

THE HIGH COURT

[2022] IEHC 251

[Record No. 2016/1020 S]

BETWEEN

ALAN GAFFNEY AND DEREK GAFFNEY

PLAINTIFFS

AND

PHILIP GAFFNEY AND TERESA GAFFNEY

DEFENDANTS

THE HIGH COURT

[Record No. 2017/3234 P]

BETWEEN

PHILIP GAFFNEY

PLAINTIFF

AND

ALAN GAFFNEY AND NICOLE GAFFNEY

DEFENDANTS

JUDGMENT of Mr. Justice Barr delivered electronically on the 29th day of April, 2022.

Introduction.

1. These two actions were heard together. They involve members of the one extended family. They each revolve around the same payment that was made with a view to funding a business project that Philip Gaffney had undertaken, in or about October 2015.
2. In order to understand the background to the two actions, it is necessary to set out, in very brief terms, some detail about the business carried on by Philip Gaffney. For some years, he has been engaged in the production of various items that could be regarded as souvenirs of Ireland, such as; small ceramic ornaments depicting Irish scenes, such as leprechauns, cottages, fairy doors and fairy mushrooms.
3. Mr. Gaffney had developed a successful business relationship with a company in the United States called Quality Value Choice Corporation (hereinafter "QVC"), which ran a shopping channel on American television networks and also had an online presence. As part of the operation of the shopping channel, QVC would select a particular item, which would be designated as "Today's Special Value" item (hereinafter "TSV") for a particular day. The TSV item would be featured on a regular basis throughout that day.
4. In or about October 2015, as a result of negotiations that had gone on for some months, Philip Gaffney landed the contract to supply certain product as the TSV on the shopping channel for the show that was due to go on air at or around St. Patrick's Day 2016. This was a sizeable contract, which was going to be worth approximately US\$1.3 million to Mr. Gaffney.

The 2016 Action.

5. The first set of proceedings were issued by Alan Gaffney and Derek Gaffney in 2016 (hereinafter "the 2016 action"). The plaintiffs and the first defendant are brothers. The second defendant is the wife of the first defendant.

6. In this action, the plaintiffs are seeking repayment of a loan allegedly made by them to the defendants in the sum of US\$372,043.70. That debt is allegedly due on foot of an oral contract of loan between the plaintiffs and the defendants, which was concluded in or about October 2015.
7. In summary, the plaintiffs' case is that when the defendants were unable to secure funding to enable them to take up the contract, which had been offered to the first defendant by QVC in respect of the television programme that was due to go out on or about 17th March, 2016, the first and second plaintiffs between them provided the funds the subject matter of the loan, so as to enable the defendants to be in a position to fulfil the order that had been placed with the defendants by QVC.
8. It is alleged by the plaintiffs that in the oral agreement that was made between them and the defendants in October 2015, it was agreed that the plaintiffs would lend up to a total sum of US\$400,000 to the defendants to enable them to carry out certain construction works at their property in The Naul, Co Meath, as it was necessary for the defendants to expand their workshop and to improve the access routes thereto, in order to take up the contract. In addition, the funds were to be used to obtain the raw materials to enable the defendants to manufacture the goods that were required for the order that had been placed by QVC. The funds were also to be used to pay the wages of staff.
9. The plaintiffs alleged that it was agreed between the parties that the defendants would repay the loan, together with 15% interest, when payment was made by QVC in or about April 2016. They alleged that it was agreed by the defendants that the funds received from QVC would go directly to the plaintiffs in repayment of the loan, plus interest. It was further alleged that as security for the loan, the defendants agreed that it would be secured by way of a charge on their property in The Naul, Co. Meath.
10. In October 2015 and in the following months, the plaintiffs furnished the loan in various payments that were made either to the defendants, or directly to their suppliers. It is alleged that in the period October 2015 to February 2016, the plaintiff's advanced the sum of US\$372,043.70 for the use and benefit of the defendants.
11. Unfortunately, things did not turn out as had been anticipated. The plaintiffs maintain that the order that had been placed by QVC for production and delivery of the goods, which were going to be used in the TV show to be broadcast on or about St. Patrick's Day in March 2016, was conditional on the products passing certain safety and suitability tests. The products were deemed by QVC as not having passed a particular test. For that reason, the company cancelled the order in February 2016.
12. When that happened, the first named plaintiff drew up a written contract from a precedent, which he had obtained on the internet. He maintained that this document set out the terms of the loan, which had been agreed orally between the parties in October 2015. He sent that contract, in draft form, to the defendants. The first defendant did not accept the terms thereof. The first plaintiff then sent two further amended versions of the

contract to the defendants, but they did not accept those either. The draft written contracts were never signed by any of the parties.

