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Judgment: approved by the Court for handing down | *Delivered:* **22/06/2015**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (COMMERCIAL)

ULSTER BANK LTD

Plaintiff;

-v-

TERENCE McQUAID

Defendant.

WEATHERUP J

[1] The plaintiff sues the defendant by Writ issued on 26 June 2013 claiming repayment of monies due by the defendant on foot of facilities advanced by the plaintiff. The amount due comprises a loan account where the amount was some £601,000, an overdraft account where the amount was some £30,000 and on a further loan account where the amount was some £57,000. The total of the three accounts together with interest accrued to the date of Writ was £746,992.63. Mr Gibson appeared for the plaintiff and Mr Orr QC and Mr McNamee for the defendant.

[2] The defendant had an account with the plaintiff from 1999. He operated bingo premises in Belfast and had acquired a petrol station at Clifton Street Belfast and was the owner of other properties. His son, also Terence McQuaid, had an account with the plaintiff and had been involved in property dealings.

[3] On 21 October 2013 judgment was entered for the plaintiff in default of Defence which, after various credits and costs and interest, involved a judgment for £743,603.34.

[4] The defendant applied to set aside the judgment and on 24 September 2014 the judgment was varied to the sum of £324,100. The defendant was given leave to defend the balance of the plaintiff's claim. In effect there was a dispute by the defendant in relation to the sum of £350,000 which had been transferred from the

defendant's account. The hearing was concerned with whether the defendant was liable for the £350,000.

[5] The affidavit of the defendant solicitor filed on the application to set aside the judgment stated that on 8 September 2011 the plaintiff sent out a letter of formal demand seeking repayment and relied on a facility letter dated 8 June 2010. The affidavit stated that the sum of £349,000 (there was also a fee of £1,000), allegedly owed by the defendant to the plaintiff, arose as a result of a transfer made by the plaintiff from funds of the defendant to an account operated by the defendant's son. It was said on behalf of the defendant that the transfer was never authorised and that the facility letter dated 8 June 2010 on which the plaintiff relied was not agreed to nor signed by the defendant.

[6] A second issue was raised in the affidavit where it referred to a further two cheques for the sum of £324,000 which it was said were not credited to the defendant. In January 2007 two cheques were received by the defendant and his wife Briege from their then solicitors Doris and McMahon. One cheque was for £249,100 payable to the defendant's wife and the other was for £75,000 payable to the defendant and his wife. The two cheques were lodged to the credit of the defendant but it was claimed that the defendant had not been given credit for the two cheques.

[7] A replying affidavit was filed on behalf of the plaintiff by the Relationship Manager, Marion Best, which stated that on 26 July 2006 the defendant contacted the bank by telephone to request a loan of £200,000 for three months to enable his son to purchase property at Princes Street and Marlborough Street, Belfast and the short term loan would be repaid by the defendant with costs and interests following the sale of the son's property in Glengormley at a price which was then estimated at £2.7m. The result was the issue of a facility letter dated 31 July 2006. The defendant had an existing facility of £180,000 so the request for the payment to the son was to increase the facility to £380,000. Ms Best stated that the defendant signed and returned the facility letter.

[8] Further it was said that on 2 August 2006 the defendant made a further telephone call to request further facilities in the sum of £150,000, again to assist the son in the purchase of the properties at Princes Street and Marlborough Street. It was agreed on 9 August 2006 to advance that further sum to the defendant and on that date a facility letter was issued to supersede the previous facility letter. The result was that the loan to the defendant, which had originally been £180,000, had now increased to £530,000 to reflect the additional £350,000 advanced for the purposes of the son's purchase of the property. The further facility letter of 9 August 2006 was sent to the defendant and signed and returned by the defendant.

[9] The first transfer was made on 7 August 2006 in the sum of £199,000, a fee of £1,000 having been deducted. The second transfer was made on 9 August 2006 in the sum of £150,000.

