THE HIGH COURT

[2016 No. 864 S]

BETWEEN

AIB MORTGAGE BANK

PLAINTIFF

AND

NADINE THOMPSON

DEFENDANT

(NO. 2)

JUDGMENT of Ms. Justice Baker delivered on the 20th day of June, 2018

1. In my written judgment delivered on the 31 July 2017, [2017] IEHC 515 ("the principal judgment"), a determination was made that the plaintiff was entitled to summary judgment against the defendant in the sum of €244,591.69.

2. The defence offered by the defendant to the claim for summary judgment was that by reason of an alleged failure to give her express written notice of the assignment, the requirement of s. 28(6) of the Superior Court of Judicature (Ireland) Act 1887 ("the Supreme Court of Judicature Act") the plaintiff had failed to show that it had taken a valid transfer from the original creditor, Allied Irish Banks Plc. ("AIB").

3. In my judgment, I determined that sufficient express notice to the debtor of the assignment of the debt had not been served for the reasons therein stated. However, I considered that an assignment of the debt had occurred in equity, that as the debt was actionable in equity, and as there was no argument to be made that any equitable principle was engaged, nor was there any question of priorities, judgment was to be entered against the defendant.

4. Subsequent to the delivery of the judgment, and before a final order was made, counsel on behalf of the plaintiff sought that I would exercise the established jurisdiction to revisit the judgment. That application proceeded in circumstances where the plaintiff agreed to indemnify the defendant in respect of her costs of defending the application and, following directions, it was agreed that the defendant would be entitled to the costs of instructing solicitor and junior and senior counsel to deal with the application.

5. The plaintiff does not assert that the decision given in its favour was wrong, and as the plaintiff succeeded in obtaining summary judgment, it would be absurd for it to argue otherwise. However, the plaintiff now seeks that the decision be revisited because it is argued that the plaintiff had a complete answer to the defence proffered derived from the Asset Covered Securities Act 2001 ("the ACS Act") and that, by virtue of the provisions of s. 58 of that Act, no notice in writing of an assignment was required in respect of bank assets transferred by AIB to the plaintiff.

6. The plaintiff's particular concern is that the focus of the judgment on s. 28(6) of the Supreme Court of Judicature Act is liable to be misinterpreted and relied on in other litigation, and result in a degree of litigation chaos and uncertainty in the law.

7. The plaintiff argues that the substantive judgment is liable to cast doubt on the legal effect of interbank transfers made pursuant to a scheme under s. 58 of the ACS Act and, in those circumstances, I am asked to "amplify" my reasoning or clarify the legal position.

8. In the course of submissions, counsel for the plaintiff informed me that € 7.8 billion of bank loans had been transferred to it pursuant to the ACS Act, and that the risk of legal uncertainty was such that it is in the public interest that the reasoning be amplified.

Jurisdiction to revisit a judgment

9. No final order was made in the case, as the judgment was delivered on the last day of the Summer Term, and the matter was adjourned pending a hearing on costs, until October 2017. At that stage, it was indicated that an application to revisit the judgment would be made, and accordingly, the final order entering judgment was not perfected.

10. In his first judgment in In *re McInerney Home Ltd*. [2011] IEHC 25, Clarke J. considered the jurisdiction of a court to revisit a decision at any time up to the perfection of the order. Clarke J. reviewed the judgment of the Court of Appeal for England and Wales in *Paulin v. Paulin* [2009] EWCA Civ 221, [2010] 1 WLR 1057 at para. 3.6, and quoted with approval the lengthy passage of the judgment of Wilson L.J. which he described as "detailed and comprehensive account of the history of the jurisprudence".

11. The jurisdiction may be exercised before the proceedings have come to a final end by the making of a final order. It can, but does not always have to, involve a reversal of the decision and can amount to what Wilson L.J. called in *Paulin v. Paulin*, at para. 30, an "amplification of the reasons which [a judge] has given". He described the circumstances on which an amplification could occur as where the decision was "allegedly inadequate" and referred to an earlier judgment in which the "inadequate reasons" were his own.

