THE SUPREME COURT

Record No: 363/2014

Clarke C.J.
Charleton J.
Ní Raifeartaigh J.

BETWEEN/

BANK OF IRELAND MORTGAGE BANK

PLAINTIFF/RESPONDENT

AND

JOSEPH O'MALLEY

DEFENDANT/APPELLANT

Judgment of Mr. Justice Clarke, Chief Justice, delivered the 29th November, 2019

1. Introduction

1.1 Financial institutions, and others, who claim to be owed a so called "liquidated sum" have the opportunity to use the summary procedure provided for in the Rules of the Superior Courts. A debt said to be due as a result of an unpaid loan provided by a financial institution represents one of the most common types of liquidated sum for which that procedure is used. The question which lies at the heart of this appeal concerns the level of detail of the relevant debt which must be set out, both in the summons issued by a financial institution using that procedure and, potentially, in the evidence which must be put before the court in order to substantiate the claim.

1.2 The defendant/appellant ("Mr. O'Malley") has appealed against an order of the High Court (Cross J.) made on 7 July 2014, granting judgment in favour of the plaintiff/respondent ("Bank of Ireland") in the sum of €221,795.53, together with the costs of the proceedings to be taxed in default of agreement.

2. Background Facts and High Court Proceedings

2.1 In October 2008, a mortgage loan facility agreement was entered into between the parties for the sum of €225,000 for a term of 18 years, repayable on a variable interest basis and secured by means of a legal charge over property situated at Inishcuttle, Kilmeena, Westport, Co. Mayo. Some amount of time subsequent to this, it is apparent that Mr. O'Malley experienced a change in financial circumstances and full monthly repayments on the loan facility agreement ceased in November 2011. It is not disputed that Mr. O'Malley drew down and has had the benefit of the funds described and that there were arrears outstanding on his account at all material times.

2.2 On 23 January 2014, a summary summons was issued on behalf of Bank of Ireland, seeking judgment in the sum of €221,795.53, which, it was stated, remained owing on the loan agreement. The special indorsement of claim on the summary summons stated, in material terms:-

> *"6. The Defendant has failed to repay the monies in accordance with the terms of the said loan offer and on or about the 2nd January 2014 the sum of €221,795.53 was due and owing by the Defendant to the Plaintiff.*

7. *Pursuant to General Condition 4(b) of the loan agreement, the Plaintiff has called upon the defendant to pay the principal and accrued interest due on foot of the said loan.*

8. *Despite having been called upon to do so, the Defendant has failed refused and/or neglected to repay the sum due and owing to the plaintiff or any part thereof and the entire sum of €221,795.53 remains due and owing by the Defendant to the Plaintiff."*

2.3 In accordance with the normal procedure, Bank of Ireland issued a motion for judgment on 21 February 2014, returnable before the Master of the High Court, which motion was grounded on the affidavit of Fiona Cassidy, an employee of Bank of Ireland, sworn on 14 February 2014. Among the exhibits to that affidavit was a Bank of Ireland document headed "Statement of Account" ("the Statement of Account"), which was said to correspond to Mr. O'Malley's loan account with the bank.

2.4 In May 2014, the matter was transferred to the Judges' List for hearing and the application for summary judgment came before Cross J. on 7 July 2014. It is apparent that the High Court had the benefit of an affidavit sworn by Mr. O'Malley, which at that time had not been filed in the High Court but which was accepted by the High Court judge on the basis of an undertaking to do the same. In that affidavit, it was alleged by Mr. O'Malley that the pleadings of Bank of Ireland were defective in respect of what was said to be a lack of detail concerning the sum of €221,795.53. Mr. O'Malley argued that it is necessary for a plaintiff in summary proceedings to identify and prove the amount of the principal sum still owing, the interest which has accrued and, if applicable, any bank surcharges and/or penalties due. Mr. O'Malley deposed that, in February 2014, solicitors acting on his behalf had requested that a detailed breakdown of the sum of monies alleged to be owed be provided and that, in response, he had received from Bank of Ireland a copy of the Statement of Account. It was Mr. O'Malley's case that, in order that the bank be entitled to judgment, there must be a sufficient calculation set out as to how the amount claimed is said to be due.

