

THE HIGH COURT

[2022] IEHC 317
[2020/99 S]

BETWEEN

ALLIED IRISH BANKS PLC

PLAINTIFF

AND

OLIVER DOREY

DEFENDANT

JUDGMENT of Mr. Justice Holland delivered on 31 May, 2022

1. On foot of a summary summons dated 18th March, 2020, notice of motion for judgment in default of appearance dated 21st September, 2021 and the grounding affidavit of Stephen Clarke sworn 27th August, 2021, the plaintiff seeks judgment in default of appearance in the sum of €809,531.10 on foot of three loans made in 2008. I part-heard the motion on 23rd May, 2022, the defendant having been called and not having appeared. For reasons which will become apparent, I need say no more of the substance of the action.

2. In the summary summons and as to each of the three loans, the plaintiff pleads as follows as to the alleged indebtedness of the defendant:-

“Short particulars of that amount are set out hereunder and full particulars of the Defendant’s indebtedness have previously been notified to him by the delivery from time to time of bank account statements in respect of each of the accounts set out below.”

3. The issue on which I now give judgment is whether that plea suffices to satisfy the requirements as to particulars to be set out in a summary summons laid down by the Supreme Court in *Bank of Ireland Mortgage Bank v O’Malley*¹. The plaintiff asked that I give a judgment confined to this issue as it is likely to arise in more than one set of such proceedings. This judgment is given without prejudice to the position of either party as to any other issues which may arise in the motion, which issues stand adjourned *pro tem* and pending this judgment.

4. I should add that I raised with the plaintiff the question whether they wished to rely on the view that they are not obliged to prove, in a motion in default of appearance, the substantive indebtedness it alleges² or, indeed, to meet any concerns as to the quality of their pleadings, in the absence of such concerns being raised by the defendant. The Bank has requested that I determine this issue on the assumption that they are obliged to adduce such proofs without prejudice to their arguing later that they are not so obliged. In that sense the issue placed before me is less akin to a motion in default of appearance than to a question in an application for summary judgment whether

¹ [2019] IESC 84

² See *Trafalgar v Mazepin* [2019] IEHC 7 §76

the plaintiff has adequately pleaded and proved a prima facie case sufficient to require the defendant to surmount the low threshold of showing a defence.

5. There are conflicting judgments on the adequacy of a plea such as that set out above. *AIB Mortgage Bank v Hayden*³ holds that the plea suffices. It is less clear that *Allied Irish Banks v Ahern*⁴ does. *Havbell v Harris*⁵ holds that it does not. I am grateful for the written submissions of counsel for the plaintiff on this issue. He seeks to distinguish the latter decision.

6. It is clear from *O'Malley* that a plaintiff issuing a summary summons may plead the calculation of the alleged indebtedness by reference to other documents setting out that calculation and previously furnished to the defendant - assuming the content of those documents suffices for the purposes identified in *O'Malley*. This is an alternative to setting out the calculation in the summons itself. It has therefore since *O'Malley* become commonplace that, shortly before issuing a summary summons, the intending plaintiff writes to the intended defendant enclosing a full set of statements of the loan account in question from drawdown of the loan to date. Such a statement states the rate of interest applicable from time to time and records each increment of interest applied to the loan.

7. It is important to state that the practical purpose of pleading such particulars is to enable the defendant to satisfy himself or herself of the accuracy of calculation of the indebtedness alleged in the specific amount of the sum claimed, so that he or she can properly decide, and be expected to decide, on adequate information, whether to defend the proceedings or submit to judgment.

8. It is important also to recall that *O'Malley* made clear that this obligation to provide information arises at two points in the process: as a matter of asserting – pleading – the debt in the summary summons; as a separate matter of evidence - proof of the debt - by exhibition of the statements in the motion papers seeking judgment. The latter issue does not arise at present in this case.

9. While *O'Malley*⁶ is the earliest and most important of the relevant judgments, I will leave its consideration to last.