13. The first defendant has defended this action as a lay litigant. He maintains that he never received any loan from the plaintiffs, but he concedes that he did receive money from the first named plaintiff and his wife, Nicole Gaffney. The first defendant states that those monies were paid, not as a loan, but as an investment by the first plaintiff and his wife, in the first defendant's business venture. That payment forms the subject matter of the proceedings issued by Philip Gaffney in 2017.
14. The first defendant maintains that his wife, the second defendant, was never a party to any oral agreement that was concluded between the first defendant and the first plaintiff in or about October 2015. While he acknowledges that the second defendant works in the business and is named as a director in a number of companies that are jointly owned by him and the second defendant, he denies that she was ever a party to the loan agreement. The second defendant was not represented at the hearing of the action.
15. Thus, in answer to the 2016 proceedings, Philip Gaffney denies that he ever received any loan from the first plaintiff and/or Derek Gaffney. The issues which arise for determination in the 2016 proceedings can be summarised as follows: (i) was there a contract of loan between the plaintiff's and either, or both, of the defendants in October 2015; (ii) if there was, what were the terms of that contract; (iii) depending upon the answers to the foregoing questions, what judgment and orders, if any, are the plaintiffs entitled to obtain against the defendants and each, or either, of them?

The 2017 Action.

16. The second set of proceedings were issued by Philip Gaffney in 2017 (hereinafter "the 2017 action"). In those proceedings, he has sued Alan Gaffney and his wife, Nicole Gaffney, for breach of an agreement, whereby it is alleged that they had agreed to invest €400,000 in Philip Gaffney's business.
17. The plaintiff alleges that in or about October 2015, when he had indicated to the first defendant that he had been unable to secure funding in either Ireland or the US, to enable him to fulfil the order for 67,000 units, that had been placed by QVC for the televised shopping event in March 2016; the first defendant had stated to him that he and his wife would be willing to invest up to €400,000 in the plaintiff's business, to enable him to fulfil that contract and to take up other lucrative shopping contracts that were in the pipeline with QVC. In particular, the plaintiff was in negotiations with QVC in relation to supplying product for its televised shopping show known as "Christmas in July", which would go on air in July 2016.
18. The plaintiff alleges that the defendants in the 2017 action, insisted that they would pay the plaintiff's suppliers directly. To that end, he would send them a copy of the suppliers' invoices by email and they would arrange to transmit the funds required directly to the suppliers.

19. The plaintiff accepted that in the period October 2015 to February 2016, he received significant funding from the defendants of somewhere in the region of US\$370,000. However, he alleged that the defendants refused to provide any further funding and in particular, did not provide the total funding of €400,000 that they had promised, due to the fact that the plaintiff refused to sign the draft written agreement that had been sent to him on or about 28th February, 2016.
20. The plaintiff alleged that he had refused to sign the agreement, because it did not reflect the oral agreement that he alleged that he had with the defendants. In particular, the agreement named the lenders as being Alan Gaffney and Derek Gaffney, when the plaintiff had never had any dealings with Derek Gaffney in relation to this matter; his dealings had always been with Alan Gaffney and his wife.
21. Secondly, the plaintiff stated that he had never agreed to give any charge or security over the property at The Naul, Co Meath, which property, as well as containing the workshop, also contained his family home. He alleged that the written agreement was an attempt to insert a draconian security clause into the agreement, which had never been part of the oral agreement and which, if incorporated into the agreement, would have required him to vacate his property within five days of a valid demand being made. The plaintiff stated that he would never have agreed to take any funds from Alan Gaffney and his wife, on those terms.
22. The plaintiff further disputed the account that had been given by Alan Gaffney, to the effect that the funds which he had provided, were exclusively in relation to fulfilment of the TSV order for the March 2016 television show. The plaintiff stated that, while he had agreed that the defendants would be repaid their investment out of the proceeds from the payment that would be made by QVC in respect of the March 2016 show and that the defendants would receive interest at 15% on their investment, it was denied that the investment specifically related to the TSV in March 2016. The plaintiff asserted that the agreement had been a decision taken by the defendants to invest in the plaintiff's business; in return for which investment, they would receive a 15% profit.
23. The plaintiff asserted that in breach of the terms of the oral contract that he had with the defendants, they wrongfully refused to advance the full €400,000 and withdrew funding when he would not sign the written agreement in February 2016. It is alleged that as a result of the withdrawal of this funding, the plaintiff was not able to fulfil the order that had been placed by QVC for the March 2016 show; as a result of which, it is alleged that the plaintiff has suffered significant loss and damage.
24. In response, the defendants have denied that there was ever an agreement to make an investment in the plaintiff's business on the terms alleged by the plaintiff. They denied that Nicole Gaffney was ever a party to any agreement. They state that the only agreement that existed between Alan Gaffney and the plaintiff, was the loan agreement the subject matter of the 2016 action.

