THE SUPREME COURT

Supreme Court Record No: S:LE:IE:2013:000448

Court of Appeal Record No: 2014/1007

High Court Record No: 2012/1242

McKechnie J.

MacMenamin J.

Irvine J.

BETWEEN

ULSTER BANK IRELAND LIMITED

PLAINTIFF/RESPONDENT

AND

JERRY BEADES

DEFENDANT/APPELLANT

JUDGMENT of Mr. Justice William M. McKechnie delivered on the 25th day of November, 2019

Introduction

1. As part of his longstanding and ongoing banking relationship with the Ulster Bank Group, Ulster Bank Ireland Limited ("the Bank" or "the respondent") offered to make available to Mr. Beades the sum of €3,270,000.00 by letter dated 26th May, 2010 ("the facility letter"). This was subject to the terms and conditions specified in the said letter which included the Bank's standard terms and conditions, being those which at that time, governed business of this nature and kind. By acknowledgement in writing and as verified by his signature, Mr. Beades accepted this offer and the terms and conditions therein specified, on 21st July, 2010.

2. This facility had as its purpose, three aspects: firstly, to redeem certain accounts which were nominated by number and sort code, secondly, to facilitate the amalgamation of other facilities which were likewise so designated and thirdly, to capitalise a number of current accounts then held by Mr. Beades, with the same once again being similarly described. The repayment requirement stated that in the absence of demand, interest only was payable on a monthly basis until 30th April, 2011, by which date the terms were to be reviewed and agreed with the Bank: failing which the loan was to be repaid in full by way of a single payment. The security therefor was said to include a first charge over several properties, which were expressly identified by both address and location. This aspect of the contractual arrangement is not of concern in this case.

3. Despite initially making certain repayments to an acceptable level, concern soon arose at the reducing nature of the amounts being paid: so much so that between March, 2012 and December, 2012 a number of meetings were had with Mr. Beades wherein those concerns were articulated. Despite such discussions which included the possible consensual disposal of assets, the profile of the payment schedule did not improve, with the result that following the issuance of a demand letter, these proceedings were instituted on 18th April, 2013.

The High Court Proceedings:

4. On the date last mentioned, the Bank issued a Summary Summons in which it sought judgment against the appellant in the sum of €3,521,735.02. As part of the required procedure, pursuant to Order 37 of the Rules of the Superior Courts as amended ("RSC") a notice of motion issued on 7th June, 2013, in which liberty to enter final judgment was sought. In addition, given the sum involved, an application was also included in that motion, seeking to have the proceedings admitted to the Commercial List, under O. 63A, r. 4(2) of the RSC. The affidavit grounding the motion was sworn by a Mr. Fergal White on 7th June, 2013. In response, Mr. Beades' replying affidavit was filed on 2nd July, 2013. Having considered the material exhibited and the evidence adduced, Kelly J. (as he then was) admitted the case to the Commercial List on 8th July, 2013: he also permitted the defendant to file a further replying affidavit by Wednesday, 11th September, 2013 if he so wished. No such affidavit however was filed.

5. Ultimately, the substantive application for judgment came on for hearing, on the 10th October, 2013, before the judge then in charge of the Commercial List, McGovern J. The respondent, at all times was represented by solicitor and counsel, but Mr. Beades was self-representing. It is clear from the transcript of the hearing that the lack of legal representation did not disadvantage Mr. Beades in any way. He took a full and active part in the process and participated to an extent that permits me to draw the conclusion which I have just described. He would not I think be in any way offended if I also said that, as a person he is not only familiar with court procedure, but also with court advocacy: he has experience in both. Consequently, although a lay litigant, he was in a position to fully articulate and ably present whatever defence he may have had, to the Bank's application.

6. In any event, having considered the evidence and having heard submissions from both sides, the learned judge by order dated 10th October, 2013, and perfected on the same day, granted judgment against Mr. Beades in the sum of €3,521,735.02, together with interest thereon at the rate provided for by s. 26 of Debtors (Ireland) Act 1840, amended by the Courts Act 1981 (Interest on Judgment Debts) Order 1989 (S.I. No. 12 of 1989). Whilst a further word is needed in respect of that decision, it should be noted that the appeal therefrom and the resulting order is the subject matter of this judgment.