2.5 A transcript of the decision of the High Court has been made available to this Court. Acknowledging the complaints of Mr. O'Malley, Cross J. stated:-

> *"The defendant makes the point, however, that for a summary summons, the requirements of the law, as stated by [Mr.] Justice Butler in [Allied Irish Banks v. The George Ltd. (Unreported, High Court, Butler J., 21st July 1975)] had not been complied with. I would agree that the indorsement of claim itself doesn't say principal or interest. The affidavit doesn't particularise principal or interest as you would like it. However, the affidavit does refer to the statement of account at [Exhibit 1 to the affidavit of Fiona Cassidy], and I think that this is sufficient to allow the defendant to know in terms of more modern law as to what case he has to meet, and where and how the claim is made, how the arrears, as specified in the exhibit, which is a statement from the bank, details the sum of €221,795.23 as being due, and setting out the arrears… I think, therefore, the defendant is clearly in breach of the loan agreement, and with that, and with the information they've been given, I hold that there is sufficient evidence there to satisfy the requirements of law as to what should or should not be contained in a motion such as this…"*

2.6 On that basis, Cross J. granted judgment to Bank of Ireland in the sum of €221,795.53, with a stay of sixth months on the execution of the order. The High Court judge did not grant interest accruing from the date that the proceedings commenced.

2.7 By notice of appeal dated 1 August 2014, Mr. O'Malley sought an order from this Court to set aside the decision of the High Court of 7 July 2014, together with any further order which the Court might deem just. For completeness, it should be noted that this appeal was one of those cases which were initially transferred from this Court to the Court of Appeal under to a direction given under Article 64.3.1 of the Constitution but which have, in recent times, been returned to this Court.

3. Submissions and Case Law

3.1 In considering this appeal, the well-established principles governing the test to be applied by a court in deciding whether to grant summary judgment should first be set out. As held by the Supreme Court in *First Commercial Bank plc v. Anglin* [1996] 1 I.R. 75, and subsequently endorsed in *Aer Rianta cpt v. Ryanair Ltd*. [2001] 4 I.R. 607, in deciding whether to grant summary judgment to a plaintiff, the court has to look at the whole situation to ascertain whether it is satisfied that the defendant has demonstrated that there is a fair and reasonable probability of it having a real or bona fide defence. As set out by Hardiman J. in Aer Rianta at p. 623 thereof:-

> *"…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 defendant's affidavits fail to disclose even an arguable defence?"*

3.2 With this test in mind, it appears that a dispute has emerged between the parties as to the issues which properly arise for determination on this appeal. It is Bank of Ireland's contention that the sole issue which arises for decision is as to whether the claim contained in the summary summons has been adequately particularised having regard to the requirements of O. 4, r. 4 of the Rules of the Superior Courts. This rule sets out:-

> "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. The indorsement of claim on a summary summons or a special summons shall be in such one of the forms in Appendix B, Part III, as shall be applicable to the case, or, if none be found applicable, then such other similarly concise form as the nature of the case may require."

3.3 It is well settled 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."

3.4 In *Allied Irish Banks v. Pierce* [2015] IECA 87, the Court of Appeal held that the particulars supplied by the plaintiff in the special indorsement of claim in those proceedings were sufficient in referring to the sum outstanding, the date of demand and the relevant account, in circumstances where it was clear that the defendant in question was fully acquainted with the nature of the bank's claim against her and had not asserted any confusion or uncertainty as to her liability. Hogan J. stated, at para. 17, that it is for the court to consider whether, in light of the particulars provided, the defendant has been deprived of the opportunity to conduct a fair defence of the proceedings:-

"I do not doubt but that there might be special cases involving proceedings brought by way of summary summons where more elaborate particulars might be required. Yet such cases are likely to be unusual - perhaps even exceptional - and no objection to the form of pleading should properly be entertained unless the defendant has first made out a convincing case by way of replying affidavit to the effect that, absent such additional particulars, the fair defence of the proceedings would be compromised."

3.5 Bank of Ireland submits that the nature of the claim as against Mr. O'Malley is such that the special indorsement of claim made clear the case which Mr. O'Malley has to meet, given the references to the Statement of Account and to the loan offer letter of 13 October 2008.

3.6 In Mr. O'Malley's submission, however, it is contended that the true question to be determined on this appeal concerns not just the detail required to be included in the pleadings but also the evidential burden of proof to be discharged by the plaintiff on a summary application such as this. Mr. O'Malley submits that there is confusion and uncertainty on his part as to his liability in respect of the calculation of the monies said to be owed and argues that the amount of the principal due and owing, the amount of interest accrued and its method of computation, must be established to the satisfaction of the court in order for a plaintiff to have discharged the burden of proof.

