The letter then identifies the security for the loan as "*the Hamiltonsbawn site and all work in progress thereon*", coupled with adequate insurance. Next, the interest rate is specified. The letter continues:

"***Repayment date***

The facility is repayable on demand, which may be served at any time by the Bank at its sole discretion and without stating any reason for such demand. In the absence of such demand, the facility shall be repaid in full from the full net sales proceeds of the Hamiltonsbawn site. Prior to repayment, the facility shall be available to the borrowers on an interest only basis subject to satisfactory review by the Bank no later than 30th June 2008".

[9] Paragraph 10 of the aforementioned letter states:

"***Conditions precedent***

> *This facility is to be renewed subject to outstanding interest arrears of £9,754.72 being paid by 28th March 2008*".

Paragraph 11 continues:

> "***Conditions***
>
> *A total amount of £202,000 (i.e. 50% of the facility) is to be repaid by 30th June 2008*".

Finally, paragraph 13 states:

> "***Acceptance***
>
> *If you wish to accept the terms of this letter of offer, please return the duplicate hereof and the attached copy of the General Conditions within the next seven days, each signed by the borrowers*".

The Bank's letter dated 19th March 2008 finishes with the following acknowledgement:

> "*We acknowledge receipt of the letter of which the above is a true copy and of the attached General Terms and Conditions and we accept and agree the terms of the letter and the General Terms and Conditions and undertake to comply therewith*".

This is followed by two signatures. Having regard to paragraph 8 of the amended Defence, it is not disputed that the first of these signatures is that of Mr. Williamson and this is dated 8th April 2008. I should add that the Bank's claim is based exclusively on the terms of the letter, with nothing turning on what is described as "*the attached General Terms and Conditions*".

[10] The evidence adduced includes a separate letter, also dated 19th March 2008, from the Bank, addressed to both Defendants. This was described in evidence by Mr. O'Neill as a "side" letter. This adverts to recent discussions between the author (Mr. O'Neill) and Mr. Williamson and a request by the latter that the facility "*… remain on an interest only basis until completion of the above acquisition*": this refers to Mr. Williamson's acquisition of the 50% interest held by Mr. Lyness in the Hamiltonsbawn site. The letter continues:

> "*I can confirm that the Bank will agree for the facility to remain on an interest only basis until 30th June 2008 subject to:*

- *50% of the facility being repaid post completion …*[as above] …
- *The outstanding interest arrears balance on the facility being paid by 28th March 2008.*
- *The attached facility letter is signed by Rodney Williamson and Winston Lyness and returned to the Bank by 28th March 2008. The facility letter renews the existing facility on an interest only basis until 30th June 2008.*

The facility shall be subject to satisfactory review by the Bank no later than 30th June 2008".

[11] The inter-relationship between the two letters quoted above is clear. The evidence also included a "Review Sheet". This is an internal Bank document, the context whereof is understood by the entry "*Loan review, March 2008*". This documents the "*security*" as a six acre land bank at Hamiltonsbawn, County Armagh considered by the Bank valuer to have a market value of £80,000 per acre, reduced from an earlier valuation of £100,000 per acre. Thus the security was considered to have a value exceeding the amount of the loan, by some 20%. The record continues:

> "*We have reflected the decrease in value in our security. Since the acquisition of this site relationship with Rodney Williamson has deteriorated with all associated facilities now repaid except for £21,000 in repayment charges arising from the refinancing. The client was recently advised that the facility would be moving to C and I (£5,200 per month) from February 08 on a ten year repayment programme. The Bank's preferred option is for the promoters to refinance …*
>
> *However, the promoters have reverted to inform us that Rodney Williamson is acquiring Winston Lyness's 50% share of the site based on the original cost price. Rodney has stated that this process will take three months to complete and that following this he will repay 50% of the current debt balance. However, Rodney Williamson wishes for the facility to remain on an interest only basis until completion*".

In the final paragraph of this record, a facilities proposal was formulated accordingly. The record identifies the account number and the two Defendants are also identified, presumably as the account holders. Mr. O'Neill gave evidence that until 3rd November 2008, interest only payments were made to the Bank by Mr. Williamson. On 10th July 2008, a new facility letter was transmitted by the Bank to both Defendants. However, this was signed by neither of them. There has been no

further payment by either Defendant since 3rd November 2008. In due course, a letter of demand, dated 25th June 2009, was sent. This elicited no response.

[12] The Bank's witness, Mr. O'Neill, was cross-examined by Mr. Coyle. I consider that nothing in either Mr. O'Neill's sworn testimony or the documents adduced in evidence, highlighted above, lends the slightest support to the contentions enshrined in the draft Defence. Furthermore, objectively, and taking into account commercial realities, these contentions seem to me highly implausible. The arrangements being struck between the Bank and Mr. Williamson were characterised by a strong element of solemnity and formality and it seems to me inconceivable that Mr. Williamson would have signed the key letter if it did not reflect all material elements of the agreement between the parties. The amended Defence is further undermined by Mr. Williamson's conspicuous failure to make the case enshrined therein timeously, for example in a letter responding to the Bank's letter of demand or at a meeting with Mr. O'Neill or one of his colleagues. Furthermore, the case belatedly made by Mr. Williamson is not advanced in the original Defence and emerged for the first time, reactively, when the threat of summary judgment loomed large.

[13] I am satisfied on the balance of probabilities that the Bank's letter dated 19th March 2008 to the Defendants constituted the whole of the agreement between the parties. Pursuant to this agreement, the loan is repayable on demand and Mr. Williamson has defaulted in discharging this obligation. I find no merit whatsoever in the amended Defence of Mr. Williamson. It is confounded by any fair and objective analysis of all the evidence. The whole of the loan is repayable in consequence.

Disposal

[14] The Bank is entitled to recover in full from the Defendants. There has been a payment into court of £80,000. This reduces the principal sum claimed to £324,000 plus interest at the contractual rate specified in the letter dated 19 March 2008 viz. 3% over the "LIBOR" rate per annum. I remain somewhat unclear about the particulars and principles of the Bank's claim for interest. This should be properly calculated and particularised in clear and simple terms, in writing. As the legal representatives are fully aware, any pleading claiming interest must particularise:

(a) The date from which interest is claimed.

(b) The rate at which interest is claimed.

(c) The total amount of interest claimed to date.

(d) The continuing daily rate of interest.

Furthermore, if there is more than one interest calculation, taking into account the payment into court, this too must be addressed. Clearly, anything submitted to the Court Office must also be copied to the Defendants.

[15] In the meantime, it will not be possible to perfect the formal, final order of the court. In principle, judgment will be against both Defendants.

[16] Finally, the Plaintiff is entitled to its costs, to include those costs thrown away ordered by the court on the occasion of previous adjournments.