The High Court Judgment:

7. At the outset, the learned judge acknowledged that as a lay litigant Mr. Beades "had to be given an appropriate amount of latitude in defending his position". This is in accordance with a longstanding tradition of the Irish judiciary. He was also conscious of the fact that the procedure attaching itself to a summary summons is different in nature and extent to that pertaining to a plenary process and accordingly, the consequences of granting judgment, on a motion rather than at the end of a plenary hearing was "a very serious matter and [would have] serious consequences for…Mr. Beades". It was therefore essential that the facts, circumstances and the evidence would be critically analysed with this in mind.

8. In furtherance of this awareness the following point should be noted: as above explained, Kelly J., as part of the order made on 8th July, 2013, afforded Mr. Beades an opportunity of putting in a further affidavit in response to the grounding affidavit sworn by Mr. White. This was thought necessary as the replying affidavit appeared to concentrate more on opposing the application to

have the case admitted to the Commercial List, rather than dealing with the substantive motion for judgment. Even though no such affidavit was filed by the due date or indeed at all, nonetheless, and although the same technically should not have been permitted, McGovern J. was entirely satisfied to allow Mr. Beades to rely on the only affidavit sworn by him in this case. Not to do so he felt, would be entirely unjust.

9. The learned judge cited many of the cases in which the relevant principles governing the summary process are set forth. These included *Danske Bank a/s (t/a National Irish Bank) v Durkan New Homes and Others* [2010] IESC 22 (Unreported, Supreme Court, 22nd April 2010), *Aer Rianta C.P.T v. Ryanair* [2001] 4 I.R. 607, *McGrath v. O'Driscoll* [2006] IEHC 195, [2005] 4 I.R. 100 and an older case but nonetheless one still of significance, *First National Commercial Bank v. Anglin Ltd* [1966] 1 I.R. 75. McGovern J. then outlined his approach to the instant case: at p. 75 of the transcript he said: "…the basis on which I have to approach this matter: does that afford him a *bona fide* defence or a *prima facie* case – defence or do – is the position that notwithstanding what is in his affidavit and notwithstanding what he says the documents would show, that even taking them at their height they nonetheless do not disclose an arguable defence. So that is the basis on which I have to approach this matter in accordance with the jurisprudence of the Supreme Court. And that is the basis upon which I approach the case".

10. The trial judge then went on to consider several of the complaints advanced by Mr. Beades in his opposition to the application made: whilst many of these were not raised in his affidavit, nonetheless all were considered. However, for the purposes of this judgment, it is unnecessary to dwell on these matters at any length or on the submissions behind them: this because they have been repeated, almost *verbatim*, before this Court. It suffices to state, that having acknowledged the low threshold of having to establish an arguable ground so as to resist an application on the summary side, and even accepting the assertions made by Mr. Beades, many of which were not evidentially based, nonetheless the trial judge was not satisfied on the evidence, that such a threshold had been met. Accordingly, the order as above referred to (para. 6 *supra*) was made in favour of the Bank. From that order a notice of appeal dated 30th day of October, 2013 was filed.

11. So far as I understand this appeal, it is not suggested, as such, that the principles outlined by the trial judge were in themselves incorrect or erroneous as a matter of law. Rather, what is claimed is that even on those principles, liberty to enter judgment should not have been granted. In effect, the principles were wrongly applied. Reference was made in this context to an article published in the Commercial Law Practitioner, October, 2019, headed "Revisiting Aer Rianta" by Barrett J. in support of this submission.

Notice of Appeal:

12. Normally it is neither desirable or informative to set out, by way of a *verbatim* narrative, the grounds of appeal specified in the notice thereof or the reliefs which an appellant seeks on foot of those grounds. However, in deference to Mr. Beades, and in order to ensure that the essential issues, which I have later dealt with, fairly reflect the essence of his appeal, I intend in these rather exceptional circumstances to refer to both the grounds and the reliefs claimed. Accordingly, in its material respects, the Notice, as filed, reads as follows:-

"1. That the learned Trial judge misdirected himself in law and or in fact in refusing to examine or establish that the Plaintiff before the Court was the correct Plaintiff.

2. That the learned Trial Judge misdirected himself in law and/or in fact in proceeding with the hearing on the 10 October when the Defendant clearly had obtained fresh information/evidence regarding the Plaintiff questionable standing before the Court and the failure of the Plaintiff to explain to the Court or to their customer how they had transferred his accounts and contract to supply banking services from Ulster Bank Limited Company Number 900050 to the Plaintiff before the Courts. Ulster Bank Ireland Limited Company Number 255766.