[10] The facility letter relied on by the bank was issued on 8 June 2010. The letter stated that advances to the defendant had been to cover the part purchase of the petrol station and the £350,000 contribution to the son's property. A copy of the signed facility letter, which would have been a pre-requisite to the further facility being granted, could not be procured within the bank.

[11] On 28 August 2010 a review was conducted of the defendant's borrowings and the defendant claimed that the £350,000 was never requested or agreed by him and was drawn from his account with the bank without his authority. On 13 May 2010 a review was conducted of the defendant's borrowings and this revealed that the defendant had lodged a claim with the Official Receiver in the sum of £350,000 which was a claim in the son's bankruptcy.

[12] In relation to the two cheques that the defendant claimed had not been credited, the explanation given by Ms Best on behalf of the bank was that the sum of £324,100 had been credited to the defendant's accounts on 4 January 2007 and the sum of £350,000 was debited on 9 January 2007. Following payment of the monies into the defendant's account the defendant immediately paid out the sum of £350,000 to M M Kelly, solicitors. It was presumed, although not entirely clear, that the payment to M M Kelly was in respect of the purchase by the defendant of property adjacent to the Clifton Street petrol station. The payments were confirmed by the bank statements.

[13] I conclude that the issue of the two cheques for £249,100 and £75,000 are not relevant to this dispute and have been credited to the defendant. I leave these cheques aside as a red herring.

[14] Returning to the dispute about the transfer that was made for the benefit of the defendant's son, there is a copy of a facility letter of 31 July 2006 which is the first of the two initial facility letters. There is a copy with a handwritten note at the top "copy please sign and return" dated 31 July 2006. It was sent to the defendant at his home address in Dungannon. It refers to the variable loan of £380,000 as a temporary increase from £180,000. It was stated to be to assist with part purchase of the petrol station at Clifton Street and the contribution of £200,000 to the son to input into property deals. It stated that the facilities fell due for review on 30 June 2007 and the loan of £380,000 was expected to reduce to £180,000 within the next 2 to 3 months. The facilities were said to be available at any time after the bank had received written acceptance of the terms and conditions of the letter and the security was in place. The security was a first legal charge over the petrol station and adjacent site at Clifton Street, which was in place. The repayment scheme involved reduction of £200,000 from the defendant's son. Further, an up-to-date valuation of Clifton Street was to be received prior to the loan being drawn down. This facility letter was signed by the defendant and he has acknowledged that it was his signature.

[15] The other facility letter of 9 August also had written across the top "copy please sign and return" and again it was addressed to the defendant at his address in Dungannon. It stated the facility as a variable rate loan of £530,000. The other provisions of the facility letter were as the letter of 31 July and this too was signed by the defendant and he acknowledged that it was his signature.

[16] The later facility letter dated 8 June 2010 was not signed by the defendant. It was in the same format as the other letter and stated at the top "please sign and return this copy", was sent to the defendant at his Dungannon address and referred to a demand loan of £599,605, which was then the total amount. The letter referred to the purchase of the petrol station and the contribution to the son to input into property and repayable on demand, but in the absence of such demand would remain available until 31 May 2011. The defendant's evidence was that he did not receive this letter.

[17] On 14 October 2009 a letter to the Bank from Mallon and Mallon, solicitors for the defendant, raised the issue of the two cheques that were said not to have been credited to the defendant. The letter also raised the issue that Mr Cribbens, an employee of the bank, without the defendant's authority, may have transferred the sum of £330,000 from the defendant's account into the account of his son and the defendant did not authorise this transfer and the letter was to put the bank on notice requiring the immediate return of the funds. At this point there was a mixing up of the two cheques issue and the transfers made to the son. There had been a transfer under the facility letters of £349,000 to the son's company, rather than the £330,000 referred to in the solicitor's letter.

[18] The defendant replied in a further affidavit in which he denied that he had contacted the Bank on 26 July 2006. He denied that the facility letters were sent to him or handed to him in any complete state. However he stated that in November 2007 he attended a meeting at the Bank in Newry together with his colleague Gerry Corrigan to agree a loan facility in the sum of £1.2m in respect of an unrelated business. He remembered that at the end of the meeting a Bank employee named McCrisken had come into the meeting and presented him with two separate pages that were blank except for the provision of signature details and asked him to sign. He assumed that these related to the business he had just discussed and signed the documents.

