APPROVED

THE HIGH COURT

[2024] IEHC 270

Record No. 2019/287S

BETWEEN/

SETANTA VEHICLE SALES LIMITED

PLAINTIFF

AND

BRIAN DALY

DEFENDANT

JUDGMENT of Mr. Justice Conleth Bradley delivered on the 30th day of April 2024

INTRODUCTION

Background summary

1. This is the Plaintiff company's application for summary judgment in the sum of €117,500.17. The sum is comprised of two amounts: a termination sum of €45,878.41 and a sum for miscellaneous services in the amount of €71,621.76. The Plaintiff is not pursuing any interest on foot of that total sum.

2. The Plaintiff is an authorised Renault truck dealer and provides Renault commercial vehicles to customers by way of outright sale, hire-purchase and leasing arrangements in addition to vehicle repair and maintenance services.

3. The Defendant is a former director of Brian Daly Transport Sevices Limited ("BDTS"), a private limited company which was placed into liquidation on or about 20th February 2018.

4. By a Hire-Purchase Agreement ("HPA") dated 3rd June 2015, the Plaintiff agreed to lease and BTDS agreed to hire two vehicles, subject to terms and conditions in the HPA. In addition to the HPA, the Plaintiff leased several additional vehicles to BDTS on terms agreed in writing between them and the Plaintiff also provided repair and maintenance services to BTDS (which goods and services are referred to as "miscellaneous services").

5. In this application, the Plaintiff is seeking judgment against the Defendant on the basis of a Guarantee and Indemnity executed by the Defendant, dated 28th May 2015,

by which the Defendant guaranteed that BDTS would observe its obligations to the Plaintiff and that, in default of BDTS discharging its obligations and debts to the Plaintiff, the Defendant would fully indemnify the Plaintiff against all losses, damages, costs and expenses incurred by it in connection with any transactions with BDTS.

6. On 28th May 2015, the Defendant executed a continuing Guarantee and Indemnity in favour of the Plaintiff. By virtue of this Guarantee, the Defendant *inter alia* agreed unconditionally and irrevocably to "*discharge on demand the Debtors obligations under the Credit Agreement with interest from the date of demand* " and in addition to the Guarantee and Indemnity, agreed irrevocably to keep the Plaintiff "*fully and effectively indemnified from all costs, claims, charges, damages, expenses and losses (on a full and unqualified indemnity basis) whatsoever (a) which are incurred by the Creditor arising out of or in connection with <u>any transactions entered into by the Creditor with the Debtor</u>*". (Emphasis added).

7. As mentioned, the sum of €117,500.17 claimed by the Plaintiff is comprised of the termination sum of €45,878.41 in addition to the miscellaneous services which included vehicle parts, vehicle maintenance, repair services, leasing of further vehicles totalling €71,621.76.

8. By letter of demand dated 29th November 2018, the Plaintiff demanded that the Defendant pay the sum of €117,500.17 and, despite this demand, the Defendant failed, refused and/or neglected to pay the sums which the Plaintiff says are due and owing to it.

HIRE-PURCHASE AGREEMENT & MISCELLANEOUS SERVICES

9. The HPA dated 3rd June 2015 was made between Setanta Vehicles Ltd and BDTS and contained a number of terms and conditions. For example, paragraph 5 of the HPA addressed "*Ending The Agreement Early*". At paragraph 5.3, it provided:

> "*Upon the early termination of the hiring of the Goods under this Agreement for any reason whatsoever you will no longer be in possession of the Goods with our consent and we shall be entitled to enter any premises where the Goods are located in order to repossess them. You shall pay off immediately the Termination Sum calculated in accordance with clause 9 below*."

10. Clause 5.4 of the HPA stated:

> "*We will notify you of the amount of the Termination Sum in writing as soon as possible after the early termination of the hiring of the Goods under this Agreement. Unless there is an obvious error the amount notified to you shall be final and binding. All our rights under this Agreement shall continue after the termination of the hiring of the Goods under this Agreement. If we do not own the Goods then any reference to us shall where appropriate be construed as the owner of the Goods.*"

11. Clause 9 of the HPA dated 3rd June 2015 provided for the "*Lease Agreement Termination Sum*" as follows:

> "*The termination sum payable under clause 5.3 shall be:-*
>
> *9.1 all arrears of Payments and other amounts you owe us together with any interest payable pursuant to clause 1.3; plus*

9.2 any costs that we incur in finding and recovering possession of the Goods and enforcing our rights and putting the Goods in good repair and condition, fair wear and tear excepted; plus

9.3 the balance of Payments that would have been payable during the remainder of the term but for such early termination, discounted to reflect early receipt; plus

9.4 an amount calculated to ensure that we maintain the same after-tax rate of return for the purchase of the Goods and their hiring under this Agreement as we would have obtained but for the early termination or repudiation of this Agreement."