12. The courts of England and Wales, initially, did not favour a narrow approach to the circumstances in which it would be proper for a judge to exercise the jurisdiction to revisit a decision prior to the perfection of an order, and had evolved an approach that did not limit such circumstances to cases of manifest error or omission, although there seemed to be a view that a written judgment which has been disseminated as a draft only may be more open to reversal than one formally handed down and, thus, finally delivered. Wilson L.J. referred in this context to the decision in *Robinson v. Bird* [2003] EWCA Civ 1820, [2004] WTLR 257.

13. After some evolution in judicial thinking in the courts of England and Wales, the matter seems to have been firmly determined in *In re Barrell Enterprises* [1973] 1 WLR 19, in which the High Court for England and Wales held that the circumstances in which the jurisdiction to reverse might be exercised should be "exceptional", although the language of "strong reasons" is also used. That is the preferred approach in the Irish jurisprudence.

14. One particular basis on which the courts of England and Wales have exercised the jurisdiction to revisit a decision is where the court's attention is not drawn to a particular matter, and in the example given by Wilson L.J., in *In re Australian Direct Steam Navigation Company (Miller's Case)* (1876) 3 Ch D 661, the Articles of Association of a company which had not been drawn to the

attention of the court led the court to the opposite conclusion to that which was reached. Another example given was the judgment of the Court of Appeal for England and Wales in *In re Harrison's Share* [1955] Ch 260, where the House of Lords had made a pronouncement regarding the jurisdiction of the court to vary a trust which rendered a judgment delivered ten days earlier by the lower court wrong in law.

15. In his first judgment in *In re McInerney*, Clarke J. adopted the analysis of Wilson L.J. that the jurisdiction to revisit should be sparingly exercised, and summarised the law in this jurisdiction as follows:

> "In those circumstances, it seems to me that, in order for the court to exercise its jurisdiction to revisit a question after the delivery of either an oral or written judgment, it is necessary that there be 'strong reasons' for so doing", at para. 3.7.

16. Clarke J. noted the range of circumstances in which the jurisdiction could be exercised, including where a material matter was not drawn to the attention of the court or where a judge simply changed his mind following the delivery of judgment, albeit the example was more in regard to the *quantum* of damages to be awarded than a legal principle. As he said at para. 3.12, a "simple error" of the judge would be more readily amendable to being revisited, such as where a computational error had been made in the assessment of damages.

Respect for finality: the obligation to explain
17. The jurisdiction to revisit or even reverse a decision must respect the importance of the principles enunciated in *Henderson v. Henderson* [1843] 3 Hare 100, and this was the approach of the Supreme Court in *In re Vantive Holdings* [2009] IESC 69, a case involving examinership, where the court placed some emphasis on the fact that additional material sought to be relied on in a second petition could have been included in the first petition and that no acceptable explanation had been given for the failure to do so.

18. One of the principles protected by *Henderson v. Henderson* is legal certainty and the avoidance of procedural chaos, and one means by which the court approaches the introduction of new evidence or new arguments is to assess the explanation as to why those matters were not put before the court in an earlier hearing.

19. As O'Donnell J. said in *Nash v. DPP* [2017] IESC 51 the "exceptional jurisdiction to revisit a judgment" is justified by the fundamental constitutional obligation of the administration of justice, and if something "fundamental to the decision" is wrong, the outcome of the case may not meet the constitutional imperative. O'Donnell J. noted the constitutional imperative that "justice itself requires that there be an endpoint to all disputes" and that the jurisdiction to revisit was "exceptional" to be exercised where "cogent and substantive grounds" are shown for its exercise.

20. Laffoy J. considered an application that she revisit certain aspects of her judgment and vary the outcome in *Kilarden Investments Ltd. v. Kirwans (Galway) Ltd*. [2013] IEHC 602, but determined that the appropriate course for the plaintiff was to appeal her decision.

The new evidence or argument must be material
21. In his first judgment in *In re McInerney*, at para. 3.12, Clarke J. considered that the court ought to examine whether in that new material there was a realistic possibility that there were matters which could "in a very real sense, be material" and might have an "important influence on the result of the case, even if not decisive, and be credible", and that the parties explain the reason for not putting the matters before the court at the first hearing.

22. He returned to the matter some weeks later, in his second judgment in *In re McInerney Home Ltd.* [2011] IEHC 61, at para. 3.1, and emphasised that a court:

> "should be careful not to allow either party to seek to re-litigate matters which were already fully and fairly heard and determined at the hearing which led to the written judgment save only to the extent necessary to deal with the question or issue which led to the judgment being revisited. To permit such a course of action would be to court procedural chaos. Where, in exceptional circumstances, the court does allow a matter to be revisited, then the "revisiting" should be confined to whatever questions or issues led the court to consider that the interests of justice required such a revisiting to occur in the first place. No wider latitude should be permitted."

