

APPROVED

[2021] IEHC 13

THE HIGH COURT

2019 No. 225 S.

BETWEEN

LAKELAND AGRI LIMITED

PLAINTIFF

AND

AIDAN HAND

DEFENDANT

JUDGMENT of Mr. Justice Garrett Simons delivered on 7 January 2021

INTRODUCTION

1. This matter comes before the High Court by way of an application for judgment as against the defendant in the sum of €125,676.38 (together with interest). The plaintiff claims that this sum is due and owing in respect of goods sold to the defendant. The defendant accepts that he is indebted, in principle, to the plaintiff but resists the application for judgment on the basis that he wishes to pursue a counterclaim in respect of the alleged breach of a (separate) contract for haulage services which had existed between the parties.
2. The central question to be determined in this judgment is whether it would be inequitable to allow the plaintiff to enter and execute judgment in advance of the hearing and determination of the counterclaim which the defendant wishes to pursue. This falls to be decided by reference to the principles set out in the

NO REDACTION REQUIRED

judgment of the Supreme Court in *Prendergast v. Biddle* (unreported, 31 July 1957).

BACKGROUND TO THE PROCEEDINGS

3. These proceedings were instituted by way of summary summons, and come before the court on the basis of affidavit evidence only. It would be inappropriate, therefore, to attempt to resolve any factual disputes on this application. The narrative which follows is premised largely on matters which are not in controversy. Where a particular matter is in dispute, this will be highlighted.
4. It is common case between the parties that their commercial relationship was governed by two contracts. The first contract is a contract for the sale of goods. The plaintiff is a limited liability company and is engaged in the business of, *inter alia*, selling agricultural goods and related products. The defendant had been a customer of the plaintiff, and had purchased feedstuff and other goods from the plaintiff. The terms and conditions governing the sale of goods are set out on the invoices issued by the plaintiff. Condition 2 of the terms and conditions require a purchaser to make a payment within one month from the end of the month of the sale of the goods.
5. The plaintiff's claim relates to goods sold and delivered to the defendant, on credit terms, during the period 18 May 2018 to 31 October 2018. The plaintiff has exhibited a statement of account which indicates that there is a total sum of €125,676.38 outstanding (which includes interest in the sum of €1,204.23). The defendant has not disputed the calculation of the debt owing, and has accepted on affidavit that he is indebted, in principle, to the plaintiff in respect of the goods purchased by him.

6. The second contract between the parties had been in respect of the provision of haulage services by the defendant to the plaintiff (*“the haulage services contract”*). The defendant owns and operates a number of trucks and trailers and has been involved in the transport of foodstuff on behalf of the plaintiff for a number of years. The trucks and trailers are, seemingly, painted in the livery of Lakeland Dairies.
7. The defendant, in his second affidavit (filed on 16 December 2019), has described the contract as a *“serious commercial contract between the parties”*. It is further averred that the defendant invoiced the plaintiff a total sum of €152,010.90 in 2016; €220,120.14 in 2017; and €115,258.68 for the six months to June 2018.
8. The terms and conditions of the haulage services contract have not been reduced to writing. The defendant has, however, exhibited a document which addresses one aspect of the contract as follows.

“22nd April 2017

AGREEMENT between AIDAN HAND, Magoney, Inniskeen, Dundalk, Co. Louth and LAKELAND AGRICULTURAL LTD. Lough Egish, Co. Monaghan.

The agreement refers to the method of payment for agricultural input goods purchased by Aidan Hand from Lakeland Agri

The Agreement states that Aidan Hand agrees to offset all monies due to him by Lakeland Agri for haulage services supplied by Aidan Hand to Lakeland Agri, against amounts owed by Aidan Hand to Lakeland Agri for the purchase of agricultural input goods. Full offset shall continue until Aidan Hand’s account is within credit terms.”

9. The version of the offset arrangement which has been exhibited is not signed, but it is accepted on behalf of the plaintiff that the above arrangement had been entered into.

10. As appears, the defendant had agreed, in effect, that monies due to him under the haulage services contract would be used to defray amounts owed by him under the contract for the sale of goods.
11. The defendant maintains that the circumstances in which the haulage services contract came to an end in August 2018 are such as to give rise to a claim for damages on his part.
12. The precise circumstances in which the contract came to an end are very much in dispute. In brief, the plaintiff's position is that the haulage services contract operated on a casual basis, and there was no obligation on the defendant to undertake any haulage job offered to him nor was there any obligation on the plaintiff to offer haulage jobs to the defendant. It is further said that there was no obligation on either party to provide any minimum period of notice prior to termination of the contract. The defendant is said to have terminated the contract without notice by text message on 28 August 2018.
13. The defendant acknowledges that he did, indeed, send a text message on 28 August 2018 stating that "*We have withdrawn all haulage services to Lakelands until further notice*". The defendant insists, however, that it was not intended that this withdrawal be permanent. Rather, it is said that haulage services were being withdrawn pending the completion of an investigation into a complaint made by the defendant that the number of haulage jobs being allocated to him had been reduced. It is said that this was in some way related to an alleged incident whereby an employee of the plaintiff had intimated that a cash payment would have to be made to him personally. This allegation has been investigated internally by the plaintiff and found to be unsupported by evidence. A complaint

made by the defendant to An Garda Síochána is, seemingly, still under consideration.