3.7 In particular, Mr. O'Malley relies on the decision of Butler J. in *Allied Irish Banks v. The George Ltd*. (Unreported, High Court, Butler J., 21 July 1975), where it was held that the special indorsement of claim as pleaded was sufficient to comply with the requirement of the rules, but that the affidavit verifying the claim of the plaintiff was defective. In that case, Butler J. said that, in such an affidavit, it is necessary to:

"…identify and prove the amount of the principal and to aver and prove what was the current rate of interest in force during the currency of the debt and if applicable to aver and prove what were the normal bank charges due in the same period. If the computation of debt corresponds with the particulars of the special endorsement then the bank is entitled to judgment…"

3.8 It is disputed by Bank of Ireland that the question of the adequacy of the evidential proof of the debt arises for consideration on this appeal, in circumstances where it is contended that no issue was taken with the particulars of the plaintiff's proofs at first instance. Without prejudice to that argument, Bank of Ireland claims that the burden of proof in relation to its application has been discharged, having regard to the details of the grounding affidavit and the documents exhibited. It is submitted that the interest rate applied would be readily calculable by any competent professional by reference to the terms and conditions of the loan and the detailed Statement of Account furnished.

3.9 Mr. O'Malley also places reliance on the judgment in *Allied Irish Banks v. Marino Motor Works Ltd.* [2017] IEHC 522, in which an application for summary judgment was remitted to plenary hearing on the grounds that the particular sum sought by the plaintiff was put before the High Court in evidence by way of general averment without any indication as to how the particular figure, inclusive of interest, had been arrived at. It is submitted by Bank of Ireland that the decision in *Marino Motor Works* can be distinguished on the facts. In that context, reference is made to the complexity of the case and the evidence placed before the High Court, as appears in the judgment in that case at para. 32:-

> *"I have reached this conclusion with some considerable reservation, but my concern is that a summary judgment would be entered for a particular sum when neither the defendant nor the court is in a position to check, on the information available, that the figures are correct. This is not a straightforward case of a single loan with a single loan account on which the interest charged can be easily calculated. There were multiple accounts and the interest calculation is potentially complex. It has not been done in a manner sufficiently transparent for a professional accountant, on the information available to date, to be able to assess whether the figure is correct. Further, the bank has refused to provide the information when it was requested, albeit that the request was made late in the day."*

4. The Issues

4.1 It is first necessary to consider the dispute between the parties as to whether the question of the sufficiency of the evidence put by Bank of Ireland before the High Court is properly before this Court on the appeal. Counsel for Mr. O'Malley drew attention to a passage from the transcript in which the trial judge, having referred to *Allied Irish Banks v. The George Ltd,* said the following:-

> *"The affidavit doesn't particularise principle or interest as you would like it. However, the affidavit does refer to the statement of account at FC1, and I think that this is sufficient to allow the defendant to know in terms of more modern law as to what case he has to meet, and where and how the claim is made, how the arrears, as specified in the exhibit, which is a statement from the bank, details the sum of €221,795.53 as being due…"*

4.2 It does seem that the trial judge had some concerns as to whether there was sufficient detail to be found in the special indorsement of claim on the summary summons and did have regard, therefore, to the evidence put before the court by Bank of Ireland for the purposes of assessing whether the claim was sufficiently particularised. In those circumstances, it seems to me that

there is an inextricable link between the pleadings and the evidence such that it is appropriate to allow Mr. O'Malley to argue on this appeal that the detail in either or both of the pleadings and the evidence was insufficient to justify granting judgment to Bank of Ireland.

4.3 It also seems clear that the level of detail which requires to be given in evidence may exceed the level of detail which would be sufficient in a special indorsement of claim. This much is clear from the judgment of Butler J. in *Allied Irish Banks v. The George Ltd*, for the High Court in that case was satisfied that the pleadings, even though not perhaps ideal, were sufficient but that the evidence did not go far enough. It follows that there are two separate questions. The first is as to the level of detail that needs to be included in order for a special indorsement of claim to be compliant with the Rules of the Superior Courts in a case involving a claim for debt arising out of what is said to be a lending arrangement. The second is as to the evidence which needs to be put forward in order to justify the grant of judgment on a summary basis within the confines of a motion for judgment.