3. That the learned Trial Judge misdirected himself in law and/or in fact regarding the undated letter of Demand, and the failure of the Plaintiff to offer any evidence regarding the method of service or method of delivery of the said letter issued by the Bank.

4. That the learned Trial Judge misdirected himself in law and/or in fact regarding irregularities and matters surrounding the affidavit of Fergal White which were admitted as evidence, and the conflicting evidence at Paragraph 7 "FW2" and Paragraph 10 "FW4" regarding the same undated letter.

5. The learned Trial Judge failed to uphold the law of evidence with respect to Bankers' Books of Evidence Act Section 4 and Section 5 in permitting Mr. Fergal White's evidence to be included when he is neither a partner or officer of the Bank.

6. The learned Trial Judge failed to recognise the Fundamental Rights and Personal Rights of Jerry Beades as set out in Article 40.3.1 of the Constitution of Ireland, when he failed to uphold the law of evidence with respect to Bankers" Books Evidence Act and or failed to send the proceedings forwarded for plenary hearing.

7. That the learned Trial Judge erred in not ensuring that the Defendant as a lay litigant was provided with a full set of papers paginated similar to those provided by Counsel for the Plaintiff for the Trial Judge.

8. The learned Trial Judge, Mr. Justice Peter Kelly at the July hearing date erred in law and in fact in his refusal to give access to Digital Audio Recording DAR of the proceedings which had taken place in his court, and further infringed the rights of the citizen and the lay litigant who has to defend against Plaintiff Banks with unlimited money and legal manpower and note takers V one citizen and this is contrary to the concept of fair procedure and created a further injustice in breach of the Constitution of Ireland and the European Convention of Human Rights.

9. The learned Trial Judge failed to take into consideration the failure of the Bank Directors to deny any wrong doing by their Employee Mr. Sean Martyn in the Fraudulent Removal of 1.3 Million Euros over 6 years.

10. The Appellants also request that when the transcript of the DAR Recording of the hearing is obtained, alterations to the grounds of appeal may need to be made."

13. Based on those grounds of appeal, the relief sought by Mr. Beades was as follows:-

1. "That the Orders of the 10 October be set aside.

2. An Order directing that an undated letter that does not display in the opening paragraphs the Date and the word Demand, cannot be regarded as a valid letter of demand.

3. An Order directing that the undated letter also has no validity as it does not comply with the Companies Act 1963 section 196 any business letters sent by a Company which contains the company's name and where sent by the company to any person, must state in legible characters in relation to every director the following particulars, (a) present Christian name, or initials and surname: (b) any former Christian or Surnames: (c) His nationality: if not Irish. Any officers, who are in default, will on summary conviction be liable to a fine.

4. An Order that the Plaintiffs case be dismissed following the failure to serve a proper Demand notice and or failing this that the case be sent back to the High Court for Plenary Hearing.

5. An Order/Direction from the Supreme Court to the Court Service for easier and cheaper access for Lay Litigants to be provided with DAR recordings, similar to the Australian access system to reduce costs.

6. An Order for costs of the action."

14. In support of his appeal, Mr. Beades has filed submissions, which in total run to 56 paragraphs. Self-evidently it is not feasible to record all of these in this judgment. Having considered the grounds so advanced, the submissions filed in written form, and having heard what was agitated in oral argument, I am quite satisfied that the following are the issues of substance which arose. Accordingly, whilst I acknowledge that the court permitted Mr. Beades to raise other matters, it did so purely as an indulgence to a lay litigant: however, it must be stressed that the vast majority of those are entirely extraneous and peripheral to the issues arising on this appeal. Accordingly, I do not propose to deal with them in any exhaustive fashion, as they have no bearing on the outcome. I will therefore concentrate on the major issues which are pertinent.

The Litigation Process:

15. At the outset a general point can be made regarding the method of accessing the judicial system in this jurisdiction: this for the purposes of resolving an issue with another party or parties. There are several different avenues by which such access may be gained. Whilst the most common are by way of a plenary summons, special summons or a summary summons, many others also exist: such as petitions (Matrimonial Causes and Matters - Order 70 RSC and Elections - Order 97 RSC): original summons (Admiralty Action – Order 64 RSC): by *ex-parte*

or by motion on notice (Judicial Review – Order 84 RSC: or under a number of different statutory provisions) and by originating notice of motion (Statutory Applications - (Order 84B RSC) and Statutory Appeals - (Order 84C RSC)). These different methods have not emerged randomly or without reason. There is good justification why over decades if not centuries, a variety of different originating steps have been provided for, depending on the subject matter of the proceedings.