[19] The defendant then addressed another matter which is also a red herring. In 2010 it was suggested to him by the Bank that he had entered a guarantee of his son's debts. He had not entered into such a guarantee. The Bank wrote to the defendant and to his solicitor confirming that the guarantee had been released and was no longer relied on by the Bank. This only added to the confusion. The defendant stated that his son had been declared bankrupt on 16 December 2009 and that a dispute had been raised with the Bank as to whether the £350,000 had been agreed to be paid to the son. The defendant received professional advice that he ought, as a protective measure, to lodge a claim for the £350,000 in the son's

bankruptcy because if he did not take that protective step he could later be precluded from recovering that sum in the event that it was held that the £350,000 had been lent by him to his son. There had been an earlier challenge made in the letter of 14 October 2009 to the transfer of funds to the defendant's son. The claim in the bankruptcy does not help in the resolution of the issue now arising.

[20] I turn to the transaction record in relation to these dealings. A transaction document of 26 July 2006 records Ms Best's account that the defendant telephoned the Bank requesting a loan of £200,000 for three months to assist his son with the purchase of property. The loan would be interest only and the costs and interests would be covered by the son upon the sale of property in Glengormley and the sale would be within the next 2 or 3 months. The Bank assessed the request and the advance was made.

[21] A similar transaction document of 2 August 2006 records that the defendant telephoned to advise that his son now needed an extra £150,000 to assist with the purchase, the loan would be interest only with all costs and interest would be covered by the son upon sale of property at Glengormley within 2 or 3 months. Again the facility was approved.

[22] I am satisfied that somebody rang the Bank to obtain the additional facility on the defendant's account. If this was not the defendant, then it seems to me that it must have been his son or someone on behalf of his son. The Bank records do not identify who took the telephone instructions or how they purported to identify the caller as the defendant.

[23] The two facility letters of 31 July 2006 and 9 August 2006 were signed by the defendant. The defendant explained the signatures being a result of his meeting in November 2007. He stated that he operated as a bookmaker and from 31 July to 6 August 2006 he was running a book at the Galway races, which he attends every year and he was not in a position to sign the letters at that time. After 6 August 2006, when the race meeting was concluded, he went touring with his wife for a few days, as he did every year. He was not in Newry to sign at the bank.

[24] The meeting in November 2007 led to a facility letter dated 21 November 2007 addressed to the defendant and Terry Corrigan that concerned a loan of £2.1m for a 25 apartment scheme at Limestone Road, Belfast. The letter was signed by Mr Corrigan and the defendant on 21 November 2007.

[25] Paul McCrisken, a Senior Relationship Manager at the Bank, took over the defendant's account in October 2006 and was in charge until January 2008. His evidence was that he did meet with the defendant and Mr Corrigan to finalise arrangements for the Limestone Road development in November 2007. He chaired the meeting and he was present throughout. He did not obtain the signatures on the earlier facility letters.

[26] The defendant's evidence was that he attends the Galway races each year from the last Monday in July to the following Sunday. He stays in Galway and he might come home on the Saturday night. He travels through Clones and in 2007 he did not go via Newry. The 2007 race meeting ended on Sunday 6 August. The date of the signature on the second facility letter was the following Wednesday. The defendant's evidence was that he did not phone the Bank to request the loan for his son. When he went to the meeting at the Bank in November 2007 Mr McCrisken came in with two pieces of paper. The defendant handed one over to Mr Corrigan and Mr McCrisken said that the papers were for the defendant to sign as his account had been moved to Belfast. The defendant stated in his affidavit that he had assumed that the papers he was signing were connected to the Limestone Road transaction but in evidence he stated that he was being told by Mr McCrisken that he was to sign because his account had been moved to Belfast.