AIB Mortgage Bank v Hayden⁷

³ [2020] IEHC 442

⁴ [2021] IEHC 311

⁵ [2020] IEHC 147

⁶ [2019] IESC 84

⁷ [2020] IEHC 442 (High Court (General), Meenan J, 12 June 2020)

10. In *Hayden*, summary judgment was granted on foot of various loans. The Defendants resisted judgment, inter alia, in reliance on *O'Malley*. Meenan J dealt with the pleadings issue briefly and on the basis that the Plaintiff had “satisfied the “*O'Malley test*”” (which he recited) by a plea that:

“The particulars of the amount due and owing are calculated as detailed in the bank account statements in respect of loan account no. [blank] and have previously been notified to the defendants by the delivery of same from time to time.”

That plea is in all material respects the same as that made in the present case.

11. Meenan J noted that the defendant’s replying affidavits were filed before the decision in *O'Malley* and made no complaint of lack of particularity such as would allow the defendants to decide whether to concede or resist the claim. Meenan J also noted the exhibition by the plaintiff of all relevant bank statements. He was therefore satisfied that the defendants had not established any defence in this regard.

12. It is not clear to what extent, if at all, the issue was argued before Meenan J whether the specific feature of reliance on the statements issued periodically over the entire life of the loan sufficed for purposes of pleading particulars of the debt by reference to such statements.

AIB v Ahern⁸

13. In *Ahern*, summary judgment was granted on foot of various loans. The defendants resisted judgment, inter alia, in reliance on *O'Malley*. The summons had been issued before *O'Malley* and before *O'Malley* the plaintiff sought summary judgment on foot of an affidavit which exhibited the relevant bank statements. After *O'Malley* the summons was amended to comply with *O'Malley*. As amended, it pleaded the bank statements which the defendants had received regularly over the years and which had been furnished again in the proceedings.

14. Notably, that plea in the amended summons differs from that in the present case in that it pleads, not merely the statements sent to the Defendant over the period of the loan, but the statements already furnished again in the proceedings – in other words, those exhibited in the motion for judgment prior to the amendment of the summons. Thus, the amended summons asserted that, on their receipt of the amended summons, the defendants had, by the earlier exhibition of those statements, the necessary information to enable them to decide whether to concede or resist the claim. In a sense this is a reversal of the normal sequence in which pleading precedes evidence: here earlier evidence is being retrofitted, as it were, as pleading. But there

⁸ Allied Irish Banks PLC v Ahern [2021] IEHC 311 (High Court (General), Barr J, 6 May 2021)

seems to me to be nothing wrong with that if it achieves the required practical objectives of justice identified in O'Malley as to the provision of particulars. In my experience, this reflects an approach commonly adopted by Plaintiffs.

15. The difference in the present case is the absence of a plea in an amended summons of reliance for purposed of furnishing particulars in an amended summons on statements exhibited before the amendment. The present summons pleads only the statements sent to the borrowers from time to time since the loans were made.

16. Barr J in Ahern recorded that *O'Malley* dealt with two distinct questions. The first concerned the level of detail required for a special endorsement of claim to be compliant with the Rules of the Superior Courts in a case involving a claim for debt on foot of a loan. The second concerned the evidence required to justify summary judgment on a motion to that end. As to the first question, *O'Malley* decided that the Defendant was entitled to sufficient particulars in the summons to enable him *"to satisfy his mind whether he ought to pay or resist"*. Barr J very briefly cited **Hayden** in considering the particulars adequate to O'Malley requirements⁹. Barr J concluded that:

"75. Having regard to the matters pleaded in the amended summons and to the fact that the facility letters and the relevant account statements were furnished to the defendants from time to time during the lifetime of the accounts and having regard to the fact that in the account statements, the rate of interest charged was clearly identified; changes in interest were clearly identified and once the facility limit was exceeded, the amount of interest accruing, but not applied to the account, was clearly stated in a separate box; the court is satisfied that the defendants were given adequate particulars of both the principal sums claimed and the amount of interest constituted therein, together with the amount of interest that had accrued since 4th August, 2016."