14. It is neither appropriate nor necessary for this court to attempt to resolve these factual disputes in the context of an application for summary judgment. Instead, it is proposed for present purposes to take the defendant's case at its height, in order to assess what implications the counterclaim, if well founded, might have for the plaintiff's application for judgment. In particular, it is necessary to consider the potential value of the counterclaim relative to the plaintiff's claim. If, for example, the counterclaim equalled or exceeded the plaintiff's claim, then consideration would have to be given to whether entry and execution of judgment should be deferred pending the determination of the counterclaim.
15. It has to be said that it is difficult to identify from his affidavits the precise nature of the claim for damages which the defendant now seeks to assert. The gist of the claim, as articulated by counsel, appears to be that the plaintiff was obliged to use the defendant's haulage services for a minimum amount of haulage jobs. No attempt has been made in the affidavit evidence, however, to explain the nature of this arrangement, nor, crucially, to specify the value of the minimum threshold of work which was to be put the defendant's way. I will return to these issues at paragraphs 21 to 24 below.

DISCUSSION AND DECISION

16. There was broad agreement between the parties as to the principles governing an application to enter judgment. These principles are set out in a well-established line of case law including, in particular, the judgment of the Supreme Court in *Aer Rianta cpt v. Ryanair Ltd (No 1)* [2001] 4 I.R. 607.

17. The disagreement between the parties centres on the application of the subset of the case law on summary summons proceedings which addresses the distinction between a cross-claim which amounts to a defence, and one which is merely a counterclaim. This distinction is articulated in two judgments of the current Chief Justice, Clarke C.J., then sitting in the High Court, namely *McGrath v. O'Driscoll* [2006] IEHC 195; [2007] 1 I.L.R.M. 203, and *Moohan v. S. & R. Motors (Donegal) Ltd v. Bradley Construction* [2007] IEHC 435; [2008] 3 I.R. 650.
18. The overall approach to be taken to a case involving a cross-claim is summarised as follows in *Moohan* (at page 656/57 of the reported judgment).
- “(a) it is firstly necessary to determine whether the defendant has established a defence as such to the plaintiff’s claim. In order for the asserted cross-claim to amount to a defence as such, it must arguably give rise to a set off in equity and must, thus, stem from the same set of circumstances as give rise to the claim but also arise in circumstances where, on the basis of the defendant’s case, it would not be inequitable to allow the asserted set off;
 - (b) if and to the extent that a *prima facie* case for such a set off arises, the defendant will be taken to have established a defence to the proceedings and should be given liberty to defend the entire (or an appropriate proportion of) the claim (or have same, in a case such as that with which I am concerned, referred to arbitration);
 - (c) if the cross-claim amounts to an independent claim, then judgment should be entered on the claim but the question of whether execution of such judgment should be stayed must be determined in the discretion of the court by reference to the principles set out by Kingsmill Moore J. in *Prendergast v. Biddle* (Unreported, Supreme Court, 31st July, 1957).”
19. In the present case, the defendant has, very sensibly, not asserted that his cross-claim represents a defence to the proceedings. There is no suggestion, for example, that he has not been paid for work carried out pursuant to the haulage services agreement or that there is an outstanding balance which should be set-off against the monies owed to the plaintiff under the contract for the sale of

goods. Rather, the defendant asserts that he has an *unliquidated* claim for damages arising out of what he says is a breach of the haulage services contract. It is submitted that it would be inequitable to allow the plaintiff to enter judgment in advance of a determination of this counterclaim, and that the appropriate order would be to remit these proceedings to plenary hearing, and to allow the counterclaim to be brought in the context of these existing proceedings.

20. As explained in the judgment in *Moohan*, the approach to be taken in the case of a counterclaim is that set out in the judgment of the Supreme Court in *Prendergast v. Biddle* (unreported, 31 July 1957). There, Kingsmill Moore J. described the approach to be adopted where application is made to the court to obtain final judgment in a summary procedure, as follows.