[27] Mr Corrigan gave evidence about the round table discussion with two bank officials about the Limestone Road property. One was Mr McCrisken and they signed for the Limestone Road deal. The defendant was then asked to sign more forms that were not for the Limestone Road and nothing to do with him.

[28] The defendant's evidence was that he was given single sheets for signature. The signature pages on the two facility letters have been examined. It seems that each contains different types of paper and have been stapled and re-stapled. The pages might have been detached from the letters and reconnected at some point.

[29] The transaction record of 2 August stated that the valuation of the Clifton Street property was a condition of the loan being advanced to the son. The report was dated 4 August 2006 and prepared by P M McGibbon and Company. It was stated to be an Evaluation and Appraisal related to 46-48 Clifton Street, Belfast and valued the property at £2.4m. The report was stated to have been prepared following verbal instructions dated 31 July 2006 from Mr R Kearney on behalf of Dalrada Developments. Mr R Kearney was known to the defendant and was involved with Dalrada, a development company set up by his son.

[30] The payments of £350,000 were not made directly to the defendant's son but to the development company, Dalrada Limited. The records from the Bank show a payment of £199,000 to T McQuaid Junior, although this should read that payment was to Dalrada. There was an arrangement fee of £1,000. A second payment was made to Mr McQuaid Junior of £150,000 and that too should read as having been a payment to Dalrada. The business account of Dalrada shows receipts of the two payments of £199,000 and £150,000 on 7 and 9 August respectively, stated to have been made from the account of Mr McQuaid Senior, the defendant.

[31] The Glengormley site owned by the defendant's son did not sell within the 2 or 3 months that was originally anticipated when the loan was arranged. When the property was later sold it seems that the proceeds were turned over into another development. There is no evidence that the Bank followed up later in 2006 in

relation to the disposal of the Glengormley site as the proceeds were meant to reduce the additional loan of £350,000.

[32] There was an application for extended facilities dated 25 February 2007. I assume that this was a paper exercise as there was no evidence as to how this appraisal had actually been carried out. The Bank record stated that the Glengormley site acquired by the defendant's son had been completed and all the units had been contracted for sale. The funds were to be used in reduction of the facility, however they were required by the son as contribution towards a new development site at Princes Street, Belfast. It was stated to be not completely satisfactory that the loan facility would remain at £540,000 for an additional 12 months and would be reviewed again. The Bank had obviously been informed of the son's plans for the development. The recommendation, the lending proposition as it was called, was for renewal of the existing loan facility. It was recorded that the holder had recently been offered £3.5m for his property and the facility of £540,000 was recommended for a further 12 months and the Bank's position was regarded as secure at that time.

[33] The loan having been extended there followed a series of further facility letters issued to the defendant. On 9 March 2007 another facility letter issued to the defendant at his address in Dungannon and one of the loans was described as demand loan B for £539,000 as the part purchase of the petrol station and £350,000 for the son. This facility letter was in the same form as the others and was not signed by the defendant. Paragraph 11, which appears in all of the facility letters, provides that if acceptance is not received within 28 days, the offer will lapse and by confirming acceptance of the facility the borrower authorises the Bank to make all relevant payments on his behalf. The Bank may at its option treat continued usage of the facility as acceptance without amendment of the terms and conditions of the letter. A further facility letter of 15 June 2006 addressed to the defendant at his home again referred to the same loan and the contribution to the son but was not signed by the defendant. The defendant's evidence was that he did not receive these latters.

[34] A further letter dated 8 October 2008 was signed by the defendant. It is apparent that by October 2008 there was concern about the extent of the defendant's borrowings because a representative of the Bank went to the defendant's home to discuss the borrowings. This resulted in the letter of 8 October 2008 being signed by the defendant. The total facilities available were stated to be £897,000. There were four facilities provided, and one of them, facility C, was a demand loan of £599,000. This facility was stated to relate to the part purchase of the petrol station. The letter did not refer to the £350,000 paid to the defendant's son. Nevertheless the total included the £350,000 paid to the defendant's son. Cleona O'Boyle, a corporate executive in Belfast, attended the defendant's home when he signed the letter on 8 October 2008. The defendant's evidence was that he did not remember having signed the letter of 8 October 2008. Two further letters, both unsigned, one on 29 May 2009 and one on 8 June 2010, restated that the borrowings included the £350,000

paid to the defendant's son. The defendant did not accept that he had received these letters.