23. With these principles in mind, I turn now to consider the present application that I revisit my judgment.

The basis of the present application to revisit
24. Counsel for the applicant argues that, given its focus on s. 28(6) of the Supreme Court of Judicature Act and the making of no more than a passing reference to s. 58 of the ACS Act, the principal judgment is likely to be "misinterpreted" and to be relied upon in other litigation as authority for a proposition that, when a loan is transferred under s. 58 of the ACS Act, notice in writing for the purposes of s. 28(6) of the Supreme Court of Judicature Act is required.

25. It is sought in those circumstances that I would amplify my reasoning or clarify the position regarding the interplay between s. 58 of the ACS Act and s. 28(6) of the of Supreme Court of Judicature Act.

26. Reliance is placed primarily on the judgment of Jessel M.R. in *Miller's case*, where the court did revisit a matter because its attention had not been called to a relevant factual matter, and counsel argues that, as my attention had not been fully drawn to the argument that s. 58 of the ACS Act effected an absolute assignment at law in respect of which no notice was required, I ought now to engage that issue.

27. Counsel argues that the potential repercussions in other cases, having regard to the principles of *stare decisis*, mean that a bank which had availed of s. 58 of the ACS Act might be met with a defence in reliance on the principal judgment and that doubt regarding the efficacy of transfers effected under s. 58 of the ACS Act is not desirable, both in the private interests of the bank and in the public interests that there be clarity in regard to the operation of loan transfers generally. Counsel for the plaintiff, in written submissions, suggests that the judgment has "the potential to impact generally on the market in assets covered securities in an adverse way", and that such impact is not confined to the loans transferred to AIB Mortgage Bank.

The argument from s. 58 of ACS Act
28. The plaintiff argues that a transfer pursuant to s. 58 of the ACS Act is a form of "specific statutory provision providing for the assignment of specific choses" of the kind referred to in Halsbury's, *Laws of England* (2017, edition volume 13):

> "Choses or things in action can be transferred in one or more of the following ways. First, common law, under one of the two limited exceptions to the common law rule prohibiting assignment. Secondly pursuant to a statutory provision. There is no single statutory provision for the assignment of choses or things in action…. Thirdly, there are equitable assignments which again can take a number of different forms."

29. The argument is that s. 58 provides a separate and complete statutory mechanism for the transfer of businesses and assets, including mortgage loans from one credit institution to another, provided such institution is registered under the ACS Act. It is submitted in the circumstances that such transfer is independent of any other means of assignment, whether at common law, in equity, or under other statutory provisions.

30. The long title to the ACS Act recites that it was introduced to "facilitate the establishment and operation of a market in asset covered securities" and s. 2 of the Act identifies one of the purposes of the ACS Act to make available "a source of funds" to the relevant credit institutions, *i.e*. to enable such institutions to raise funds or to otherwise meet capital requirements. It is argued in a general way that the objective of the Act would not be met were a requirement to be found that each individual debtor be given express notice of a transfer of his her or its loan.

31. Section 58(8) of the ACS Act, makes provision for the effect of a transfer made under that section:

> "A transfer of a business or assets under this section takes effect—
>
> (a) subject to any conditions imposed on the approval of the transfer, and
>
> (b) on the date or dates specified in the scheme."

32. Section 58(1) of the ACS Act provides that the transfer of an asset does not have to be registered under the Registration of Deed Act 1707, the Registration of Titles Act 1964, the Companies Act 1963, or the Bills of Sale (Ireland) Act 1879 and 1893.

33. Section 58(11) of the ACS Act provides that, if legal proceedings are pending, the proceedings are to continue, and the transferee:

> "a) replaces the transferor credit institution as a party to the proceedings, and
>
> b) assumes the same rights and obligations in relation to those proceedings as the transferor credit institution had immediately before that time."

34. Thus, it is argued that the provisions of s. 58 of the ACS Act provide a complete self-contained statutory mechanism for the transfer of assets at law by which, *inter alia*, rights and obligations are transferred absolutely and without the requirement for any further action to be taken.