16. It is I think generally accepted that the most complete hearing a litigant can obtain is by way of a plenary hearing. This occurs for the most part when an action is commenced by plenary summons, so that if the normal route is then followed, a statement of claim will issue, particulars may be raised and replied to, a defence will be filed and depending on the issues, discovery of documents may be agreed upon or ordered. The matter will then go to trial which will involve oral evidence and the testing of that by the opposing party. Submissions may be required and having carefully analysed the totality of what is offered, judgment will be delivered. This process, if uninterrupted in its travels, is generally referred to as a full plenary hearing.

17. In this case the procedure utilised was that of a summary summons: Order 2, r. 1 of the RSC renders this appropriate where the plaintiff only seeks to recover a debt or liquidated demand in money, with or without interest. The pathway by which such an action is processed, is set out in Order 37 RSC. This involves the issuing of a notice of motion and seeking liberty to enter final judgment for the amount claimed, with the same being made returnable before the Master in the first instance. Save as otherwise ordered, such a motion shall be heard on affidavit only subject of course to any application by either party to cross examine a deponent on his or her affidavit. A defendant may show cause against such motion, again by affidavit. In uncontested cases the Master has jurisdiction to deal with the matter.

18. In contested cases however, he must transfer the motion into the Judges' List for hearing: this results in a judge of the High Court determining the matter. That judge, may give leave to defend unconditionally or subject to such terms, as the court thinks fit. In brief but subject to what is later stated, such leave will be granted where an arguable defence has been plausibly asserted. If not, judgment should be entered for the amount claimed. Overall therefore, one can see that the procedure is quite different to that of a plenary hearing. It is envisaged as being a speedier process and a more efficient manner of dealing with cases to which it applies: in addition, there is less cost and expense involved. However, whatever its virtues may be, it must be acknowledged that where judgment results at this point in the proceedings, the overall process falls short of the more complete hearing inherent in the plenary process. Where appropriately utilised however, there is nothing fundamentally wrong with this procedure, a point I will come back to in a moment.

19. Whatever the initiating process may be, it is however necessary to remain mindful that justice is, at least, a two-way process involving the party who institutes the proceedings and the party against whom a cause of action is asserted, and some relief or remedy is sought: the public interest in the general administration of justice should be added. In assessing how any action should be conducted, irrespective of its origin, the court is frequently called upon to have regard

to a number of potentially competing rights. On the plaintiff's side there is principally a right to litigate a judiciable grievance to a merit based conclusion and, depending on the circumstances including the subject matter of the action, a defendant may assert some right or entitlement which may impact on the course of that litigation.

20. In general, where in issue, these rights are assessed by the application of many different rules either created by statute, rules of court, or by case law: whichever, all have been developed so as to ensure that the litigation process is conducted fairly and proportionately and that the outcome is just. For example, even with a plenary process, a defendant may be entitled to rely on the statute of limitations if the circumstances so permit. The competing rights in this situation are those of access to the court on the one hand and the right not to be subject to old or stale claims, or to have one's property endangered by such claims, on the other (*Tuohy v. Courtney (No.2)* [1994] 3 I.R. 1 at p. 47). Another example would be where an application is made for security for costs: in those circumstances, the courts' approach "effectively involves balancing the right of a defendant to recover costs if he successfully defends a claim against the right of a plaintiff, rooted in the Constitution, to have access to the courts." (*Farrell v. The Governor and Company of the Bank of Ireland* [2012] IESC 42 (Unreported, Supreme Court, 10th July, 2012) at para. 4.4).

21. There are several other limitations on a full merit based hearing, as above described. Natural and constitutional justice, aided by equity has developed a variety of rules by which an action may be terminated short of such a hearing. These involve, *inter alia*, delay or laches or where full disclosure and clean hands are required. The rule in *Henderson v. Henderson* ([1843] 3 Hare 100) may give rise to the same result as may the principle in *Barry v. Buckley* [1981] I.R. 306. On virtually every motion day the High Court is faced with several applications under O. 19, r. 28 RSC where pleadings may be struck out which fail to disclose a reasonable cause of action, or where in legal terms such are considered frivolous or vexatious: the general abuse jurisdiction is to the same effect. (*O'Connor v. Bus Átha Cliath* [2003] 4 I.R. 459 and *In Re Vantive Holdings* [2009] IESC 68, [2010] 2 I.R. 108.) A further example is where leave of the court is required such as in judicial review, but which has been denied: procedural failure also comes to mind, such as failing to file a statement of claim or a defence or failing to reasonably prosecute an action. The validity of these and other similar rules are not in doubt: their existence and application are crucial in upholding the two-way process of justice and in furtherance of the public interest in the administration thereof.