25. The first defendant denied that he had withdrawn funding from the plaintiff in February 2016 as alleged. He stated that he and Derek Gaffney have never refused to provide further funding to the plaintiff, they had simply sought to have him execute a written agreement, which mirrored the terms of the oral contract that had been entered into between them in October 2015.
26. The first defendant further denied that he and Derek Gaffney had ever refused to make any further payments to the plaintiff, because he would not sign the written agreement. He stated that the plaintiff had not requested any further monies, due to the fact that he was unable to fulfil the order in time for the March 2016 show, as the products had not passed all relevant tests as required by QVC.
27. The issues that arise for determination in the 2017 proceedings, are as follows: (i) who were the parties to whatever agreement was entered into in October 2015; (ii) was the agreement that was reached in October 2015 a loan agreement as maintained by the plaintiffs in the 2016 action, or was it an agreement by Alan Gaffney and Nicole Gaffney to invest €400,000 in the plaintiff's business, as alleged in the 2017 action; (iii) if so, did the defendants breach that agreement by failing to provide further funding after February 2016?

The Evidence.

28. While there was a large amount of conflicting evidence in this case, there was a considerable area of agreement between the parties to the various actions. Firstly, it was accepted by all parties that Philip Gaffney had obtained an order for 67,000 units from QVC for use in its special television programme that was to be aired on the shopping channel on St. Patrick's Day 2016. It was accepted that the value of this contract was in or about US\$1.3 million.
29. It was accepted by all parties that Philip Gaffney was unable to secure the necessary funding to fulfil that order from the banks in Ireland. It was stated that, as the plaintiff's property at The Naul, Co Meath, also contained his family home, as well as his workshop, the banks in Ireland were not willing to take a charge over the property as security for the loan. Instead, they required an irrevocable letter of credit from QVC in respect of the sum payable under the contract. While QVC were prepared to furnish a letter outlining the fact that the order had been placed and the value of that order, they were not prepared to supply an irrevocable letter of credit in respect of the contract sum. The net result of which, was that the plaintiff was unable to secure funding in Ireland.
30. It was agreed between the parties that Philip Gaffney was also unable to secure funding in the US, due to the fact that he did not have any assets, or business operation within that jurisdiction.
31. It was agreed that in or about October 2015, an oral agreement was reached between Philip Gaffney and Alan Gaffney that money would be forthcoming to enable Philip Gaffney to take up the order that had been placed by QVC.