35. In the light of those provisions, and without taking any view on the correctness of the assertion made by counsel for the plaintiff, it seems that the provisions of s. 58 of the ACS Act could form the basis of a determination of the question whether the loan of the defendant was validly transferred at law to the plaintiff. At the very least, an argument that the ACS Act created an alternative and in itself complete legal mechanism for the assignment at law of a loan would meet the test of materiality identified by Clarke J. in his first judgment in *McInerney Homes Ltd*.

36. A determination that s. 58 of the ACS Act did offer a complete answer to the defence proffered by the defendant that her loan had not been assigned at law, would not mean that I would have come to a different decision in the principal judgment, and judgment would still have been entered against the defendant, albeit for a different reason.

37. I turn now, in those circumstances, to consider the second element of the test identified by Clarke J. in his first judgment in *McInerney Homes*, that element of the test which is designed to achieve the objectives of finality in litigation and legal certainty, in the light of the principles explained in *Henderson v. Henderson*. This involves examining the arguments and evidence heard before the principal judgment was delivered.

The course of the proceedings

38. The proceedings commenced by summary summons on 20 May 2016 followed by a notice of motion seeking summary judgment on 29 June 2016 grounded on an affidavit of John Basquille sworn on 24 June 2016. That affidavit contained the usual averments and exhibited evidence, but did not make any reference to the fact that the original lender was AIB. Ms. Thompson served a replying affidavit sworn on 9 November 2016 where she raised a number of defences, one of which related to the standing of the plaintiff to maintain the claim. She identified that the facility agreement was made by her with AIB, and in a simple, but correct, averment, pointed to the obvious fact that the entity now suing her is different and that she had received no notification from the original lender or the plaintiff regarding any assignment or transfer of her facilities.

39. Mr. Basquille then swore a second affidavit on 1 December 2016 in which he exhibited copies of statements of account and computer records and averred to the fact that the loan was transferred to the plaintiff by operation of a transfer explained in an affidavit of Jerry Gaffney sworn on 30 November 2016. This evidence was directed to the question of the adequacy of the notice of the assignment given to the defendant.

40. In his affidavit, Mr. Gaffney makes express reference to s. 58 of the ACS Act, to Statutory Instrument No. 60 of 2006 by which the approval of the transfer from AIB to AIB Mortgage Bank was made, to the scheme of 8 February 2016 between AIB and the plaintiff for the purposes of s. 58, to the transfer agreement made on 8 February 2006 between AIB and AIB Mortgage Bank, and to the schedules of 8 February 2006 and 24 February 2011 for the purposes of this scheme, and avers that, by virtue of the operation of those matters, the obligations of AIB were transferred to the plaintiff. The relevant documents, including the Statutory Instrument, were exhibited.

41. Ms. Thompson then swore a second affidavit on 11 January 2017 in which she avers that she did not accept that a "lawful and effective transfer" had occurred, but the narrative is short and lacking in detail. Later in her affidavit, she denies that the documentation exhibited by Mr. Basquille in the form of correspondence and bank statements could be considered to be "a valid and effective notice of transfer", and also says that the correspondence was "*unclear and confusing* in respect of which entity I was dealing with and/or was seeking payment from me". Ms. Thompson put the plaintiff on proof that her loan had been effectively transferred.

42. The third affidavit of Mr. Basquille, sworn on the 9 February 2017, exhibits an announcement or advertisement in the Irish Times newspaper on 10 March 2006 confirming the transfer of the loan book, and exhibits further statements and particulars of mortgage loan sent to the defendant in December 2006. He concludes that there is "no basis" for the argument that the transfer was not effective or for the assertion that Ms. Thompson was "unaware of that transfer".

43. The matter then came on for hearing and written submissions were prepared by counsel following my request that the parties make submissions with regard to the provisions of s. 28(6) of the Supreme Court of Judicature Act, as this was the focus of oral submissions.

44. Those written legal submissions were understandably confined to that Act, although the written submissions on behalf of the defendant did make short reference to s. 58 of the ACS Act.