It must be said that, here, Barr J in terms upheld the plaintiff's reliance for purposes of particulars on *"statements furnished to the defendants from time to time during the lifetime of the accounts ..."*. It can also be said that Barr J did so in the context of a plea which he identified as referring, *"to the bank statements, which the defendants had received on a regular basis over the years and which had been furnished again in the course of these proceedings"*¹⁰.

17. As relevant to the issue before me and his consideration of **Havbell v Harris**¹¹, Barr J said:

"72. When one has regard to the essence of the decisions in the O'Malley; Fergus and O'Brien cases, the rationale for the requirement that the creditor should provide adequate particulars of the debt, is to enable the person sued to know precisely what sums are being claimed from him or her; how such sums are calculated and armed with that information, the defendant will be in a position to know whether he or she has either a merits based defence to the sum claimed, or may have a defence based on the fact that the plaintiff may have

⁹Barr J said: "74. The same approach was adopted by Meenan J. in *AIB Mortgage Bank v Hayden* [2020] IEHC 442."

¹⁰ Emphasis added

¹¹ [2020] IEHC 147

made an error in its calculations. The essential requirement is that the defendant is given adequate information to enable him or her to know whether such defences are open to them.

73. *However, it is not necessary that the matter be pleaded in minute detail in the summons itself¹². That is made clear in the *Havbell v Harris* case, where Humphreys J. stated as follows at para. 21:-*

*“The need for the claim to be sufficiently particularised is stressed in *Bank of Ireland v O’Malley* (see paras. 5.5 to 5.9 in particular). The particularisation may be done indirectly by referring to another identified document which provides the necessary information (see para. 5.6).”*

Barr J cited *Havbell v Harris* specifically for the point, also made in *O’Malley* and which is beyond dispute, that the indorsement on the summons can plead the necessary particulars of the debt by referring to another document in which those particulars are to be found. It bears observing that Barr J here and this excerpt from *Havbell v Harris* address the question where the particulars are to be found as opposed to the detail they must contain.

18. The passages from the judgment of Barr J set out above address the question of the substantive content of those particulars in terms which are not at issue in the present case. Barr J addressed that content and, as I record above, did rely in upholding the particulars on the statements issued from time to time in the ordinary way over the life of the loan since drawdown. However it is not clear that Barr J was concerned with that mode and timing of provision of statements as opposed to their content. It is not apparent that the specific question of the adequacy of that means of provision of the requisite information was argued before Barr J. Indeed Barr J records the arguments the Defendants did make as follows:

37. *The defendants also raised the defence, that having regard to the decision of the Supreme Court in *Bank of Ireland v O’Malley*, and notwithstanding the amendment of the summary summons herein, the pleadings were still deficient in respect of the particulars that the plaintiff was obliged to provide in respect of the alleged debt the subject matter of its claim. In particular, it was submitted that the amended summary summons was deficient in the following respects: there was no evidence showing the breakdown between interest and principal for any of the accounts; the amended summons set out that the amount due on each account was made up of principal and interest accrued but not yet applied. No particulars were given of whether the principal figure due was made up of any interest charged throughout the lifetime of the loans; the figures in the amended summons setting out the interest not yet accrued differed from the figures provided in the bank statements for interest not yet accrued. No reason was given for this difference, or how the amount was calculated and the demand letter suggested that there was a surcharge interest of 12%, but the summons set out that there was no surcharge interest. There was no explanation for the inconsistency.*

¹² Emphasis added

38. *It was submitted that having regard to the cases dealing with the level of particulars that had to be furnished in debt collection proceedings following the O'Malley judgment, it was clear that the pleadings herein and the evidence tendered, did not comply with the requirements of the law. In this regard counsel referred to the decisions in Bank of Scotland v Fergus [2019] IESC 91; AIB Mortgage Bank v O'Brien [2020] IECA 191 and Havbell v Harris [2020] IEHC 147."*

19. It will be apparent from the foregoing that the Defendant's arguments related to the substantive content of the documents incorporated by reference in the Summons by way of particulars - as opposed to the form and timescale in which those documents were provided. And it was in addressing those arguments that Barr J cited *Havbell v Harris*.