32. As noted above, there is considerable dispute between the parties as to the nature of the funding that was provided under that agreement and as to the identity of the parties that were providing funding. However, it is accepted that the sum of approximately US\$370,000 was provided to Philip Gaffney, or to his suppliers, by Alan Gaffney, along with either Derek Gaffney, or Nicole Gaffney.
33. Although there was some dispute as to who had first raised the rate of interest of 15%, it was agreed that the people who had provided the funding were to receive interest at 15% thereon. It was further agreed that the money would be repaid out of the fees that would be paid by QVC, which payments were to be made within 45 days of the television show on 17th March, 2016.
34. The main areas in dispute between the parties can be summarised in the following way: firstly, there is a dispute as to who provided the funding. Both Alan Gaffney and Philip Gaffney agreed that there was contact between them in relation to the question of funding in October 2015. They further agreed that this communication resulted in an agreement whereby funding, whether by way of loan or investment, was forthcoming from Alan Gaffney to Philip Gaffney in October 2015 and in the months thereafter.
35. Alan Gaffney's evidence was that when Philip Gaffney had been unable to obtain funding in either Ireland or the US, he had agreed that he and Derek Gaffney would provide the required funding. He stated that he had informed Philip Gaffney that their brother, Derek Gaffney, was going to provide some of the funding. He stated that, as Philip Gaffney had indicated that he required somewhere in the region of €250,000-€300,000, which equated to approximately US\$350,000, he and Derek Gaffney decided that they would provide a loan of up to a maximum of US\$400,000.
36. Alan Gaffney stated that the sum ultimately provided of US\$372,043.70 was made up of US\$100,000 from him, with a similar amount contributed by Derek Gaffney, and in addition, he had drawn down a line of credit secured against his family home for the remainder.
37. Both Alan Gaffney and Derek Gaffney were adamant that the contract was a contract of loan. Under that contract, it was agreed that the sums advanced, would be repaid out of the payment that was to be received by Philip Gaffney from QVC after the March 2016 show. In this regard, it had been agreed that a company would be set up in the US in the name of Philip Gaffney's trading company, "O'Gowna", so that payment could be made directly by QVC to a bank account in America, from which the lenders could be repaid the loan, with the remainder being transferred to Philip Gaffney in Ireland.
38. Alan Gaffney stated that the loan was made to Philip Gaffney and his wife Teresa Gaffney. He stated that she had been present on the telephone call on speakerphone, when the terms of the loan had been agreed in October 2015. As such, he stated that the loan contract had been made between him and Derek Gaffney on the one part and Philip Gaffney and his wife, on the other part. In support of that contention, he stated that when he had attended a family wedding shortly after October 2015, Teresa Gaffney had

thanked him for providing the funds to them. In addition, he pointed to the fact that in the emails from Philip Gaffney and his wife, they had always referred to the business operation in the first person plural, showing that it was a joint-venture.

39. In response to those assertions concerning the identity of the parties to the agreement and the nature of that agreement, Philip Gaffney stated that, while his wife may have been present on the telephone call in October 2015, she was not a party to any agreement that had been reached as a result of that call. He stated that the business carried on at the workshop, which involved the production of various products, was solely his business. He accepted that his wife was named on certain documentation lodged in the Companies Registration Office as a co-director with him of various companies, but that was purely due to the fact that two directors are required for a company. Insofar as she had sent certain emails in the months after October 2015, he stated that that was due to the fact that he did not have internet access in his workshop; their administration office being located in the family home. As he worked primarily in the workshop, his wife looked after the administrative side of affairs and sent most of the relevant emails.
40. In relation to the nature of the agreement with Alan Gaffney, Philip Gaffney stated that his agreement had always been with Alan Gaffney and his wife, Nicole Gaffney. This was evidenced by the fact that a number of the payments from their account were made by Nicole Gaffney. He also disputed the nature of the agreement, stating that it was not a contract of loan, but was in fact an investment by Alan and Nicole Gaffney in his business, for which they were going to be repaid a profit of 15% on their investment. While he accepted that it was agreed that their investment would be repaid out of the payment received from QVC for the March 2016 show, he denied that it was solely referable to that event, but was intended as an investment in the business generally, particularly in light of the fact that he had a further lucrative contract with QVC in the pipeline.
41. Philip Gaffney stated that he would never have taken a loan from Derek Gaffney, because they had had unsuccessful business dealings many years previously, prior to Derek Gaffney relocating to the US.
42. The third main area of contention between the parties concerned the clause that was in the written agreement concerning the giving of security over Philip Gaffney's property at The Naul, Co Meath. Alan Gaffney stated that at the time of their discussions in October 2015, Philip Gaffney had indicated that he would give whatever security would normally be required by a lending bank in Ireland. It had been indicated to him that they would normally require some form of charge or security over the borrower's property. On that basis, he took it that Philip Gaffney and Teresa Gaffney had agreed to provide security for the loan over their property in Co Meath.
43. In response to that assertion, Philip Gaffney denied that he had ever given such an indication to Alan Gaffney in their conversation in October 2015. He denied that he had ever agreed to furnish any security over his family home. He stated that this was a term which had been inserted into the draft written agreements, which had never been part of their oral agreement in October 2015. He stated that had it been made known to him in

October 2015, that he would be required to give security over his family home, he would never have gone ahead with the agreement.