12. As referred to earlier in this judgment, in addition to the HPA, the Plaintiff provided goods and services, described as miscellaneous services, including the provision of several additional vehicles to BDTS at a daily or weekly rate (plus an agreed mileage rate and an agreement by the Plaintiff to discharge toll levies) on terms agreed in writing between them and the Plaintiff also provided repair and maintenance services to BTDS.

THE PERSONAL GUARANTEE

13. The Personal Guarantee is dated 28th May 2015 and was given by the Defendant, Brian Daly, of 23 Ashwood Way, Clondalkin, Dublin 22 ("The Guarantor"), for the benefit of the Plaintiff, Setanta Vehicle Sales Ltd, whose registered offices are at Unit 20, Parkmore Industrial Estate, Longmile Road, Dublin 12 ("The Creditor"). In paragraph 1, under the first subheading, "*Background*", there is a typographical error

which refers to the HPA between the Plaintiff, "*Setanta Vehicle Sales Limited (SVS)*" and "*Brian Daly Transport Ltd*" which should have read "*Brian Daly Transport Services Ltd*").

14. It states: "*WHEREAS SETANTA VEHICLE SALES LIMITED (SVS) has entered into a Hire Purchase Agreement BRIAN DALY TRANSPORT LIMITED having its registered office at 63 Leigh Valley, Ratoath, County Meath (hereinafter referred to as "the Debtor") in relation to Goods more particularly described in the said Agreement.*"

15. In the Supplemental (third) Affidavit of Harry Nash sworn on 11th January 2024, he addresses this issue in paragraphs 6-8 of that Affidavit as follows:

> "*6. … There is a typographical error in the Guarantee in that it incorrectly refers to "Brian Daly Transport Limited" as being the debtor company whose debts are being guaranteed rather than "Brian Daly Transport* ***Services*** *Limited" (emphasis added). However, I say and believe that this is an obvious and clear clerical error and that all times, the parties to the Guarantee clearly understood and intended the Guarantee to mean that the Defendant had guaranteed to pay BDTS's unpaid debts to the Plaintiff and to indemnify the Plaintiff against all losses, damages, costs and expenses incurred by it in connection with any transactions with BDTS.*
>
> *7. The context in which the Guarantee was provided by the Defendant to the Plaintiff was the Plaintiff entering into a hire*

purchase agreement with BDTS relating to two vehicles. This hire purchase agreement-which is exhibited at HN2 to the Grounding Affidavit - is referred to in the Guarantee and was concluded between the Plaintiff and BDTS. The hire purchase agreement and the Guarantee were signed immediately one after the other by the Defendant in your Deponent's presence. The registered address of the company referred to in the Guarantee was the registered address of BDTS at the time the Guarantee was executed. This is also the address used for BDTS on the hire-purchase agreement. The invoices and statements which were sent from the Plaintiff subsequent to the execution of the Guarantee-and which are also exhibited to the Grounding Affidavit at HN5 and HN6, and the Supplemental Affidavit at HN1 - were addressed to either "Brian Daly Transport Serv" or to "Brian Daly Transport Services Ltd."

8. I further say and believe that no company by the name of "Brian Daly Transport Limited" exists nor has Mr. Daly averred to the existence of such a company in the Replying Affidavit. I beg to refer to the Form B1 Annual Return filed on 25 November 2016 for BDTS for the financial year ending 31 December 2015 showing its relevant details and that its registered address at the time the Guarantee was executed was 63 Leigh Valley, Ratoath, County Meath marked with the letters HN1 and upon which I have signed my name prior to swearing hereof. I further beg to refer to a printout of the screenshot of a search carried out on 5 January

2024 on the CORE (Companies Online Registration Environment) section of the Companies Registration Office Ireland website showing no results for a company named "Brian Daly Transport Limited" marked with the letter HN2 upon which I have signed my name prior to swearing hereof."

