



## Settling with a concurrent wrongdoer

*Bank of Ireland v Doyle* [2018] IEHC 594

November 2018

### Background

In December 2010, Bank of Ireland (the “**Bank**”) advanced €7,473,348.47 to joint borrowers (the “**borrowers**”) and the defendant. The loan was advanced for the purpose of restructuring an earlier loan and to fund the development of a site at Greenhills, Drogheda, Co. Louth. Prior to the advancement of the loan, the defendant and borrowers agreed to form a joint venture for the purposes of developing the site by entering into a joint venture agreement.

The borrowers and the defendant defaulted on the repayments which prompted the Bank to issue letters of demand. The borrowers then entered into a Debt Resolution Agreement (the “**Agreement**”) with the Bank. Under the Agreement, subject to certain conditions, the Bank agreed not to pursue the borrowers for the amount due and owing.

The defendant was not a party to the Agreement and although he entered into talks with the Bank with the intention of reaching a similar arrangement, no formal agreement was entered into by the defendant with the Bank.

The Bank brought a motion to enter judgment for the amount due and owing by the defendant. The defendant sought to have the proceedings referred to plenary hearing.

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## Defence

The defendant argued that the Agreement was a release or accord for the purposes of [section 17 of the Civil Liability Act 1961](#), and that he therefore had no further liability to the bank. That section provides that the release of, or accord with, one concurrent wrongdoer shall discharge the others if that release indicates an intention that the other parties are also to be discharged.

## Judgment

In coming to his [decision](#) Mr. Justice Meenan looked to the wording of the Agreement to determine whether it was the Bank's intention for it to constitute a release or accord for the purposes of s. 17. He pointed to the clause in the Agreement entitled "Reservation of Rights" which provided:-

*"For the avoidance of doubt, each Borrower acknowledges and accepts that:-*

*(a) this Agreement shall not in any way impair or prejudice, or be construed as constituting a waiver or release or satisfaction of, any of the Bank's rights or remedies or in connection with the Finance Documents whether arising under their terms, at law or equity or otherwise..."*

The definition of "Finance Documents" included the facility letter under which the loan monies were advanced to the defendant and the borrowers. The "Absolute Bar" clause contained in the Agreement set out that the Agreement *"may be pleaded and tendered by the Bank as an absolute bar to any defence offered by any defaulting Borrower in any proceedings brought by the Bank in relation to this Agreement or the Finance Documents ..."*.

## Conclusion

Meenan J. concluded that based on the wording of the Agreement, it could not be said to amount to a release or accord for the purposes of s. 17 of the Civil Liability Act 1961 and granted the Bank judgment against the defendant for the full amount.

## Comment

Great care should be exercised when settling with one of several borrowers. In this case, the Agreement was suitably worded by the Bank, but where less clear terms are used, difficulties may be encountered when proceeding against a borrower who is not a party to the compromise.

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