Restriction on Access:

22. Quite frequently one finds an argument made or a submission advanced that any inhibition which restricts a full hearing is a denial of access to the court (emphasis added). This in my view is to misunderstand what is truly meant by such phrase. A proper example of this type of restriction is to be found in *Macauley v. Minister for Posts and Telegraphs* [1966] I.R. 345. In that case it will be recalled that Kenny J. decided that the requirement to obtain the *fiat* of the Attorney General in order to bring an action against a Minister of Government was a breach of the right of access. That is an example of what is really meant by a denial of access. On the other hand the principles and rules above mentioned cannot accurately or properly be described in the same way. Decisions resulting therefrom are made within the administration of justice

rather than being external to it: such are and may be necessary to preserve both the judicial process and litigation. Accordingly, I agree with the general observations made in this regard by this Court in *Farrell v. Governor and Company of the Bank of Ireland & Ors* [2012] IESC 42 (Unreported, Supreme Court, 10th July, 2012).

23. Reverting to this case, I am satisfied that the remarks above made have equal application to the procedure applicable to a summary process. In fact, I rather doubt that it should be referred to in that way: such does not fully take account of a defendant's right to be heard, to adduce any relevant evidence which he may have and to make any pertinent submission as he or she so wishes. Moreover, the general power given to the court when hearing a motion for liberty to enter final judgment is both widespread and extensive. This can be seen from O. 37 RSC, which by r. 7, provides:-

> "…the court may give judgment for the relief to which the plaintiff may appear to be entitled or may dismiss the action or may adjourn the case for plenary hearing as if the proceedings had been originated by Plenary Summons…with such directions as to pleadings or discovery or settlement of issues or otherwise as may be appropriate…and generally make such order for determination of the questions at issue in the action as may seem just."

24. As can immediately be observed, the court on hearing such an application has a variety of options available to it, including remitting the action for plenary hearing. As explained above, the summary process is different from that which follows if the proceedings have been commenced by plenary summons and if the normal route should be followed. To that extent it can be described as a truncated process. Nonetheless, it is an entirely valid and regular procedure and its utilisation may be critical in achieving justice between parties and in facilitating effective and efficient administration. When properly invoked and applied, an aggrieved party cannot be heard to have a complaint that his Constitutional or Convention rights to a fair trial has been abridged. This because the nature of the case and the evidence adduced not only permits, but indeed demands a conclusion at that point. Furthermore, if a defendant cannot meet the threshold set out in the case law so as to have the proceedings remitted to plenary hearing, it follows that justice is best served by entering judgment for the plaintiff. Finally every judge in every court is by the Constitution and the Convention obliged to ensure fairness of process: in light of these safeguards I am entirely satisfied that when properly applied the summary procedure is robust and suitable for use

The Applicable Law:

25. In *First Commercial Bank Plc v. Anglin* [1996] 1 I.R. 75, Costello J., in the High Court, refused leave to defend on the basis that the defendant had not put forward any credible evidence of a real *bona fide* defence to the claim asserted against him. On appeal, Murphy J. speaking for this Court, followed the test laid down in *Banque de Paris v. De Naray* [1984] 1 Lloyds Reports 21, to the effect that leave to defend should be granted where there is a fair and reasonable probability that a real or *bona fide* defence exists, or that what is averred to in the defendant's affidavit is credible. This approach, admittedly with some modification of emphasis if not more, has to a substantial degree, continued to be the law to this day. Notwithstanding the impressive array of cases that were cited by the High Court judge, it is I think sufficient to

mention two in this context namely, *Aer Rianta C.P.T. v. Ryanair Ltd* [2001] 4 I.R. 607, and *Harrisrange Ltd v. Duncan* [2003] 4 I.R. 1.

26. In *Aer Rianta*, Hardiman J. *inter alia*, said the following at p. 623:

> "In my view the fundamental questions to be posed on an application such as this remain…is it very clear that the defendant has no case? Is there either no issue to be tried or only issues which are simple and easily determined? Do the defendants affidavit disclose even an arguable defence."