16. I accept Mr. Nash's explanation of this typographical error.

17. The Personal Guarantee made on 28th May 2015 is a continuing Personal Guarantee. Paragraph 2 deals with "*Guarantee and Indemnity*". Paragraph 3, under the subheading "*Indemnity for Costs*" (which is addressed in full at paragraphs 3, 4 and 5) *inter alia* states as follows:

> "*In addition to the Guarantee and Indemnity, the Guarantor hereby irrevocably agrees to keep the Creditor fully and effectively indemnified from and against all costs, claims, charges, damages, expenses and losses (on a full and unqualified indemnity basis) whatsoever*
>
> *a. which are incurred by the Creditor arising out of or in connection with any transactions entered into by the Creditor with the Debtor or*
>
> *b.* …
>
> *c.* …
>
> *d.* …
>
> … *Together with interest on each sum from the date that the same was incurred or fell due to the date of payment*".

18. The Personal Guarantee at paragraph 6 deals with "*Agreements with the Debtor and Others*"; paragraph 7 deals with the "*Preservation of the Creditor's Claims against the Debtor*"; paragraph 8 deals with "*Payments*".

19. The Personal Guarantee also provides at paragraphs 9 and 10 for the "*Waiver of Demand*", with paragraph 9 *inter alia* stating that "*[t]he Guarantor further agrees that in any litigation relating to these presents the aforesaid obligations or any security therefor, he shall waive the rights to interpose any defence based upon any claim of laches or set off or counterclaim of any nature or description relating to such aforesaid obligations*"; paragraph 11 provides for "*Making of a Demand*"; paragraph 12 provides for "*Interest*"(which is not being pursued in this application); paragraphs 13 and 14 provide for "*Preservation of Creditor's Rights*"; paragraph 15 provides for "*Representations and Warranties*"; paragraph 16 provides for "*Lien and Set Off*"; paragraphs 17 to 25 provide for "*General*" matters; paragraph 26 provides for "*Notices*"; paragraphs 27 to 32 provide for "*Interpretation*" and; paragraphs 33 to 35 provide for "*Governing Law and Jurisdiction*."

20. Accordingly, the Personal Guarantee covers not only the HPA but also "*any transactions entered into by the Creditor with the Debtor*" which includes the miscellaneous services, the subject of the claim of €71,621.76, comprising *inter alia* invoices for vehicle leasing, repair and maintenance.

21. The Statement of Account dated 28th February 2018 exhibited in the Affidavit of Harry Nash, Director of the Plaintiff Company, sworn on 24th September 2019 refers to the amount due of €113,823.06 which did not include the additional termination

sum plus repossession and other costs which are, in addition, claimed in this application by the Plaintiff.

22. Insofar as the miscellaneous matters are concerned (including the lease, repair and maintenance of vehicles), the evidence of Harry Nash is that BTDS began to fail to discharge the invoices which were submitted to it in or around March 2016. In relation to the HPA, Mr. Nash avers that BDTS began to default on its payment obligations in or around May 2017.

23. Accordingly, as a result of BDTS's default of its payment obligations, the Plaintiff notified BDTS by way of letter dated 28th November 2017 that it required the accrued arrears relating to the HPA to be discharged within ten days and that, in default of such payment being made, the HPA would terminate and that BDTS would be liable to pay the termination sum. In fact, the two Hire-Purchase vehicles were recovered from BDTS shortly after the BDTS creditors meeting on 6th February 2018. By letter dated 11th December 2018, the termination sum was notified to BDTS. As stated, this amounted to €45,878.41 and included a deduction for credit from the proceeds of the sale of the Hire-Purchase vehicles of €13,636.36. As set out in Mr. Nash's Affidavit sworn on 24th September 2019, the Termination Sum of €45,878.41 was calculated as follows:

- "*Invoiced Monthly Arrears (included in the Statement of Account): €42,201.30*
- *Interest on Monthly Arrears: €3,066.37*
- *Cost of Repossession of hire purchase vehicles: €1,000.000*
- *Balance of Payments Due Pursuant to hire-purchase agreement: €13,247.10*

[Less [*i.e.*, credited] proceeds of hire-purchase vehicles: (minus) €13,636.36]

Termination Sum: *€45,878.41*".

24. As stated earlier, the sum due and owing was comprised of the HPA termination sum in the amount of €45,875.41 plus the invoices for miscellaneous services including vehicle leasing, repair and maintenance in the amount of €71,621.76, giving a total of €117,500.17.