20. Barr J did not cite *Havbell v Harris* as to its consideration of the issue, which I now consider, as to the form and timescale in which those documents were provided and Barr J did not cite §22 of *Havbell v Harris*, to which I will come in due course.

21. In summary, it appears to me that it is not clear that Barr J in *Ahern* is to be understood as having laid down that it suffices for the provision of the particulars required by O'Malley, to plead by reference the statements provided from time to time since drawdown of the loan.

Bank of Scotland v Fergus¹³

22. In *Fergus*, Charleton J observed of *O'Malley* that:

"19. The requirement for particularity, on a summary summons is necessary because if no appearances entered to a liquidated claim, judgment may be marked in the Central Office of the High Court, or in the Circuit Court by the country registrar. When an affidavit explaining the nature of the debt is put in by a bank it is necessary for that bank to indicate clearly what sum is capital, arising from what loan, what sum is interest and charged on which account, if there are many, and how, if this arises, penalties are calculated by way of increased interest charges on overdue loans or overdraft facilities drawn in excess without permission.

20. The nature of these requirements is to put a debtor in a position where on an individualised basis he or she may see where perhaps a mistake has been made or where interest may have been overcharged or penalties may have been misapplied. Thus, not only is any proposed defendant in a claim for a liquidated sum required to engage with the evidence

¹³ [2019] IESC 91

and to demonstrate a defence and to be denied a plenary hearing unless those steps are taken, but it is also required of a plaintiff financial institution to make it clear as to the precise basis that a sum of money is owed. ...”

23. For present purposes, it seems to me that the important element of the judgment of Charleton J is that *“The nature of these requirements is to put a debtor in a position where on an individualised basis he or she may see where perhaps a mistake has been made or where interest may have been overcharged or penalties may have been misapplied.”*

A.I.B. Mortgage Bank v O'Brien¹⁴

24. In *O'Brien*, Faherty J considered the indorsement of claim inadequate - but in respects quite different to those with which I am concerned. However, the case is an application of *O'Malley* as to *“the necessity for proper pleading”* and assists for present purposes as a reminder, via citation of *AIB v Purcell*¹⁵ and *Harrisrange v Duncan*¹⁶ of the requirement of *“discernible caution”* in granting summary judgment. It also assists in citing Humphreys J. in *Allied Irish Banks v McGowan*¹⁷ as having *“pithily summarised”* the *O'Malley* principles as rebalancing the criteria for summary judgment in imposing somewhat more onerous requirements on plaintiffs than was previously understood. Humphreys J. referred to his decision in *Havbell v Harris*. Of the four criteria identified by Humphreys J in *McGowan*, I am concerned with only the first: is the plaintiff's claim sufficiently pleaded and particularised.

Havbell v Harris¹⁸

25. Havbell was an action on a loan made to the Defendant by Permanent TSB and later assigned to Havbell. Humphreys J referred to *“the significant refinement of the requirements of pleading introduced by the Supreme Court in O'Malley”* as *“a tangible modification to the previous law”*.

26. Humphreys J noted that *O'Malley* required that the pleadings must specify how the sum due was calculated - the jurisprudence is clear that the amount claimed must be explained and indeed explained precisely - but permitted pleading the requisite particulars indirectly by referring to another identified document which provides the necessary information. The defendants asserted a lack of pleaded detail as to the calculation of the interest claimed. Humphreys J said:

¹⁴ [2020] IECA 191 (Court of Appeal (civil), Faherty J, 15 July 2020)

¹⁵ [2018] IEHC 534

¹⁶ [2003] 4 I.R. 1

¹⁷ [2020] IEHC 148. The Plaintiff's pleadings were found inadequate but not in a respect which adds to a consideration of the present case.

¹⁸ [2020] IEHC 147

“All that the amended summary summons says is that it specifies the interest rate on 26th October, 2017. It also refers to statements of account although they aren’t expressly identified in the summons. Clarke C.J. in O’Malley refers (at para. 5.6), to the possibility of giving particulars via an “identified” document. A general plea as set out in the amended summary summons at para. 10, which states that “the defendants have been regularly supplied with statements of account ...” does not constitute reference to an “identified” document.”

