

**THE HIGH COURT
COMMERCIAL****[2019 No. 740 S]****BETWEEN****EVERYDAY FINANCE DAC****PLAINTIFF****AND****IVOR CALLELY****AND****JENNIFER CALLELY****DEFENDANTS****JUDGMENT (Ex tempore) of Mr. Justice Twomey delivered on the 12th day of March, 2020****Summary**

1. This is an application for summary judgment against the first named defendant ("Mr Callely"). When this case originally opened the amount sought was just over €1.6 million (€1,631,751). Summary judgment was also sought against the second named defendant Ms. Jennifer Callely ("Mrs. Callely"), otherwise known as Jennifer Foley, the wife of Mr. Callely. The application arises on foot of joint and several borrowings taken out by Mr. and Mrs. Callely from Allied Irish Banks plc ("AIB") under the terms of a Letter of Sanction dated 22nd of February, 2013.
2. The plaintiff, Everyday Finance, acquired the said loan facilities from AIB pursuant to a Deed of Transfer dated 15th November, 2018.
3. Evidence was provided to the Court of the borrowings and the reduction of those borrowings arising from the sale of certain secured properties, which evidence was not disputed by Mr. Callely

Settlement with Mrs. Callely

4. On the opening of this action, this Court was notified of a settlement between Everyday Finance and Mrs. Callely, whereby she consented to judgment against her in the sum of the €1.5 million.
5. As a result of this settlement, Everyday Finance confirmed that they were not seeking summary judgment in the sum of €1.6 million against Mr. Callely, but instead proposed to give him the benefit of the settlement with Mrs. Callely by seeking summary judgment in the reduced sum of €1.5 million.

Mr. Callely's claim of previous settlement with AIB

6. In relation to the application for summary judgment against Mr. Callely, it is relevant to note that he accepted that the monies had been lent to him. His only basis for resisting the judgment was his claim that it was his understanding that a settlement had previously been reached with AIB. However, he adduced no evidence to support this assertion.
7. In fact, the only sworn evidence regarding the existence of a settlement was evidence which denied its existence. This is because in her affidavit dated 14th November, 2019 Mrs. Callely avers at para. 11 that:

"AIB had many negotiations with your deponent [Mrs Callely] and [Mr Callely] but no settlement was reached for which I hold [Mr Callely] responsible."

8. In these circumstances, Mr. Callely's defence to the summary summons that there was a settlement of the debt is, at most, a mere assertion and therefore does not provide a defence to Everyday Finance's claim for summary judgment. This is clear from the judgment of Hardiman J. in *Aer Rianta v. Ryanair* [2001] 4 I.R. 607 at p. 622 where he quoted with approval *dictum* from *National Westminster Bank v. Daniel* [1993] 1 W.L.R. 1453 at p. 1457:

"The mere assertion in an affidavit of a given situation which was to be the basis of a defence did not of itself provide leave to defend: the court had to look at the whole situation to see whether the defendant had satisfied the court that there was a fair or reasonable probability of the defendants having a real or *bona fide* defence."

Conclusion

9. Since the allegation of a settlement was the only basis put forward by Mr. Callely to defend these summary proceedings, it seems clear to this Court that Mr. Callely does not have a fair or reasonable probability of having a real or *bona fide* defence to these proceedings.
10. On this basis, while this Court does have sympathy for Mr. Callely regarding the life-changing injuries he suffered as a result of his bike accident, this Court has however no option but to grant an order for judgment against Mr. Callely in the sum of €1.5 million.