25. By letter dated 29th November 2018, the Plaintiff's then-solicitors wrote to the Defendant, Mr. Brian Daly and stated *inter alia* that pursuant to the terms of the Personal Guarantee, Mr. Daly had "*unconditionally and irrevocably*" guaranteed payment and the discharge of BDTS' obligations under the HPA. The letter stated that the outstanding balance under the HPA was €117,500.17, as of that date, and that:

> "*Accordingly we hereby make formal demand on you for payment forthwith of the sum of €117,500.17 now due by you on foot of the Personal Guarantee …*
>
> *In default of receiving payment within the prescribed time, we have instructions to issue High Court proceedings against you for recovery of all sums due without further notice to you. In the event of proceedings being issued we will also be seeking recovery of costs and interest*".

26. As was made clear on behalf of the Plaintiff at the beginning of this application, interest on the total sum is not being pursued.

27. Following receipt of the demand letter, the Defendant telephoned the Plaintiff's solicitor and required a breakdown to be provided of the sums due and owing. This information was issued to him by letter dated 10th December 2018, referring *inter alia*

to the calculation of the Termination Sum on the HPA (as per Clause/paragraph 9 of the HPA) in the amount of €45,878.41 (which included an interest sum which had crystallised at that date in the sum of €3,066.37 (with the calculation attached)), and added to the invoices for parts, services and other vehicle hire in the amount of €71,621.76, which gave a total amount due and owing of €117,500.17.

28. At the date of the swearing of Mr. Nash's Affidavit on 24th September 2019, no response had been received at that time from the Defendant and Mr. Nash in his grounding Affidavit states his belief that the Defendant had no valid or *bona fide* defence to the Plaintiff's claim and that an appearance had been entered solely for the purposes of delay.

29. In his supplemental Affidavit sworn on 1st June 2023, Mr. Nash exhibited outstanding invoices.

30. The Defendant swore an Affidavit in response on 4th December 2023 and the gravamen of his reponse is contained in paragraphs 4, 5 and 6 of this Affidavit.

31. Mr. Daly states, for example, that Brian Daly Transport Services ("the company") had an "*active trading commercial account with Setanta Vehicle Sales from the period in 2005 until the date it ceased trading and used the garage services and frequently bought parts etc from Setanta as normal trading business*", that "*[t]his account was in the company name and not in my personal name*" and that the amount being sought "*in this judgment is disputed and is a company debt and therefore I am not liable for the mentioned sum of 113,823.06 euro*."

32. In the Supplemental (third) Affidavit of Harry Nash sworn on 11th January 2024 in response to Brian Daly's Affidavit sworn on 4th December 2023, Mr. Nash *inter alia* makes the point that in this application, the Plaintiff is seeking judgment against the Defendant on the basis of a Guarantee and Indemnity executed by the Defendant and dated 28th May 2015, by which the Defendant guaranteed that Brian Daly Transport Services Ltd ("BDTS") would observe its obligations to the Plaintiff and that, in default of BDTS discharging its obligations and debts to the Plaintiff, the Defendant would fully indemnify the Plaintiff against all losses, damages, costs and expenses incurred by it in connection with any transactions with BDTS. Mr. Nash emphasises *inter alia* throughout this Affidavit that Mr. Daly's Affidavit does not refer to, or address, the Guarantee or any of the averments in Mr. Nash's previous Affidavits. As set out earlier in this judgment, Mr. Nash also addressed, and I accept his explanation of, the typographical error in the Guarantee.

33. I also note the exhibit referred to by Mr. Nash, the "*B1 – Annual Return -: 447095*", setting out the Company Details where the registered office of "*BRIAN DALY TRANSPORT SERVICES LIMITED is given as 63 Leigh Valley, Ratoath, Co. Meath*".

ASSESSMENT & DECISION

34. For the following reasons, I am of the view that the Plaintiff is entitled to have judgment entered against the Defendant in the sum of €117,500.17.