In *Harrisrange*, having stated that the power to grant summary judgment should be exercised with "discernible caution", I went on to say *inter alia* at p. 7:-

> "(iv) where truly there are no issue or issues of simplicity only or issues easily determinable, then this procedure is suitable for use:
>
> (vi) where there are issues of law, this summary process may be appropriate but only so if it is clear that fuller argument and greater thought is evidently not required for a better determination of the issues:
>
> (vii) the test to be applied, as now formulated, is whether the defendant has satisfied the court that he has a fair or reasonable probability of having a real or *bona fide* defence: or as is sometimes put "is what the defendant says credible", which latter phrase I will take as having as against the former an equivalence of both meaning and result."

These, in my opinion are therefore the frontline principles which should apply to a case such as this. In this context, I do not believe that the article, above referenced by Barrett J. (para. 11 *supra*) casts any serious doubts about these principles.

Issue No.1 – The Identity of the Plaintiff:

27. Mr. Beades complains that the identity of the bank with which he had such a business relationship over many years, was not Ulster Bank Ireland Limited, but rather some other corporate entity within the Ulster group. During the hearing on occasion, he suggested that such an entity was Ulster Bank Limited: however on being specifically asked as to what the correct legal description of what entity, other than that named in the title hereof, had the capacity to institute these proceedings, he could not say. As part of this generalised argument, he said that sometime in the early 2000s his accounts were or at least may have been transferred from one entity to another without any prior consultation with him, and certainly without his approval. He instanced that most of the accounts in respect of which the facility was designed to redeem, amalgamate or capitalise, were not with Ulster Bank Ireland Limited, but rather with some other company.

28. On the documentation available it is not possible to trace all of the precise legal entities with which, as part of the Ulster Bank Group, Mr. Beades has had a banking relationship throughout the years. This results, not from a lack of ability to do so, but from the sparsity of the evidence upon which such an exercise could only be conducted. So, it is not possible to conclude one way or the other on these submissions of Mr. Beades.

29. However, what is clear and beyond dispute is that the debt sought to be recovered is that as advanced in the facility letter above described. That offer issued from Ulster Bank Ireland Limited and, subject to a point later referred to, from no other legal entity. Accordingly, the contractual relationship underpinning that facility is one between the plaintiff above identified and Mr. Beades. The purpose of the facility is set out with express clarity: the accounts involved are numbered and sort codes are given. Moreover, the letter on p. 2 goes on to state "this facility letter supersedes all prior agreements, arrangements or correspondence between the Bank and the borrower in relation to this facility". It cannot therefore be suggested that Ulster Bank Ireland Limited is not a correct applicant to seek to recover the debt which this facility has given rise to. It follows therefore that his submission in this regard is ill conceived.

Issue No. 2 – Cross-Border Merger Regulations:

30. Much reliance has been placed on what I will refer to as "Cross-Border Merger Regulations": (The European Communities (Cross-Border Merger) Regulations 2008) these have featured with various financial institutions in this country for the past eight or nine years. During that period of time, these Regulations have played a part, perhaps a significant part, in the reorganisation of affairs within subsidiary or associated companies, and the parent company. Bank of Scotland (Ireland) is a typical example. With effect from 31st December, 2010, all of the assets, liabilities, rights, duties and general obligations, were transferred from that Bank to its parent company, Bank of Scotland Plc. The Irish entity was dissolved, but was not formally wound up: thereafter all subsequent proceedings were taken in the name of Bank of Scotland Plc. The legal basis for that transaction and similar transactions was founded upon these Regulations. Nothing of similarity has taken place in this instance. The creditor which advanced the facility is the same creditor who is named in the title of these proceedings. Accordingly, the elaborate submissions by Mr. Beades on these Regulations have no relevance to the correct identity of the plaintiff bank or to its standing to bring these proceedings.

Issue No. 3: A Related Issue:

31. A related issue was the submission regarding an entity called "Global Restructuring Group". Apparently this was a business support unit which operated within RBS between 2008 and 2014. Despite what its descriptions might suggest, serious misgivings emerged about the manner of its activities. So much so that a major inquiry was initiated in the United Kingdom in this regard and a substantial report was then published by the Financial Conduct Authority ('A report on an independent review of Royal Bank of Scotland Group's treatment of small and medium-sized enterprise customers referred to the Global Restructuring Group', June, 2019). In short and in the briefest of terms, that inquiry looked at whether the group *inter alia* took steps or engaged in actions, which without justification resulted in many people or corporate entities being forced into insolvency, or into liquidation. The *modus operandi* was then said to involve seizing the secured assets and thereafter disposing of them in a manner which could not be justified by the contractual and security arrangements between the parties.