44. Fourthly, there was a large element of disagreement between the parties in relation to the reason for the loss of the QVC contract. Alan Gaffney and Derek Gaffney stated that the contract had been lost due to the fact that Philip Gaffney had not been able to ensure that all his products passed all necessary quality and assurance tests. They stated that Philip Gaffney had told them that QVC had pulled out of the contract because some of the required tests were still outstanding in February 2016. In this regard, they referred to an email that had been sent by Philip Gaffney to Alan Gaffney on 11th March, 2016, in which he had stated as follows:

"Here is where we are at, when you decided to loan me the money you did what you did for the right reason. Let's not panic. Let's take a step back and look at the situation. All money has been invested in the business, the business hit a bump in the road in relation to time and product modification, we couldn't move Paddy's day, all the challenging tests in relation to candle fire safety were passed and they've given us some new ones which will also be passed, this has created a whole new product category for which there is huge demand which is evident by the orders from QVC. They have not yet been shown to any other customers... The above is the preferred option to pay back the money which is what the money was for in the first place to help me and the business, excluding the QVC element, the business will be in a position to pay back the money in 18 months, if it is not I feel I will have enough trading history to raise the funds against my home to pay you back..."

45. Philip Gaffney denied that his product had failed to meet any safety or quality assurance standards required by QVC. In this regard, he furnished copies of test results that had issued in February 2016, showing that his products had passed the relevant tests. He stated that, while he may have referred to outstanding tests in the email of 11th March, 2016, he was mistaken in that regard, as his product had in fact passed all relevant tests.
46. He stated that the real reason why he had lost the QVC contract, was due to the fact that when he had refused to sign the draft written agreements that have been sent to him in February and March 2016 and as a result of that, the flow of funding had been withdrawn, he was not able to continue to pay his staff and produce product, so he had been required to pull out of the contract with QVC. He stated that he had lost the contract because Alan Gaffney and his wife had withdrawn funding in breach of the terms of their agreement with him.

Conclusions.

47. A truism that is taught to law students, is that an oral contract is not worth the paper that it is not written on. If ever there was a case that demonstrated the validity of that saying, it is this case. Here, substantial funding was furnished between members of the same family, without any of the essential terms being reduced to paper, or recorded in

electronic format. The absence of clarity in relation to their commercial dealings, has led to protracted and acrimonious proceedings between brothers.

48. The absence of any note or memorandum of the terms of the oral contract, is all the more inexplicable, in light of the evidence given by Alan Gaffney. He stated that on a number of occasions over the preceding 10 years, he had given loans of varying amounts to Philip Gaffney in relation to various aspects of his business. He stated that he had never received the interest that had been agreed and he had "eventually" been repaid the loans that he had given to his brother. The court finds it hard to understand how Alan Gaffney failed to get any of the terms of the alleged loan agreement in writing, if his evidence about their prior business dealings was correct.
49. The three draft written agreements that were sent by Alan Gaffney to Philip Gaffney in February and March 2016, are of no evidential value. They were agreements that were downloaded by Alan Gaffney from the internet. He then adapted them to reflect what he maintained were the terms of the agreement he and Derek Gaffney had with Philip Gaffney. The draft written agreements were amended by Alan Gaffney over time. They were never accepted by Philip Gaffney. They were never signed. They only came into existence long after the date of the oral agreement in October 2015. The court finds that they are of no evidential value.
50. Notwithstanding the difficulties that confront the court in trying to decide what exactly was agreed, and by whom, in October 2015, the court must do the best that it can to reach a finding as to what was actually agreed between the parties, based on the evidence that is available to it.
51. Fortunately, some matters are very clear. There were conversations between Philip Gaffney and Alan Gaffney in October 2015, which led to substantial funding being provided to Philip Gaffney for the purpose of enabling him to fulfil the order that he had with QVC for the show in March 2016. The difficult questions that arise in relation to that agreement are: by whom the agreement was concluded, and was it an investment, or a loan?
52. To take the second question first, the court is satisfied on the evidence before it, that the agreement was for a short-term loan to enable Philip Gaffney to fulfil a lucrative order that he had with QVC for March 2016. There was an agreement to lend him up to US\$400,000, repayable at 15% interest, in or around April 2016, when QVC were to make their payment in relation to the March 2016 order. The email sent by Philip Gaffney to Alan Gaffney on 11th March, 2016, makes it crystal clear that he regarded the contract as being one in respect of a loan that had been made to him by Alan Gaffney.
53. Insofar as Alan Gaffney tried to portray the giving of the loan as some form of altruistic gesture on his part to help his brother, Philip Gaffney, due to the fact that he had suffered a family bereavement and because he felt sorry for him; the court rejects that evidence. In obtaining an agreement that he would recover 15% profit on repayment of the loan in