35. As set out in this judgment, and in the evidence adduced by Mr. Nash in his Affidavits, the Plaintiff has clearly met the legal requirements in an application such as this. This test was set out by the Court of Appeal (Whelan, Murray and Pilkington JJ.) in *Onyenmezu t/a Norlia Recruitment Service v Firstcare Ireland Limited & Ors* [2022] IECA 11 in the following extract of the judgment of Murray J. (with whom Whelan and Pilkington JJ. agreed) at paragraphs 23 and 24:

> "*23. The legal framework within which this issue as it thus evolved falls to be addressed is settled and familiar. A court in exercising the jurisdiction to grant an application for summary judgment must proceed with care and caution. The fundamental question it must address on such an application is whether there is a fair and reasonable probability of the defendant having a real or bona fide defence, in law, on the facts or both. This is not the same thing as a defence which will probably succeed or even a defence whose success is not improbable. If the court concludes that there is a fair and reasonable probability of the defendant having a defence thus understood, the court must refuse to enter judgment. In interrogating that issue, the court must satisfy itself before entering judgment that it is 'very clear' that the defendant has no defence. Necessarily, the court must assess the credibility of the defence presented, but in doing so does not engage in any qualitative assessment of the cogency of whatever evidence may be advanced by the defendant by way of asserting a defence. Indeed it must be remembered that in determining whether the defendant has established such a defence for the purposes of an application*

for summary judgment, the court is concerned to assess not merely whether the defendant has established a fair and reasonable probability of a defence on the basis of facts known at the time of the application, but also whether there is a real prospect that some material support for that party's case would emerge if case proceeded to plenary hearing with discovery, interrogatories and oral evidence.

24. At the same time, while the court must be cautious in granting summary judgment, and while the requirement that a defendant establish a fair and reasonable probability of the defendant having a defence is a relatively low threshold, it is nonetheless a threshold: it is neither in the public interest nor in the interests of the parties that straightforward claims for a debt or liquidated demands should require to be determined by plenary hearing, with the additional delay and cost that such a hearing involves, and the additional burden thereby placed on the resources of the courts (see Promontoria (Aran) Ltd. v. Burns [2020] IECA 87 at para. 4).

The defendant must, accordingly, go further than merely assert a defence. Thus, in IBRC Ltd. v. McCaughey [2014] 1 IR 749, Clarke J. (as he then was) stated that the type of factual assertions which may not provide an arguable defence are those that amount to a mere assertion unsupported either by evidence or by any realistic suggestion that evidence may be available, or which

comprise facts which are in and of themselves inconsistent or contradictory."

36. Having regard to this framework for summary judgment, the evidence in this application, in my view, establishes that BDTS entered into a HPA with the Plaintiff in relation to two vehicles and also leased other vehicles and received other goods and services, described as miscellaneous services, from the Plaintiff. The Defendant failed to discharge the sums due and owing for those goods and services and the lease of those vehicles. The evidence establishes that upon the early termination of the HPA, a termination sum of €45,878.41 became due and owing to the Plaintiff and also in relation to the miscellaneous (goods and) services including, for example, the repair and maintenance and leasing of the vehicles, the evidence shows that there is an undischarged sum of €71,621.76 due and owing by the Defendant to the Plaintiff. The evidence also establishes that the Defendant, Mr. Brian Daly executed a continuing Personal Guarantee to fully indemnify the Plaintiff against all losses and damages incurred by BDTS, not only in relation to the HPA but also in relation to any other transactions entered into by the Plaintiff with BDTS.

37. Consequent upon these findings, I find that there is not a fair and reasonable probability of the Defendant having a real or *bona fide* defence in law and/or on the facts in this case.

38. While Mr. Daly argues that these services were provided to the company, a limited company and not himself, it was Mr. Daly who executed the continuing Personal Guarantee to fully indemnify the Plaintiff against all losses and damages and debts

incurred by BDTS not only in relation to the HPA but also in relation to any other transactions entered into by the Plaintiff with BDTS.

39. In this regard, I do not accept Mr. Daly's argument that the Personal Guarantee only applies to the HPA and is limited to two vehicles (and "only" the sum of €45,878.41) and not the miscellaneous (goods and) services. As set out earlier in this judgment (as per, for example, Clause/Paragraph 3(a) – Indemnity for Costs), the Personal Guarantee applies to the termination sum of €45,878.41 and also in relation to the miscellaneous goods and services (including the repair and maintenance and leasing of the vehicles) in the sum of €71,621.76 and therefore the total amount of €117,500.17 is due and owing by the Defendant to the Plaintiff.

40. Accordingly, the evidence establishes that the Defendant, Mr. Brian Daly, executed a continuing Personal Guarantee to fully indemnify the Plaintiff against all losses and damages incurred by BDTS not only in relation to the HPA but also in relation to any other transactions entered into by the Plaintiff with BDTS.