4.4 In addition, there may be a question as to the consequences which should follow in the event that this Court were to determine that either or both of the special indorsement of claim and the evidence put forward were insufficiently particularised. However, as the two questions relating to the level of detail which needs to be given are quite interrelated, I propose to deal with them together. I turn now to those issues.

5. The Level of Detail Required in a Summary Claim for Debt

5.1 In my view, it is appropriate to start by going back to the underlying rationale for the requirement as to detail. Order 4, r. 4 simply requires that "all necessary particulars" should be stated. What particulars are "necessary" is the real question. But the rationale goes back at least 140 years, to the passage from the judgment of Cockburn C.J. in *Walker v. Hicks*, already cited above. The defendant to a summons is entitled to have sufficient particulars to enable him "to satisfy his mind whether he ought to pay or resist".

5.2 Where it comes to the evidence which is required to be placed before the court, it does seem to me that it is important to emphasise that there is an obligation on any plaintiff to produce *prima facie* evidence of their debt if they wish the court to grant summary judgment (or, indeed, if, in the absence of the filing of an appearance by the defendant, they bring an application for judgment in the Central Office). The jurisprudence on the question of what a defendant must do to resist summary judgment primarily focuses on cases where a *prima facie* claim to a debt is established and the defendant wishes to put forward a positive defence. In such cases, it is necessary for the court to assess, in accordance with the detailed requirements which can be found in the relevant jurisprudence, whether what is said to amount to a defence amounts to mere assertion or meets the threshold for entitling the defendant to a full or plenary hearing.

5.3 However, it also seems clear that the obligation on a defendant to establish an arguable defence is, in reality, one which only arises if the plaintiff has first placed sufficient evidence before the court to establish *prima facie* the debt alleged is due. There are, therefore, two questions. The first is as to whether the plaintiff has put sufficient evidence before the court to establish a *prima facie* debt. If the answer to that question is no, then the plaintiff cannot be entitled to summary judgment in any event. If, however, the answer to that question is yes, then the

court must go on to consider, in accordance with the established jurisprudence, whether the defendant has put forward a credible defence.

5.4 It is important to emphasise that no question of the second type arises on this appeal. Rather, counsel for Mr. O'Malley places his entire argument on what he says is the absence of sufficient evidence, or perhaps more accurately put, evidence of sufficient particularity, on the part of Bank of Ireland so as to discharge the initial burden which lies on it to establish its *prima facie* debt. As counsel pointed out, if he is correct in that argument, then there would have been no obligation on Mr. O'Malley to establish a positive defence, for there would, in substance, be nothing to defend or, at least, nothing to defend at this stage, having regard to the insufficient evidence which would, on that hypothesis, have been put forward by the plaintiff.

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 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.

5.7 While the special indorsement of claim in this case sets out the terms of the loan, the fact that it was accepted and that the monies were drawn down and an assertion that Mr. O'Malley has failed to repay monies demanded in accordance with the terms of the loan which are therefore said to be due, 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. There are more than adequate particulars as to how it is said that monies generally are due having regard to the

asserted loan, drawdown, failure to pay and calling in of the balance. But 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. It will be necessary to return to the consequences of that finding in due course. However, it will be necessary to look again at the Statement of Account in the context of whether it provides sufficient evidence as to the amount said to be due, having regard to what is set out in that account and the terms and conditions of the loan which were established in the evidence. In that context, it may also be useful to indicate my views on whether, had the Statement of Account been incorporated by reference into the summary summons, it would have been sufficient to adequately particularise the claim for the purposes of the special indorsement of claim.

6. The Evidence of the Debt

6.1 I have already indicated my view that the elements of the claim other than those which related to the calculation of the amounts said to be due were adequately particularised in the summary summons. Those matters were also clearly established in evidence. The fact of the loan agreement, the drawdown, the existence of arrears and the calling in of the full sum were all fully established. The only question, therefore, concerns the detail of how the amount said to be due was calculated. In that regard, the only evidence of detail is to be found in the Statement of Account.

6.2 That document does specify that the initial loan was, as per the loan agreement, in the sum of €225,000. It goes on to record payments made corresponding to the monthly instalments for much of the earlier period of the loan. It then records a failure to pay the monthly instalments commencing towards the beginning of 2012 (there were very minor arrears to that time) with arrears rapidly increasing during that year when, from February to August, only €100 per month was paid against a liability of €1,554.27. From September 2012 onwards, no payments were made.