[35] Bank statements were issued to the defendant, addressed to the defendant at his Dungannon home. The bank statement for 26 January 2006 shows the £180,000 borrowed by the defendant for his own purposes. Monthly bank statements showed the debt due. The August 2006 statement showed the payment to the son £199,000, the arrangement fee, the second payment of £150,000 and the total debt stated to be £530,000. The statements for September 2006 and October 2006 showed the balance of £530,000 due. The defendant's evidence was that he never received any of the bank statements.

[36] I am not satisfied that the defendant made the telephone arrangements in July or August 2006. I am not satisfied that the defendant signed the facility letters of July and August 2006 on the dates that are shown on the letters. The condition of the facility letters is such that they could have been signed at a later date. It is possible that arrangements were made with the bank by or on behalf of the son without reference to the defendant. If that is the case there must have come a time when the defendant found out what had been done. Terence McQuaid junior did not give evidence. The defendant must now know what happened about the transfer of this money. The defendant has not disclosed what he must now know happened about the money. If the arrangements were made by or on behalf of the son then the details of what happened must by now have been uncovered by the defendant. It was the son's company that received the money and the son must know that it came from the defendant. When this dispute arose the son must have told the father what had happened. The defendant has denied all this and says that he is unaware of what happened. I am not satisfied with his plea of ignorance about the arrangements.

[37] While I have not been satisfied that the defendant was party to the initial arrangements, I am satisfied that there came a time at which the defendant found out about what had happened and he now knows what happened and he has not disclosed what he now knows. Hence I am satisfied that, if the defendant did not make the arrangements with the Bank, he discovered the particulars of those arrangements that had been made whereby his son's company received the money. I am satisfied that, when the defendant became aware of the arrangements whereby his son had obtained the £350,000, he ratified the arrangements. At the latest this knowledge must have come to him on 8 October 2008 when Ms O'Boyle visited the defendant at home and the defendant signed the facility letter. This letter indicated that the letter superseded all previous arrangements. The total debt included the £350,000 and the defendant cannot have failed to have been aware of the scale of the total debt at that time. Nor can he have failed to be aware at that stage as to how the total debt had arisen.

[38] In 2009, in response to a phone call to Mr Cribbens at the Bank, the defendant was made aware by the Bank of the transfer to his son and he went to his solicitor. I

am not satisfied as to the date on which the defendant signed the letters of 7 July 2006 and August 2006, although it could have been on 9 August in Newry. The races ended on 6th. I am not satisfied that the Bank only released the funds on receipt of the signed letters. The tale of dealings with the defendant does not suggest attention to the regularity of the paperwork. The letters may have been signed and returned later. I am not satisfied that the defendant signed the two facility letters on 7 November 2007. If it were necessary to decide on the balance of probabilities, I would have decided that the letters were signed and returned after the loans were made. However I am satisfied on the balance of probabilities that the defendant was made aware of the payments to his son at least by 8 October 2008 at the very latest and he accepted responsibility by signing the facility letter and raising no objection at that time.

[39] I am satisfied that there should be judgment for the plaintiff against the defendant for £350,000. As to interest on that loan from the date of the loan, the standard of the plaintiff's record keeping and dealings with the defendant were quite frankly abysmal. I propose to exercise my discretion not to award any interest on the loan.

[40] Further, costs have been incurred by the defendant's lack of acknowledgement of the debt but also by the plaintiff's failure to provide a coherent account of the transactions that took place between the plaintiff and the defendant and his son. With the amount of money involved one would have thought the Bank would have been careful about the paperwork and provide a record of the transactions. Instead there were days of confusion in Court about the arrangements that had actually been made. In those circumstances I consider that no order should be made for costs against the defendant.