45. Counsel for both parties, in the course of their written and oral submissions to the court, focused on the requirement for notice and the extent to which, in the absence of notice, an assignment may sound in equity. Argument was also had regarding the possible joindure of AIB to the claim. A submission was made by counsel for the defendant that, because of s. 58(9) of the ACS Act, it was no longer possible for the plaintiff to seek to join AIB to the proceedings, as it no longer had any right or obligations in the loan. That is the basis on which the ACS Act was engaged in the first hearing. Section 58(9) of the ACS Act reads as follows:

> "On the transfer of a business or assets under this section—
>
> (a) the transferee credit institution has the same rights (including priorities) and obligations in respect of that business or those assets as the transferor credit institution had immediately before the transfer took effect, and
>
> (b) the transferor ceases to have those rights and obligations."

46. In the course of the principal judgment, I did make reference to the ACS Act in paras. 71 to 73, and I did so in order to deal with the possible argument that the original owner of the debt, the assignor, namely AIB, might continue to have some right to pursue the debtor, and because I was satisfied that, by virtue of s. 58 of the Act and the Scheme, AIB could no longer maintain such a claim and that there was no basis to join it as a party. I did not consider the question now sought to be addressed, namely whether the ACS Act offered a complete answer to the defence that the absence of notice of assignment was fatal to the claim of the plaintiff.

47. My own notes of the hearing make reference to the ACS Act and the transfer, but again suggest that the focus of the argument was on whether notice of the transfer was, in fact, given to Ms. Thompson and whether the debtor had "contracted out" of the requirement for notice.

48. I am satisfied, therefore, that the argument that s. 58 of the ACS Act might have offered a full answer to the argument of the defendant was not advanced prior to the delivery of the principal judgment.

The second test for the jurisdiction to revisit or amplify

49. The plaintiff seeks that I now consider the arguments of the defence regarding the requirement to notice in the light of the provisions of s. 58 of the ACS Act and that the clarification is important "in the light of the underlying importance of s. 58 transfers to the operations of AIB" (a statement made in the written submissions of the plaintiff for the purposes of this hearing).

50. The basis of the present application is the stated desire for legal certainty and clarity in the light of a possible "misinterpretation" of the judgment in future cases. That argument is difficult to accept as it seems to me that the principal judgment is not authority for any proposition that a loan transferred by virtue of the provisions of s. 58 of the ACS Act, including the loans transferred under the Scheme by which the loan books of AIB were transferred to AIB Mortgage Bank, did require notice under s. 28(6) of the Supreme Court of Judicature Act. The judgment did not consider that question at all, and s. 58 was engaged in the judgment for the purposes of answering a limited question, namely whether the alleged infirmity could be cured by the joindure at a late stage in the proceedings of AIB to the proceedings. The principal judgment was not intended to be, nor is it, an authority which may be relied on in a suitable case where s. 58 is fully litigated, and it is clear that the arguments addressed by me in the principal judgment were the arguments regarding the efficacy of notice of assignment, the operation of s. 28(6), and whether the claim might sound in equity. I was not directed to, nor did I address, the provisions of the ACS Act as a substantive defence to the proceedings, but the evidence and argument in regard to that Act was proffered as evidence of the assignment and not by way of an argument that such assignments were not to be regarded as subject to the notice provisions of section 28.

51. While the plaintiff has argued with some force that there existed a legal argument which might have provided a full answer to the defence of the claim at law, and might have obviated the need for me to consider whether the claim sounded in equity, I am not persuaded that such argument could not, with reasonable diligence, have been put before me at the trial. Clearly, the provisions of the ACS Act and the Scheme by which the transfer to the plaintiff was effected was in the minds of the legal advisors of the plaintiff, and the Scheme by which the transfer was effected were adduced in evidence, but for a different and narrower purpose.

52. I consider, therefore, that what I am asked to now do is what Clarke J., in his second judgment in *McInerney* characterised as impermissible, and that the bank in essence seeks to re-litigate matters which were "already fully and fairly heard and determined at the hearing". While I appreciate that the plaintiff has sought to avoid precisely the procedural chaos feared by Clarke J., I am not satisfied that the plaintiff ought now to be permitted to reopen the case and rely on wholly different legal principles to defeat the argument of the defendant when those legal principles and arguments were in existence and capable of being addressed in the earlier hearing.

53. The circumstances are not sufficiently similar to those in *In re Harrison's*. There is, in the present case, no new legal basis on which the plaintiff might now seek to revisit the case. That basis was available to be argued at the first hearing. No explanation is tendered for the failure to argue it at that point. The plaintiff rather relies on an argument from the public interest.