27. It seems to me this passage, if it represents the law generally, in terms invalidates the plea in the present case.

Distinguishing Havbell & the Position on the Authorities.

28. Counsel for the plaintiff sought to distinguish *Havbell* on the basis that the loan in that case had been assigned such that, whereas later statements presumably issued from Havbell to the Harrises, earlier statements had issued from Permanent TSB. I confess I was not quite clear why this distinction was thought to make a difference. I respectfully reject the attempt to distinguish Havbell.

29. It appears to me that the foregoing authorities are at odds on the net question whether it suffices to satisfy *O’Malley* requirements as to particulars of calculation of the sum claimed to incorporate by reference in the Indorsement of claim statements provided from time to time in the ordinary administration of the loan in question: Hayden says yes; Havbell says no; Ahern is unclear, though that is no criticism of the judgment – it is merely an artefact of how that case was argued. I consider it open to me to follow either line of authority and that to choose between them the best course is to return to *O’Malley*.

Current Practice & the Facts in this Case

30. Before I do so it seems not unreasonable to note that, as counsel for the Plaintiff accepted and as I have recorded above, the current practice on foot of the *O’Malley* requirements is that shortly prior to the issuing of the summons, often with the last demand for payment before action, the plaintiff bank sends the intended defendant a complete set of statements of the account from drawdown. Those statements record all transactions on the account including each application of interest and each change in the rate of interest. These statements combine to “*put a debtor in a position where on an individualised basis he or she may see where perhaps a mistake has been made or where interest may have been overcharged or penalties may have been misapplied*” as Charleton J said in *Fergus*. It is no burden on the plaintiff bank to do so as it will, as a matter of course in the ordinary conduct of its banking business, maintain such records on its books and can as readily produce them to the Debtor prior to the issue of the summons in order to plead them by reference

in the summons, as it can, as it will be required to do in any event to get judgment, exhibit them in its affidavit seeking judgment.

31. Of course, that the foregoing is now standard practice does not of itself imply that it is a necessary practice or that other practices will not also suffice. But it is useful to observe that the practice commonly adopted imposes no great burden on the Plaintiff.

32. Though I do not see that my decision is highly particular to the facts of this case, nonetheless the facts provide a good illustration of my reasons underlying it. The two loans in this case were made in 2008. The summons was served in September 2020 – about twelve years later. What is pressed on me by the Plaintiff, in effect, is that it is reasonable to assume of the Defendant that he will over those 12 years since 2008 safely and effectively have preserved the bank statements issued in both accounts from time to time – it seems generally annually but some statements are dated to shorter intervals – such that they will effectively serve as particulars which he will have been able to consult on receipt of the summons in 2020 to check *“where perhaps a mistake has been made or where interest may have been overcharged or penalties may have been misapplied”*.

33. As exhibited, the statements run to 72 pages. It is entirely reasonable to expect a bank to maintain its records effectively and carefully. In a perfect world debtors would do so also. Many debtors no doubt do. Some, or more than some, debtors will be able readily to access a decade, or even many more years, of bank statements. But it does not take much appreciation of human nature and the vagaries of life to know that often, and for many and varied reasons, some good, some less so, that does not occur. Some people are just careless or bad at “paperwork”. Others lose documents when moving house. Others again fall victim to fire or flood or other accident. Marital separation may result in loss of, or loss of access to, such documents. I have no idea of the personal circumstances of the present Defendant but note that the loans on which he only is sued were made jointly to him and another. That other appears to have been a staff member of the Plaintiff. One or other or both may have been responsible, as between themselves, for safe-keeping of the statements received from time to time. There seems to me to be a considerable lack of realism in an expectation, for purposes of the exercise of a jurisdiction to be exercised with *“discernible caution”*, that, as even a general proposition, they will be able to do so.

