THE HIGH COURT

[2026] IEHC 635

[Record No. H.S. 2024.15]

BETWEEN

MARS CAPITAL FINANCE IRELAND DESIGNATED ACTIVITY COMPANY

PLAINTIFF

AND

MICHAEL ELLIOTT AND CAROLINE ELLIOTT

DEFENDANTS

JUDGMENT of Ms Justice Bolger dated this 17th day of September 2026

1. This is the plaintiff's application for summary judgment in the amount of €990,813.97 and interest. The defendants are litigants in person and the second defendant confirmed that she adopted the submissions made by the first defendant.

Summary judgment

2. A party seeking to overcome summary judgment must demonstrate a fair or reasonable probability of having a real or *bona fide* defence at trial (in *Aer Rianta v Ryanair Ltd* [2001] 4 IR 607). The defendants' evidence in assessing the plaintiff's application is to be taken at its highest.

3. The *Harris Grange* principles, set out by McKechnie J, are well known. I highlight, in particular, (v), (ix) and (xii) as follows:-

"(v) where, however, there are issues of fact which, in themselves, are material to success or failure, then their resolution is unsuitable for this procedure;

…

(ix) leave to defend should be granted unless it is very clear that there is no defence;

…

(xii) the overriding determinative factor, bearing in mind the constitutional basis of a person's right of access to justice either to assert or respond to litigation, is the achievement of a just result whether that be liberty to enter judgment or leave to defend, as the case may be."

The plaintiff's case

4. The plaintiff bases its claim on four demand loan facilities granted to the defendants by Bank of Ireland on 7 July 2008, secured by a deed of mortgage and charge dated 31 July 2008 which charged a commercial/industrial property in Carlow to the bank. Those facilities were restructured and renewed by way of a letter of loan offer from Bank of Ireland of 23 May 2014. The plaintiff pleads that the defendants accepted and signed that letter, including an express confirmation that they were entering into it for business reasons and were not a consumer within the meaning of the Consumer Credit Act 1995. That has been disputed by the defendants.

5. All four facilities were stated in the letter of 23 May 2014 to have been already drawn down. Facility 1 had a higher rate of interest applied over three, six and twelve months and facilities 2, 3 and 4 had 0% interest rate. There were different repayment arrangements for each of the facilities including in relation to facility 2 from the proceeds of sale of an identified commercial premises. The letter of offer also said that, subject to facilities 1 and 2 being cleared within the allocated time frame and to facility 2 being cleared from the proceeds of sale, the bank would not enforce its rights in relation to facility 4.

6. The plaintiff says that the repayment arrangements were not adhered to, although some of facility 2 was repaid from the proceeds of sale, which fell short of the total facility amount. Therefore, the plaintiff says that part of facilities 1 and 3 and the entirety of facility 4 remain outstanding.

7. Bank of Ireland transferred its interest in the facility and mortgage to the plaintiff by deed of transfer dated 17 April 2023 and the plaintiff was registered as owner of the mortgage. The plaintiff sent the defendants letters of demand on 21 July 2023.

<u>The defendants' defences and an assessment of same</u>

8. The offer letter included a confidentiality clause which, the defendants contend was not executed until after the offer letter.

The offer letter clearly allowed the bank to waive any of the terms or conditions in its favour, as the confidentiality letter provision clearly was.

9. The defendants maintain they were consumers and whilst the purported acceptance of the 2014 letter confirms they were not, they dispute that they signed that acceptance and assert the signatures thereon to be forgeries.

The purpose of the loan was clearly commercial, being for the building of a commercial unit and it is therefore difficult to see how the defendants could maintain they were ever consumers within those loan arrangements.

10. The defendants contend they did not consent to the transfer of their debts from Bank of Ireland to the plaintiff.

No such consent was required given the inclusion in the standard terms and conditions of the bank's right to assign.

11. The defendants contend there was no possession demand.

I do not accept that. The demand letters clearly indicate the bank's intention to seek possession of the mortgage premises in default of repayment.

12. Finally, the defendants assert a defence based on the plaintiff's status as a credit servicer. The defendants have averred that the plaintiff cannot prove it owns any mortgage in Ireland (at para. 8 of the plaintiff's affidavit of 11 July 2024) and that the plaintiff has no registered legal personality (at para. 9 of the affidavit of 11 July 2024). The defendants later averred that the plaintiff cannot be a lawful creditor as they are a mere credit servicing company in the State (at para. 7 of the affidavit of 14 October 2024) and that the plaintiff is not the lawful successor to the Bank of Ireland (at para. 9 of the affidavit of 14 October 2024).

Those allegations are repeated frequently in a complex and unclear manner across some ten replying and supplemental replying affidavits in which the defendants make various allegations of wrongdoing against the plaintiff's deponent and the plaintiff's solicitors, none of which have satisfied me that the defendants actually have a *bona fide* defence to this claim in respect of monies received by them and in respect of which they seem to have engaged in part performance in repaying at least one of the four facilities in total and part of two of the others.

The defendants' *bona fide* defence

13. The defendants have raised a serious issue about what the plaintiff says are their signatures accepting the letter of offer of May 2014. Both parties have exhibited reports from experts on those signatures. The plaintiff's expert says the signatures are the same as sample signatures of both defendants whereas the defendants' expert says they are not. This is a serious matter that is in dispute between the parties. Whilst the plaintiff maintains that there has been prior performance of the terms set out in the 2014 letter, the defendants maintain that the consequences identified in the letter of non-adherence to the repayment terms of facilities 1, 2 and 3 were not accepted by them and they were unaware of them, instead believing that their liability would be limited to the proceeds of sale of the commercial premises rather than retaining liability for the balance of the debt as set out in the letter on which the plaintiff now relies. The defendants assert that they have cleared their liability and never admitted to the debts in 2014.

14. In the circumstances, the defendants have established a *bona fide* defence in relation to whether or not they ever accepted the terms as set out in the May 2014 letter. It is clear that the defendants have the benefit of the original loans but what is at issue are the terms on which they agreed to their restructure in 2014. The validity of their purported acceptance of the 2014 letter may therefore be a central issue (ultimately a matter for the trial judge) and given the evidential conflict, it should go to plenary hearing.

Indicative view on costs

15. My indicative view on costs in accordance with s. 169 of the Legal Services Regulation Act 2015 is that the costs of this motion should be treated as costs in the cause. Ultimately, it will be a matter for the trial judge whether or not the defendants have a defence to the claim and, if the plaintiff is ultimately correct in its current contention that the defendants have no defence to the claim, the plaintiff may be entitled to the costs of this application as well as to their substantive costs depending on the views of the trial judge.

16. I will put the matter in for mention at 10.00am on 8 October for the making of final orders in relation to this application.

Counsel for the plaintiff: Conor Feeney BL

The defendants represented themselves.