approximately six months, Alan Gaffney had secured a rate of interest that was not only exorbitant; it was unconscionable.

54. The court is satisfied that the agreement concluded between Alan Gaffney and Philip Gaffney in October 2015, was that the loan would be provided by Alan Gaffney and Derek Gaffney. The court accepts the evidence of Alan Gaffney that he told Philip Gaffney that Derek Gaffney would be providing some of the funding. While there may have been unhappy commercial relations between Philip Gaffney and Derek Gaffney in 1988, when they had been involved in some form of business venture operating out of their back garden, the court is not satisfied that those events would have prevented Philip Gaffney accepting money from him, so as to enable him to complete the very lucrative order that he had secured from QVC.
55. The court accepts the evidence of Derek Gaffney that he put up US\$100,000, with the remainder being provided by Alan Gaffney from his savings and from money that he drew down on foot of his equity line of credit, which had been secured against his family home.
56. The fact that the payments made on foot of the loan agreement were routed through a company owned by Alan Gaffney called Gizmotech, is not relevant. The court accepts the evidence of Alan Gaffney that these payments were made through the company solely as a means of obtaining a better rate of exchange, as the commercial rate for exchange of currency was better than for ordinary customers.
57. Accordingly, the court finds as a fact that the lenders were Alan Gaffney and Derek Gaffney, the plaintiffs in the 2016 action.
58. In terms of the identity of the borrowers, the court finds that Philip Gaffney was the sole borrower. The court is not satisfied that Teresa Gaffney was a party to the contract. Her presence on the telephone call by way of speakerphone in October 2015; her holding of a number of directorships in companies with her husband; and her sending emails requesting payment of funds in the months that followed, are not sufficient to make her a party to the contract. The court is satisfied that the business was run by Philip Gaffney. Accordingly, the court finds that he was the sole borrower under the loan agreement concluded orally in October 2015.
59. In terms of the size of the loan that was agreed to be provided under the oral agreement of October 2015, it is not necessary for the court to decide if the total loan was to be up to a maximum of US\$400,000, or €400,000, as the court finds that funds in the total sum of US\$372, 043.70 were actually furnished to Philip Gaffney under the loan agreement.
60. The court is satisfied that the summary of the payments made on foot of the loan, as set out in the summary document prepared by Alan Gaffney, as corrected in the supplemental affidavit sworn by Andrew Murphy, the plaintiffs' solicitor, on 22nd September, 2016, is accurate. The court finds that the sum of US\$372, 043.70 was furnished by way of loan by the plaintiffs in the 2016 action to the first defendant in that

action. The court is satisfied that it was agreed that the loan was to be repayable in April 2016.