34. Also, it may well be that the form and content of statements issued from time to time has been constant over the 12 years in question and conformed to the content of the statements now exhibited, which I infer are recently printed. I have no reason to believe that such form and content has changed over time. But equally I have no evidence it did not. I note that in *O’Malley* there was *“nothing in the Statement of Account itself which specifies that there has been a change of interest or what the change actually was”* such that *“the absence of any indication on the Statement of Account as to the interest rate actually being applied from time to time would not have made it easy to ascertain whether the rates actually being applied were those which had been notified.”* Such

details do appear on the recently-printed statements exhibited in the present case but *O'Malley* suggests that at least some statements of account produced by banks do not contain such details.

Bank of Ireland Mortgage Bank v O'Malley¹⁹

35. O'Malley was an action on a mortgage loan made in 2008. A summary summons on foot of default in repayment issued in 2014. It did not plead detailed particulars of the calculation of the debt. The Bank got judgment in the High Court. Clarke CJ in the Supreme Court on appeal cited Order 4, rule 4 of the Rules of the Superior Courts which requires that:

"4. The indorsement of claim on a summary summons and on a special summons shall be entitled "SPECIAL INDORSEMENT OF CLAIM," and shall state specifically and with all necessary particulars the relief claimed and the grounds thereof."

36. Importantly for present purposes, Clarke CJ identified a very practical "*underlying rationale for the requirement as to detail*" which went back at least 140 years: he recorded that:

".... the general obligation to provide sufficient particulars in a summary claim has the objective of ensuring that litigants properly know the case which they have to meet. As stated by Cockburn C.J. in Walker v Hicks (1877) 3 Q.B.D. 8, at p. 9:-

"I think a party, who is placed in the predicament of being liable to have a judgment signed against him summarily, is entitled to have sufficient particulars to enable him to satisfy his mind whether he ought to pay or resist... It seems to me that a party is entitled, before summary proceedings for judgment are taken against him, to know specifically what is the claim against him."

37. Clarke CJ said,

"5.5 So far as the pleadings are concerned, it does seem to me that a court may be entitled to take into account, in assessing the adequacy of the manner in which a debt claim is particularised, any documentation which has been sent to the defendant in advance of the commencement of the proceedings.

The procedures are intended to be summary. They are not intended to involve an overly detailed account of every twist and turn of a banking relationship which might go back many years and involve, in at least some cases, thousands of transactions or measures potentially affecting the liability of the borrower. The more detail the borrower has been given in advance, the more it

¹⁹ [2019] IESC 84 (Supreme Court, Clarke CJ, 29 November 2019)

may be possible to justify a relatively shorthand way of describing how the amount due is calculated.

But even there, it seems to me that it is necessary for a plaintiff, if they wish to rely on previously supplied details, to at least make some reference to those details in its special indorsement of claim.

5.6 *To adopt the test identified by Cockburn C.J., the question is as to the level of particularity which would be sufficient to allow a defendant to know whether he should concede or resist the claim. If the indorsement specifies the liquidated sum due but says it is calculated in accordance with some identified document or documents already sent to the defendant, then he has sufficient information, provided that those documents, in turn, themselves provide the necessary detail.”*

38. As to the special indorsement of claim in *O’Malley*, Clarke CJ said:

“5.7 *..... there is only a bald reference to the fact that the sum said to be due in those circumstances is the amount of €221,795.53. No detail whatsoever is given as to how that sum is calculated. It is true that the same sum is mentioned on the Statement of Account as previously supplied to Mr. O’Malley. That fact would, therefore, in my view have at least been sufficient to transfer the analysis of the sufficiency of the details given from the special summons to the Statement of Account, had there been some reference in the special indorsement of claim to the fact that the sum in question was calculated in accordance with the terms of the Statement of Account.”*

5.8 *However, in my view, the special indorsement of claim in this case was not sufficient. There are absolutely no details of how the sum said to be due is arrived at. why the particular amount due should be the sum claimed is not at all clear. I cannot see that a person receiving such a summons could have the “necessary” details to decide whether they should concede or resist.*

5.9 *If the special indorsement of claim had gone on to make specific reference to the relevant sum being calculated by reference to the details set out in the Statement of Account, then I would be happy that the document concerned would be incorporated by reference into the special indorsement of claim and regard could be had to it in deciding whether adequate particulars had been given. But even that simple step was not taken in this case.*

I would, therefore, conclude that the special indorsement of claim was not adequate.”