6.3 The Statement of Account does, therefore, give a very clear picture as to why it is said that there were, as of the time of the statement on 4 February 2014, arrears of €42,354.61.

6.4 It is also clear from the Statement of Account that the amount of monthly repayments due varied on a number of occasions. The loan agreement is clear that the rate of interest applied is a variable rate, so that it would not be unreasonable to infer that the change in the amounts of the monthly instalments was due to a change in interest rates. It does, however, have to be said that there is nothing in the Statement of Account itself which specifies that there has been a change of interest or what the change actually was. In fairness to Bank of Ireland, it should however also be noted that, as counsel for the bank submitted, the indicative monthly

instalment specified in the loan agreement is actually larger than any of the monthly instalments appearing in the Statement of Account, so that it might be inferred that the rate of interest applied at all material times was lower than the rate of interest originally indicated. As counsel for Bank of Ireland also pointed out, it should be noted that the terms of the loan in this case gave the bank a wide discretion to vary the rate of interest charged, provided that the borrower was notified of an intended change in rate. It was also pointed out that no suggestion had been made to the effect that Mr. O'Malley had not been informed of any such change.

6.5 On the other hand, 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. However, the crucial issue on which counsel for Mr. O'Malley placed greatest reliance was the fact that there was no indication in the Statement of Account as to how the so called "closing balance" of €221,795.53 was calculated. The debate at the oral hearing centred around whether the way in which that figure was arrived at (and, indeed, the interest rates applied from time to time) could reasonably be inferred from the content of the Statement of Account itself. Counsel for Bank of Ireland, on his feet, gave a description of his understanding as to how that might be done.

6.6 However, I am not satisfied that it would have been obvious to a reasonable person as to how the sum of €221,795.53 was calculated. That amount is not specified as deriving from any particular form of calculation based on other figures contained in the Statement of Account. A subsidiary issue arose as to whether the calculation might be obvious to a skilled financial expert. It seems to me that some care needs to be exercised in relation to that submission. If the basis of the calculation had been set out in a form where the way in which the sum was said to have been arrived at was clearly specified, then I would be more than satisfied that such an exercise would have been sufficient, both as to particularity for the purposes of pleading and to provide sufficient evidence to establish a *prima facie* case. If someone then wished to suggest that the calculation was wrong either because the methodology was not in accordance with the contract or because of an alleged error in the calculation itself, then that might or might not have required some expert assistance and evidence.

6.7 But it does not seem to me to be too much to ask that a financial institution, availing of the benefit of a summary judgment procedure, should specify, both in the special indorsement of claim and in the evidence presented, at least some straightforward account of how the amount said to be due is calculated and whether it includes surcharges and/or penalties as well as interest. Indeed, if it really is as simple as counsel suggested, then I cannot see any reason why Bank of Ireland should not have set out those calculations. A person confronted with a claim or a court confronted with a question of whether there is *prima facie* evidence for that claim is entitled to at least enough detail to know the basis on which the sum claimed is calculated. The defendant is entitled to that information to decide whether there is any point in pursuing a defence or, indeed, potentially expending monies on procuring professional advice in that regard. The court is entitled to that information to enable it to form an assessment as to whether there is sufficient evidence to say that the debt has been established on a *prima facie* basis. Neither the defendant nor the court should be required to infer the methodology used,

unless that methodology would be obvious to a reasonable person or is actually described in the relevant documentation placed before the court.

6.8 It does not seem to me that it is necessary to be prescriptive about precisely how a financial institution should set out such information, but it is obvious that the system which generated the Statement of Account must have had some inbuilt methodology for calculating the closing balance. The problem is that the relevant methodology is not clear from the document or from any other evidence. A defendant who wishes to proceed to a plenary hearing has to do more than merely assert a defence. This obligation cuts both ways. The particularisation of the amount of the claim must also go beyond mere assertion on the part of a plaintiff if they are to benefit from the use of the summary procedure

6.9 I would, therefore, conclude that there was insufficient evidence before the High Court to justify determining that Bank of Ireland had discharged the initial onus on it to produce *prima facie* evidence of its debt. That quite a significant amount of money was likely to have been due can hardly be doubted, but a party claiming a liquidated sum gets the benefit of the summary procedure precisely because it is said that a specified amount of money is due. In those circumstances, it is not unreasonable to require the plaintiff to show some basis to explain the calculation and justify, on a *prima facie* basis, the sum claimed.