“On such applications it is incumbent on the Plaintiff, if he is to get judgment, to satisfy the Court that he has an unanswerable case, and if he does this he is entitled to immediate judgment. If, however, the Defendant, while admitting that he has no direct defence to the claim, puts forward a plausible counterclaim a difficult problem must arise. Though the necessary evidence to support the claim is already before the Court and judgment on the claim can be given at once, there must usually be delay in formulating the counterclaim in a pleading, in preparing the evidence to support it at a hearing if it be contested), and in waiting for a trial. On the one hand it may be asked why a Plaintiff with a proved and perhaps uncontested claim should wait for judgment or execution of judgment on his claim because the Defendant asserts a plausible but improved (*recte* unproved) and contested counterclaim. On the other hand it may equally be asked why a Defendant should be required to pay the Plaintiff’s demand when he asserts and may be able to prove that the plaintiff owes him a larger amount. To such questions there can be no hard and fast answer. It seems to me that a Judge in exercising his discretion may take into account the apparent strength of the counter-claim and the answer suggested to it, the conduct of the parties and the promptitude with which they have asserted their claims, the nature of their claims and also the financial position of the parties. If, for instance, the Defendant could show that the Plaintiff was in embarrassed circumstances it might be considered a reason why the Plaintiff should not be allowed to get judgment, or

execute judgment on his claim till after the counterclaim had been heard, for the Plaintiff having received payment might use the money to pay his debts or otherwise dissipate it so that judgment on the counterclaim would be fruitless. I mention only some of the factors which a judge before whom the application comes may have to take into consideration in the exercise of his discretion. [...]”.

21. Applying these principles to the circumstances of the present case, I am satisfied that the plaintiff’s application to enter judgment should not be stayed pending a hearing and determination of the defendant’s counterclaim. The nature of the counterclaim to be advanced by the defendant is simply too vague. The most that the defendant asserts is that the alleged failure of the plaintiff to allocate an (unspecified) minimum number of haulage jobs to him represents a breach of the haulage services contract. No attempt has been made to explain the factual basis for this allegation, still less to specify the value of the minimum threshold of work which was to be put the defendant’s way. (It is common case that the plaintiff engages the services of a number of different hauliers, and thus there is no question of the defendant having an exclusive right to provide all of the plaintiff’s haulage requirements). No attempt has been made to quantify the monetary loss which the defendant is said to have suffered.
22. Crucially, no attempt has been made by the defendant to address the notice period which either side would be required to give to terminate the contract for haulage services. The defendant’s own conduct in withdrawing his services (albeit supposedly on a temporary basis only) in August 2018 strongly suggests that no notice period may be required. The length of the notice period might well be a very significant factor in assessing the value of the defendant’s claim. If, for example, either side were entitled to terminate the haulage services agreement on

the giving of, say, one month's notice, then this would appear to mark the extent of the damages payable for wrongful termination.

23. It is simply not possible on the basis of the affidavit evidence which the defendant has put before the court even to attempt to place a value on the counterclaim, in order to compare it with the monies owing to the plaintiff. The counterclaim is strongly contested by the plaintiff company, which relies on what it asserts was the casual nature of the agreement. By contrast, the monies owing to the plaintiff are, in effect, admitted by the defendant.
24. It should also be noted that the defendant has flagged that the hearing and determination of his counterclaim may have to be deferred pending the outcome of the police investigation—and any subsequent criminal prosecution—in respect of his complaint that an employee of the plaintiff sought an improper payment from him. Whereas the question of such a deferral is a matter which will have to be addressed as part of the case management of any proceedings which the defendant may issue, the very fact that the defendant envisages that the hearing and determination of his claim may be delayed is a further reason for allowing the plaintiff to enter and execute judgment now. It would be inequitable to delay the plaintiff from recovering what is, in effect, an admitted debt.

CONCLUSION

25. The plaintiff is entitled to judgment as against the defendant in the sum of €125,676.38 (together with interest). The parties are requested to agree the precise form of order and the appropriate figure for interest. In default of agreement, the court will rule on the matter on the basis of written legal submissions.

26. This order does not preclude the defendant from pursuing, in separate proceedings, any claim for damages arising out of the alleged breach of the haulage services contract.
27. Insofar as the allocation of legal costs is concerned, the plaintiff is *prima facie* entitled to its costs in circumstances where it has been “entirely successful” in the proceedings for the purposes of section 169(1) of the Legal Services Regulation Act 2015. If the defendant wishes to contend for a different form of order, then written legal submissions should be filed by 22 January 2021. Any replying submissions are to be filed by the plaintiff by 5 February 2021.

Appearances

Edward Farrelly, SC and Harry Buggy for the plaintiff instructed by Crosskerrys Solicitors

Richard Lyons, SC for the defendant instructed by Tony Donagher Solicitor

Approved
Gareth S. M. S.