39. The reference here to “*the Statement of Account as previously supplied to Mr. O’Malley*” is not to statements sent from time to time over the period of the loan but to a copy statement of

account sent to his solicitors earlier in 2014 in response to their request for a detailed breakdown of the sum of monies alleged to be owed.

40. In my view, and as stated above, the rationale of *O'Malley* as to pleading is the achievement of a very practical end of enabling the defendant to satisfy himself that the liquidated sum claimed has been correctly calculated. Not least when compared with the ease with which a bank can achieve that purpose by a simple letter before action enclosing the statements for later incorporation by reference in the indorsement of claim, but in any event in its own terms, I cannot see how purported incorporation by reference of statements sent from time to time, over a decade or even decades and perhaps monthly, can be seen as reliably likely to achieve that practical purpose in the exercise of a jurisdiction to be exercised with discernible caution.

41. Clarke CJ did say that "*The procedures are intended to be summary. They are not intended to involve an overly detailed account of every twist and turn of a banking relationship which might go back many years and involve, in at least some cases, thousands of transactions or measures potentially affecting the liability of the borrower.*" I confess to finding it difficult to discern how, without such details, a borrower will be able to satisfy himself of the accuracy of the sum claimed or how the requirement of provision of such details would unduly burden a bank. That may well prove a difficult balance to achieve in, for example, claims on business accounts on which very many transactions will occur. Fortunately I need not decide that issue for present purposes and in cases of loans to individuals such issues will not typically arise. They do not arise here.

Conclusion

42. For reasons set out above, I prefer the view taken in *Havbell v Harris* as conforming to the reasoning of *O'Malley* and the practical end *O'Malley* seeks to achieve. I therefore hold that the plea in the summons in this case, incorporating by reference the statements delivered from time to time over the 12 years of the loan in question, did not comply with the requirements of *O'Malley* as to furnishing particulars of the calculation of the liquidated sum claimed.

43. At one level, this may seem a somewhat theoretical as opposed to substantive approach to the requirements of justice. After all at this point in the process, the Defendant will have had the relevant bank statements as exhibited in the motion for judgment and can now satisfy himself of the calculations of the debt claimed. However *O'Malley* is clear that the requirements of pleading and evidence, though overlapping in substance, must both be satisfied. That is, in a part, a reflection of the considerable importance of the role of pleadings in our system of litigation. And I have already referred to the fact that the pleading burden on banks is not heavy given they will in any event have to satisfy the evidential burden to get judgment.

44. Further, it must be remembered that while *“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”*²⁰, nonetheless this is a process whereby a plaintiff seeks judgment without a trial. That, though an exception for very good reason and one widely applicable in practice, is nonetheless exceptional. Hence the low threshold in a motion for summary judgment for showing a defence, the refusal of judgment unless it is *“very clear”*²¹ that there is no defence and the *“discernible caution”* with which the jurisdiction to grant summary judgment is granted.

45. Finally, one may observe in a motion for judgment in default of appearance, that the law insists on strict compliance with relevant requirements²². But the *O’Malley* requirements as to pleading apply in motions for summary judgment. So, that this is a motion in default of appearance merely amplifies the view I would take in any event as to the adequacy of pleading on the summons in this case.

46. As recorded above, this finding is made without prejudice to any other issues in the case and does not of itself necessarily imply dismissal of the action or that steps cannot be taken by the Plaintiff on foot of which summary judgment may ultimately be granted. It merely holds that the Plaintiff cannot recover summary judgment on the particulars pleaded to date. I will list this matter for mention on 18 July 2022.

David Holland
31 May 2022

²⁰ *Onyenmezu v. Firstcare Ltd* [2022] IECA 11 (Court of Appeal (civil), Murray J, 25 January 2022)

²¹ *Aer Rianta c.p.t. v. Ryanair Limited* [2001] 4 I.R. 607

²² *Delany & McGrath on Practice & Procedure* 4th Ed’n §4 - 17