The public interest

54. The real concern of the plaintiff is not that the decision in the present case is incorrect, and it is accepted by counsel for the plaintiff that it is correct, albeit that different reasoning might have been employed to the same end. In those circumstances, it seems to me that the plaintiff is competent to fully litigate the argument concerning the operation of s. 58 of the ACS Act and whether it offers a complete and separate statutory means by which a debt is assigned in another suitable case. The principal judgment would not be a useful authority with regard to that argument, as the point was not considered and not determined.

55. Were I to deliver a fresh judgment in the light of new argument, that, in turn, could lead to a degree of legal uncertainty

regarding the operation of s. 28 of the Supreme Court of Judicature Act. There is little attraction in that approach, albeit there might be an attraction in so doing, were the plaintiff now seeking to argue that the decision in the principal judgment is incorrect.

56. The plaintiff, for understandable reasons, does not wish to appeal the decision, and it is not asserted by either the plaintiff or the defendant that the principal judgment is incorrect at law, or that the result, namely the judgment been entered against the defendant, is wrong. It is for the plaintiff to choose whether to appeal the decision, but it would be wrong, in my view, to permit the revisiting of my judgment in order to ensure clarification for the purposes of later cases when I am not persuaded that a suitable case could not arise in the future, where the question could be litigated. I consider that it would be wrong for me to revisit the judgment with a view to arriving at the same result by different means, and that were I to do so would, in effect, be two judgments from me in the same case with the same result and different reasoning.

57. In this, I am persuaded by the approach that the Court of Appeal in *DPP v. Casey* [2017] IECA 251, albeit the issue concerned an appeal where the Court of Appeal had delivered judgment on an appeal of the severity of a sentence, and heard thereafter a notice of motion of the appellant, would "by way of *addendum* to its judgment" consider a matter argued to be of particular importance which was omitted from the judgment the court delivered. Application was made because the appellant wished to appeal to the Supreme Court, but was concerned that the Supreme Court would "decline to entertain the ground on the basis that it was not addressed in the judgment" of the Court of Appeal.

58. The appellant was not seeking to reopen the appeal or to make fresh arguments, but the Court of Appeal refused to accept the invitation to revisit its judgment, whether by way of amendment or amplification, or, as it put it, "to make additions or to embark on a new consideration". There was no argument that a factual error had been made that undermined the judgment, and no identified factual error in the judgment. What was argued, instead, was that a legal issue or implication arose in the case, and the judgment was deficient in failing to address it.

59. The judgment of the then President of the Court of Appeal, at para. 9, explained the reasoning of the Court:

> "It is also important that this Court should not itself become a party to an appeal or an application to the Supreme Court. The court has no function in seeking to explain itself or defend its judgment or to offer an interpretation, but must remain neutral and aloof. The court does not accept that the implication contained in the motion is correct, but neither does it dismiss any such suggestion. Those are matters entirely for consideration by the Supreme Court in an application for admission and in the course of an appeal, if that arises."

60. I am persuaded that that approach is relevant to the present case, but the reasoning of the President has even more force as what is sought by the present plaintiff is to reopen the judgment not because the decision is thought to be wrong, but because of the possible repercussions for other cases.

Conclusion

61. For these reasons, it seems to me that I ought not to accept the invitation to revisit my judgment and to hear a new argument which might offer a full answer to the defence of the defendant. While I accept in principle that no injustice would be done to the defendant should the judgment be re-entered, as the result for which the plaintiff contends is the same, namely that judgment be entered against Ms. Thompson, the overriding principle must be the constitutional imperative that justice be administered in a way that leads to certainty, and that certainty requires that there be an end to litigation.

62. I am also influenced by the fact that the true concern of the plaintiff is that the principal judgment may be relied upon by defendants in other cases where a loan book transfers under the ACS Act, but I consider that in a suitable case, if the provisions of the ACS Act are opened and fully argued before the court, the matter may be appropriately determined. It would be inappropriate for me to act as an appellate court.

63. There is nothing preventing this plaintiff or another credit institution, in those circumstances, from fully ventilating the argument now sought to be raised in the present case, and accordingly, I consider that there is no public interest to be gained by the revisiting of the judgment.

64. Accordingly, I refuse to accede to the request of the bank that I should revisit my judgment.