32. Mr. Beades queried what role that group played in this case or more accurately, played in the default made by Mr. Beades and the subsequent enforcement proceedings taken by the Bank. At first sight it is difficult to see how this is in any way relevant to this case, but there is a tangential link in the sense that the affidavit sworn to ground the motion seeking summary judgment was that of a "Mr. Fergal White" who describes himself as manager of "Global

Restructuring Group, Ulster Bank Ireland Limited". It is further claimed by Mr. Beades that he was not aware of this group until well after the facility letter was accepted by him, and the facilities therein offered were utilised. These are points I will come back to in a moment.

33. Whilst undoubtedly there is or was a general inquiry in England about this group, nonetheless the underlying issues which troubled that inquiry, have not in any way been linked to the facility which Mr. Beades had with the Bank. In other words, no evidence, of even the most tenuous nature, has been advanced which might suggest an association between the impugned behaviour of this group and the loan given to Mr. Beades, or the enforcement proceedings the subject matter of this judgment. Moreover, in the letter of facility dated the 26th May 2010, it is said that same comes from "Ulster Bank Ireland Limited, Global Restructuring Group – Ireland". It was therefore clear at the time of the acceptance of this offer that Mr. Beades at least knew of its structure. In any event, this issue is discussed at the most generalised level and has not been linked in any traceable way to the transaction giving rise to these proceedings. Consequently, the submission in this regard has to be rejected.

34. One of the issues which has arisen out of the re-organisation facilitated by the Cross-Border Merger Regulations is the admissibility of evidence purportedly given by deponents of plaintiff Banks, where a debt is sought to be recovered or where the security is otherwise sought to be enforced. More particularly, on many occasions the major issue was whether or not such a deponent, by his affidavit evidence, could satisfy the Bankers' Books Evidence Act 1879 – 1959, as further amended by the Central Bank Act 1989. Problems have emerged as to whether such a deponent has to be a current officer of the institution in question, whether he or she must have had some involvement with the account(s) of the defendant, whether the authorisation given by the Bank was sufficient to verify the resulting evidence and whether, external to these statutory provisions, some other "close connection" test between the deponent and the Bank would be sufficient to render such evidence of debt admissible. Several cases have dealt with a variety of these matters: including *The Criminal Assets Bureau v. Hunt* [2003] 2 I.R. 168 (admittedly in a different context), *Moorview Developments Limited & Ors v. First Active Plc & Ors* [2010] IEHC 275 (Unreported, High Court, Clarke J., 9th July, 2010), *Bank of Scotland Plc v. Stapleton* [2012] IEHC 549, [2013] 3 I.R. 683, *Ulster Bank (Ireland) Limited v. Dermody & Anor* [2014] IEHC 140 (Unreported, High Court, O'Malley J., 7th March, 2014) and finally, *Ulster Bank (Ireland) Limited v. O'Brien* [2015] IESC 96, [2015] 2 I.R. 656 to name but some. None of the problems dealt with in any of these cases are present in this case.

35. As above referred to, Mr. Fergal White swore the grounding affidavit. He was the individual who co-signed the facility letter. He also in his grounding affidavit described himself as manager of "Global Restructuring Group, Ulster Bank Ireland Limited", and averred that he had been duly authorised by the Bank to access its banker books and records so as to ground the evidence which he tendered. In several other respects, his affidavit would suggest that the requirements of the Bankers' Books Evidence Acts 1879-1959 (as amended) have been satisfied. As no countervailing evidence has been adduced, I am entirely satisfied that the difficulties faced by other financial institutions in the circumstances which I have described, are not present in this case. Accordingly, there is no infirmity in Mr. White having sworn the grounding affidavit.

Issue No. 4: The Demand Letter:

36. Proceeding on the assumption that a "demand" for the repayment of the debt, once default had taken place, was a precondition to the institution of proceedings, the argument advanced by Mr. Beades, was that in the grounding affidavit of Mr. White, two letters were referred to, one undated but said to have been sent in January, 2013, with the second being a letter dated 13th March, 2013. At first glance the latter seems to be a replica of the January one, but on closer inspection it is not: as the amounts specified are different in respect of Account No. 10280306.