61. The court is not satisfied that the obligation to repay the loan was contingent upon payment being made by QVC. The court is satisfied that the reference to the payment being made by QVC, was solely to give the lenders the right to be paid first out of the payment that was to be made by QVC in or about April 2016. However, the loan was repayable at that date, independent of whether or not payment was made by QVC at that time.
62. The court does not accept the evidence of Philip Gaffney that the sums which were received by him represented a long-term investment in his business by Alan Gaffney and his wife Nicole Gaffney. Having regard to the emails that passed between the parties and the business opportunity that existed for Philip Gaffney at the time of the agreement in October 2015, when it was almost guaranteed that QVC would pay the sum of US\$1.3 million; the court is satisfied that the funding provided was a short-term loan on extremely favourable terms to Alan Gaffney and Derek Gaffney; rather than some form of long-term investment by Alan Gaffney and Nicole Gaffney in Philip Gaffney's business.
63. For the avoidance of doubt, the court finds that Nicole Gaffney was not a party to any lending or financing agreement with Philip Gaffney. That agreement, which the court has found to be a loan agreement between Alan Gaffney and Derek Gaffney, on the one part, and Philip Gaffney, on the other part, was solely an agreement between brothers. Insofar as Nicole Gaffney sent or received any emails and authorised any payments out of the account, she was merely facilitating the agreement that had been entered into by her husband with Philip Gaffney.
64. In relation to the issue as to why the QVC order was lost in February 2016, the court is not satisfied that the reason for that, was due to the withdrawal of funding, as alleged by Philip Gaffney. Having regard to the content of the email sent by Philip Gaffney on 11th March, 2016 and having regard to the fact that it was accepted by him, that by mid to late February 2016, he had only produced 6000 units, only 1000 of which had been painted; the court is satisfied that on the balance of probability, he lost the order with QVC, or he had to relinquish it, due to the fact that he had not passed all the required tests and/or he was not in a position to fulfil the order for 67,000 units by mid-March 2016.
65. Accordingly, the court finds that the loss of this order was not due to any breach of contract on the part of Alan Gaffney or Derek Gaffney.
66. The lenders are entitled to repayment of the loan; however, the court declines to order payment of 15% interest thereon. While Philip Gaffney agreed to pay interest at the rate of 15%, the court declines to enforce that term of the agreement, due to the fact that it constitutes an unconscionable bargain and is therefore unenforceable at law.

67. The court is satisfied that having regard to the relative economic strength of the parties, where Alan Gaffney was said to have held positions of seniority in large companies and is the owner of a number of properties in the US and where Derek Gaffney stated in evidence that at one time, he had owned up to 180 properties in the US, the court is satisfied that there was a significant inequality of bargaining power between the parties.
68. When one takes that into consideration, allied to the fact that the lenders managed to extract from the borrower, an extortionate rate of interest; the court is satisfied that the interest clause in the oral agreement represents an unconscionable bargain and is therefore unenforceable.
69. In relation to the question of there being any security over the property owned by Philip Gaffney and Teresa Gaffney at The Naul, Co Meath; no declaration, or other relief has been sought in respect of that matter in either set of proceedings. Accordingly, it is not necessary for the court to rule on that issue.
70. However, by way of *obiter dicta*, the court would have difficulty holding that the statements made by Philip Gaffney in October 2015, to the effect that he would be prepared to provide whatever security would normally be required by a lending bank in Ireland, would be sufficient to create in law, or in equity, any charge or security over his property. In addition, the fact that there is a family home on the lands, raises the question as to compliance with the provisions of the Family Home Protection Act 1976, as amended.
71. Finally, it is not necessary for the court to rule on any of the motions that were before it in relation to discovery of documents. The first motion concerned discovery of documents in the 2016 action. Philip Gaffney was provided with a booklet of all the relevant documents on which the plaintiff intended to rely at the hearing of the action. He was afforded a reasonable period of time to consider those documents prior to the hearing proceeding. While the plaintiffs in that action had their own motion for discovery against the first defendant, they did not object to the hearing proceeding in the absence of such discovery having been made by the first defendant. Accordingly, all discovery issues had been resolved prior to the hearing of the two actions commencing before the court. Any motions that were extant before the court at the hearing of the action, can simply be struck out with no order as to costs.

Decision of the Court.

72. In light of the court's findings herein, the court would propose to make the following orders in respect of the 2016 action:

- (i) Judgment for the first plaintiff in the sum of US\$272,043.70 as against the first defendant;
- (ii) Judgment for the second plaintiff in the sum of US\$100,000 as against the first defendant;
- (iii) Dismiss the plaintiffs' action against the second defendant;

- (iv) In the event of an appeal by any of the parties, liberty to all parties to take up a copy of the DAR, at their own expense, for the hearings in Court 18, Four Courts for 5th, 6th, 7th and 8th April, 2022.

73. In the 2017 action, the court would propose to make the following order:

- (i) Dismiss the plaintiff's action against the defendants.
- (ii) In the event of an appeal by any of the parties, liberty to all parties to take up a copy of the DAR, at their own expense, for the hearings in Court 18, Four Courts for 5th, 6th, 7th and 8th April, 2022.

74. As this judgment is being delivered electronically, the parties in each action will have two weeks within which to furnish brief written submissions on costs.