41. Earlier in this judgment, I accepted Mr. Nash's explanation of the typographical error in the Personal Guarantee and that this does not invalidate that Guarantee, as argued for by Mr. Daly. A similar issue arose in the decision of the High Court (Clarke J., as he then was) in *Moorview Developments Ltd & Ors v First Active plc & Ors* [2010] IEHC 275 which concerned the mistaken reference to "Moorview Properties Limited" rather than "Moorview Developments Limited" in the Guarantee in that case.

42. In *Moorview Developments Ltd*, Clarke J. *inter alia* held as follows at paragraphs 3.5 to 3.8:

"*3.5 This aspect of the case concerns what has, in some of the case law, (see for example East v. Pantiles (Plant Hire) Ltd (1981) 263 E.G. 61) been described as "correction of mistakes by construction". As is clear from East and from the speech of Lord Hoffman in Investors Compensation Scheme Ltd v. Bromwich Building Society [1998] 1 W.L.R. 896, two conditions must be satisfied in order for such a correction to occur. First, there must be a clear mistake. Second, it must be clear what the correction ought to be.*

3.6 It is also clear from the speech of Lord Hoffman in Investors Compensation that a correction of the type with which I am concerned is not a separate branch of the law, but rather an application of the general principle that contractual documents should be construed according to their text but in their context. That context may make it clear that the words used in the text are a mistake. Thus, a reasonable and informed person may conclude that the words used are an obvious mistake and may also be able to conclude what words ought to have been used. In those circumstances, as a matter of construction, the court will, as it were, construe the contract as if it had been corrected for the obvious mistake. The reason for so construing the contract in that way is that the proper principles for the construction of contracts lead to that construction in any event. I am satisfied that those cases, most recently restated by the House of Lords in Chartbrook

v. Persimmon Homes Ltd [2009] 1 A.C. 1101, represent the law in this jurisdiction.

3.7 The evidence in relation to this case was given on behalf of First Active by Mr. John Collison. Mr. Collison drew attention to the fact that all of the letters and contractual documents passing between the parties at or around the time of the guarantee being entered into, made reference to loans being advanced or to be advanced by First Active to Moorview Developments Limited. Mr. Collison gave evidence that, to the best of his knowledge, no one in First Active had ever heard of a company called Moorview Properties Limited. The guarantee was entered into as part of a package of financial arrangements between the Cunningham Group and Mr. Cunningham on the one side and First Active on the other side. The relevant loans were all entered into between First Active and Moorview Developments Limited.

Likewise, evidence was produced from the company's register which showed that there never was a company called Moorview Properties Limited.

3.8 In those circumstances there is only one conclusion. The reference to Moorview Properties Limited in the guarantee was a clear mistake. Not only was it a clear mistake but also what the correct reference should have been is equally clear.

> *The guarantee should have made reference to Moorview Developments Limited. Moorview Properties did not exist. It never existed. Moorview Developments was, at exactly the same time as the guarantee was entered into, involved in entering into loan arrangements with First Active. It is inconceivable that there could have been any other intention of the parties but that the company whose liabilities were to be guaranteed was Moorview Developments Limited and not Moorview Properties Limited*".

43. These passages were further applied by the High Court (Finlay Geoghegan J.) in *Bank of Scotland PLC v Fergus* [2012] IEHC 131; [2014] 4 I.R. 428, and both *Moorview* and *Bank of Scotland v Fergus* support the position, which applies in this case, namely that there was no other company in existence which went by the incorrect name *i.e.*, it was a clear mistake. The reference to '*Brian Daly Transport Limited*' is a clear mistake which does not invalidate the Guarantee and it is clear that the intended correct reference was to '*Brian Daly Transport Services Limited*'. The Guarantee entered into was in relation to the HPA or '*any transaction entered into by the Creditor with the Debtor*' which referred to BDTS. The address used in the Personal Guarantee is the address of BDTS. It is therefore a clear mistake and in the construction of the Personal Guarantee I hold that this typographical error does not in any way vitiate the Personal Guarantee.

44. Accordingly, I find that the Plaintiff is entitled to have judgment entered against the Defendant in the sum of €117,500.17.

PROPOSED ORDER

45. In the circumstances, therefore, I shall make an Order that the Plaintiff is entitled to have judgment entered against the Defendant in the sum of €117,500.17.

46. I shall put the matter in for mention before me on Wednesday, the 8th day of May 2024 at 10.30 to address the issue of costs.