6.10 I would, for clarity, emphasise that somewhat different considerations apply in circumstances where there is *prima facie* evidence of the precise amount said to be due but where the defendant puts forward an arguable case which could only go so far as providing a defence to a portion of the claim. In such circumstances, it is common practice for a court to award judgment for a lesser sum than that claimed, reflecting the outer extent of any possible defence. The analysis which leads to such a result does not depend on any failure of the plaintiff to have put forward *prima facie* evidence of an entitlement to a specific sum but rather stems from the possibility that a defence might successfully be mounted, although the extent of that defence may not be absolutely clear.

6.11 Next, I should indicate that, for exactly the same reasons which underlie my view that there were insufficient details to be found in the Statement of Account to explain how the sum said to be due was calculated, I would also have concluded that a reference in the special indorsement of claim in these proceedings to the Statement of Account would not have been sufficient to remedy the lack of detail in the special indorsement of claim itself.

6.12 Finally, it is necessary to look at the consequences of the findings which I suggest this Court should make.

7. The Consequences

7.1 It seems to me that the justice of this case would be fully met by allowing the appeal and by remitting the matter back to the High Court on the basis that Bank of Ireland can apply to amend the special indorsement of claim to include such details as they may think are appropriate in the light of this judgment and can also tender such further evidence as may be appropriate to fill the evidential gap identified.

7.2 It will then be a matter for the High Court judge dealing with those applications to consider whether the lack of detail identified in this judgment has been remedied to the extent that judgment is appropriate. For completeness, I should note that we were informed at the oral hearing that a receiver was appointed over the property which was the subject of the mortgage in question in these proceedings and that the property concerned had been sold by that receiver. It was agreed by all sides that credit would, of course, have to be given in any calculation now made as to the sums due by Mr. O'Malley to Bank of Ireland.

8. Conclusions

8.1 For the reasons analysed earlier in this judgment, I would conclude that the special indorsement of claim in this case contains insufficient details of how the sum claimed is calculated so as to meet the requirements of O.4, r.4 of the Rules of the Superior Courts to the effect that all necessary particulars be provided. The information is insufficient to allow, as the jurisprudence requires, a defendant served with a summary summons in that form to know whether they should concede or dispute the claim. In so holding, I have indicated that, in my view, it is possible to rely on documentation available to a defendant (such as bank statements or statements of account) for the purposes of providing sufficient particulars in a special indorsement of claim, but only where the document or documents in question are incorporated by reference into the text of the endorsement. No such incorporation occurred in this case and I am, therefore, of the view that, even if the Statement of Account provided sufficient particularisation of the claim, the special indorsement of claim would nonetheless be defective because that document is not referred to.

8.2 I have also set out the reasons why I consider that Mr. O'Malley is entitled to put forward arguments based on what was said to be a lack of evidence sufficient to warrant the grant of judgment against him. I have indicated the reasons why I consider that it is necessary for a financial institution suing for a liquidated sum said to be due on foot of a loan to at least put before the court a simple account of the basis on which it is said that the precise amount claimed is due. That obligation is prior to and independent of the obligation of a defendant to put forward a positive defence. In other words, the plaintiff must establish the liquidated debt on a *prima facie* basis before it is necessary for the defendant to establish any defence which meets the threshold for plenary hearing.

8.3 For the reasons also set out earlier in this judgment, I would hold that there was insufficient detail in the evidence submitted to provide the Court with an ability to assess whether the precise claim to the debt alleged had been established on such a *prima facie* basis. In my view, the observations in the summary judgment jurisprudence, which indicate that a defendant should not be given leave to defend if the basis put forward for resisting the plaintiff's claim amounts to mere assertion, cut both ways. A plaintiff, in order that a *prima facie* claim to the precise debt can be established, must do more than merely assert. While the basis for there being a claim in general terms was fully set out by the Bank, it does not seem to me that the evidence as to why the precise sum claimed was said to be due amounted to anything much more than assertion. In particular, it is not clear as to what calculation led to the assertion that the sum claimed was the precise amount due, nor as to the amount of capital and interest and whether the total included surcharges and/or penalties.

8.4 In those circumstances, I would allow the appeal and remit the matter back to the High Court, subject to the comments contained in the “Consequences” section of this judgment as to how the matter should proceed from then on.