37. It is rightly pointed out by Mr. Beades that the January letter states that the balance set out, which includes interest, is as of the "13th March, 2013". Unless this was intended to be a forward calculation, which I doubt, it would appear surprising that the sum claimed did not reflect the actual amount then due at the date of the letter. In any event, the 13th March, 2013, letter has different figures in relation to this account. The argument advanced by Mr. Beades is that as a contractual requirement, the letter of demand was the January letter and as it is undated it could not be said to satisfy that requirement.

38. Leaving aside whether there is such a "contractual" requirement, it is clear from the affidavit of Mr. White that the "demand letter" was not that issued in January, 2013 but rather was dated of 13th March, 2013. He suggests that the earlier letter was a "pre-demand letter", a suggestion which if a court had to adjudicate on, might be questionable. In any event, what is relied upon by the Bank is the 13th March letter, which undoubtedly issued and which undoubtedly correctly represents the amount sought to be recovered in the special summons. Therefore, despite the absence of a satisfactory explanation as to why the letter of January, 2013 almost replicated the demand letter, nonetheless I am satisfied that the March letter constituted a proper demand for the repayment of the debt, once a default situation under the terms and conditions of the facility letter had occurred, which it had. Therefore, I do not accept that there is anything in this point.

Issue No. 5: Mr. Beades acting as Consumer:

39. This ground of complaint can be swiftly dealt with. In the facility letter, under the heading "Warranty", it is required of the borrower to warrant and certify that: -

> "1. Many of the provisions of the Consumer Credit Act, 1995, apply to the facility as the facility is being advanced for the purposes of the borrower's trade, business or profession and that the borrower is not therefore a "consumer" within the meaning of that act.
>
> 2. Many of the provisions of the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995…apply to the facility as the borrower is not acting for purposes which are outside his business and the borrower is not therefore a "consumer" within the meaning of these Regulations.
>
> 3. The borrower understands the effect and importance of this Certificate and has been advised to take and has been given due opportunity to take separate independent legal advice on the effect of this Certificate and has taken the opportunity to take such legal advice."

By so accepting the facility, the warranties sought in this paragraph had been given. To allow therefore Mr. Beades to make any contrary argument at this stage would be in effect to entertain a submission that he can renege from a transaction, which undoubtedly took place and which was finalised in all of its relevant aspects.

Issue No. 6: Misappropriation of Money:

40. Mr. Beades alleges that for a number of years the Bank accepted a single signature on an account which by its mandate required two. By reason of this, the person whom he has named on several occasions, is said to have indulged in the misappropriation of a large sum of money from such accounts. Therefore, in a broad sense he suggests that this affords him a defence, worthy of a plenary hearing, to the present application. There are several reasons why this is not so. Firstly, all of these events unquestionably predated the facility letter by a number of years. Secondly, in correspondence which was had in 2007, the Bank specifically urged him to involve the fraud squad if he thought that any misconduct had taken place and furthermore indicated that they would fully cooperate with any follow-on inquiry. In addition, they invited him to sue the Bank if he thought fit to do so. Moreover, when admitting this case to the Commercial List in 2013, Kelly J., on a similar submission being made, queried why he had not instituted such proceedings and advised Mr. Beades to do so. To date more than 13 years after first discovering these alleged irregularities and despite the intervening events, some of which I have described, no such proceedings have taken place. I therefore do not believe that this assertion or the underlying submission is credible.

41. In any event, the accounts in question were those of companies which Mr. Beades controlled, but not those of himself personally. Accordingly, even if such malpractice took place, it is difficult to see how that could be a defence to this case. More appropriately such might ground either separate proceedings, or even possibly a counterclaim and set off, but if the latter had been suggested a difficulty would arise in establishing that these alleged events took place in the same transaction or arose out of the same circumstances or otherwise satisfied the requirements of equity (*Moohan v. S & R Motors (Donegal) Ltd* [2007] IEHC 435, [2008] 3 I.R. 650 at p. 656). Whichever, I am satisfied that this assertion is not sustainable.

Conclusion

42. Even applying the lowest threshold that the case law identifies, namely the establishment of an arguable ground upon which it might be said that a plausible defence might be established, I cannot identify any basis within the evidence adduced or the submissions made by Mr. Beades which would justify such a course. Accordingly, this appeal must be dismissed.