

## LEGAL UPDATE

### What do you need to get a summary judgement and how do borrowers stop them?

*Allied Irish Plc v O'Mahony* [2015] IEHC 763  
(High Court, Barrett J, 2 December 2015)

Bank granted judgment over €27 million against multiple defendants who had given personal guarantees in a transaction.

In this case the High Court had the task of deciding, based upon submissions entered, whether or not the defendant met the threshold required to have the matter remitted for plenary hearing (a fully defended case). The hurdle to be surmounted by a defendant to avoid summary judgement and "obtaining leave to defend" is recognised as a low one. Precedence has determined that the fundamental questions to be posed are whether it is very clear that the defendant has no case, there exists no issue to be tried, or that the affidavits fail to disclose an arguable case.

However, the power to grant summary judgment should always be exercised with discernible caution. The threshold was further summarised by McKechnie J in *Harrisrange Ltd. v Duncan* [2003] 4 I.R. 1, wherein it was held that the relevant principles to be considered when determining whether to grant summary judgment or leave to defend are:

1. Have regard to the entirety of the case.
2. Consider defendant's response in terms of its context.
3. Decide whether issues as to fact are material to the success or failure of the case.
4. Fair or real probability of the existence of a bona fide defence, the threshold being that of arguable defence.
5. Is it obvious that there is no actual defence.

Based upon the above precedent the Court, although painfully conscious on a human level of the financial toll that such a decision may bring, granted the summary judgment sought, as the defendants had no plausible or bona fide argument against the guarantee entered.

To summarise, if the defendant comes up with any type of remotely plausible defence then he would be entitled to a plenary hearing. However, such defence must relate to the entirety of the case which is material to its success, so the drafting of the papers seeking summary judgement must be detailed and seek to remove any chances of defence.

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