

Between:

CHARLES O'LOUGHLIN

PLAINTIFF

– AND –

ODRAN YOUNG

DEFENDANT

JUDGMENT of Mr Justice Max Barrett delivered on 21st February, 2018.

1. Mr Young is the founder of Young's Estate Agents, a prominent estate agency that is still trading in Ranelagh. He was formerly a schoolteacher and also qualified as a barrister, though he does not appear ever to have practised in this latter capacity. He is now a very senior gentleman. When he retired from Young's of Ranelagh some years ago, Mr Young was minded to move to Argentina or Hungary and, in the end, plumped for Hungary. There he operated what purported to be an estate agency but appears, on the evidence before the court, to have been more a business whereby Mr Young brought Irish people (and their money) to Hungarian property deals. In court, Mr Young rather wandered in his oral evidence and more than once it proved hard to get him to give a simple answer to simple questions, such as where he lives or when he retired, though he may simply be, to use a colloquialism, a man who 'keeps his cards close to his chest.'

2. Mr O'Loughlin is a retired schoolteacher. He has known Mr Young for a very long time. When Mr Young was living in Budapest, Mr O'Loughlin and his wife often stayed at his apartment. One evening, in or about July 2006, the three went for dinner at an eatery nearby Mr Young's apartment. Mr Telek, a Hungarian employee of Mr Young, who gave evidence in court, was also at the meal. In his oral evidence, Mr Young indicated that he was surprised to hear Mr Telek's evidence to this last effect, as apparently it was never Mr Young's practice to socialise after-hours with his staff. However, Mr Young also accepted that Mr Telek is an honest man and that if he said he was at the meal then he was. This is as good an example as any of the difficulty which presented with Mr Young's evidence: he maintained that something could not have happened because it would not have happened, then conceded that it must have happened. It was very difficult to know what to make of such evidence or the man who gave it.

3. Mr O'Loughlin's evidence was simply given and never wavered. He maintains that in the course of the meal Mr Young told him that if Mr O'Loughlin was to give him, by way of loan, the sum of €100k, he (Mr Young) would guarantee that after the expiry of two years, Mr O'Loughlin would get €200k back, i.e. the initial sum plus an extra €100k. Mr O'Loughlin contends that he raised and provided the €100k and that, in breach of contract, Mr Young has never paid the €200k which Mr O'Loughlin now comes to court claiming. Mr Young's evidence, is that he but facilitated Mr O'Loughlin's belated participation in a Hungarian property investment scheme, that there would have been the potential for a return of up to 100% on that participation, had the scheme proved successful, but that it did not succeed, resulting in a loss of investor principal and there being no entitlement to a return.

4. Going back to the meal at the restaurant, Mr O'Loughlin says that he was so surprised by Mr Young's offer, as he understood it, that he asked Mr Young to repeat it to Mrs O'Loughlin. Mrs O'Loughlin gave evidence to confirm that Mr Young had repeated to her the very deal that her husband had described in his testimony. Mr Young testified that he had no recollection of either the meal or of the conversation that allegedly transpired at the meal. So in court, the plaintiff told one story, his wife confirmed that story, and the defendant gave evidence that he had no recollection of the alleged events. As a consequence, a lot turned on the evidence of Mr Telek. He impressed the court as an honest man (Mr Young acknowledged him to be such); he gave straight answers to any questions asked; and he has no vested interest in giving a tale that favours either side (he no longer works for Mr Young, working instead as an independent property consultant). Mr Telek recalled the meal as a friendly occasion. He understood from the conversation that there was an offer by Mr Young that if €100k was handed over by Mr O'Loughlin, €200k would be returned. However, Mr Telek also understood that such a return was but a possibility; and he admitted that his attentions wandered during the conversation and that he did not focus on all of the detail.

5. The court returns to the chronology of events in the next paragraph. However, it is perhaps worth noting in passing that Mr O'Loughlin's pleadings do not seem entirely to support Mr O'Loughlin's case that there was a loan agreement between him (as lender) and Mr Young (as borrower). Thus, in an action where he maintains that he was offered a guaranteed return of 100% in two years and that he accepted that offer and paid good consideration, Mr O'Loughlin's pleadings make what occurred sound more like an investment scenario where what was on the table was an investment of €100k with the possibility of a 100% return in two years. Thus Mr O'Loughlin's statement of claim states, for example, that Mr Young guaranteed "that the Plaintiff would make a return of €100,000 on his [Mr O'Loughlin's] investment" and that "an express and implied term of the said contract [was] that the Defendant would exercise all reasonable care and skill in investing the Plaintiff's monies". Remarkably, when counsel for Mr Young put it to Mr O'Loughlin that the just-quoted text supports the proposition that what was in issue was an investment arrangement, Mr O'Loughlin indicated that he had never read the pleadings. A couple of observations might be made in this regard. First, the just-quoted text does indeed support the proposition that what was in issue was an investment arrangement. Second, for a party to plead a case that is contrary to the case to which he testifies in court suggests that that party is not especially attentive to detail.

6. Following on the meal of July 2006, Mr O'Loughlin, his statement of claim continues "raised the sum of €100,000 by mortgaging the said sum on his apartment in Budapest". In fact, a fatal difficulty arises for Mr O'Loughlin in this regard so far as it comes to his succeeding in the within proceedings. That difficulty is as follows. For whatever reason, Mr O'Loughlin's apartment in Budapest is not owned by him; it is owned by a company called Sandbark BT, a Hungarian company of which he is managing director. Thus the loan agreement of 22nd June, 2007, is between Central European Credit Ingatlanhitel Zrt, a Hungarian lending institution, and Sandbark. A related account charge agreement, call option agreement, mortgage agreement and certain associated documents are likewise executed between Central European Credit and Sandbark. There is an error in the account charge document in that the party named as chargor in the recitals is not the company above which Mr O'Loughlin's name appears in the signature section. However, what is clear is that in none of these agreements was Mr O'Loughlin signing in a personal capacity; instead he signed as managing director of a company. The loan monies once raised were not transferred to Mr Young but were instead wired by Central European Credit to the account of a company called Lindex International Ltd. Remarkably, in the witness-box, Mr O'Loughlin indicated that he thought the Lindex account was Mr Young's account when it patently was not, evidence which again suggests that Mr O'Loughlin is not a man who pays close attention to detail. But be that as it may, the result of the foregoing is this: Mr O'Loughlin never gave €100k to Mr Young. Instead a company owned by Mr O'Loughlin raised €100k on the security of an apartment that it owns in Budapest and Central

European Credit then wired that €100k directly to Lindex International.

7. What Mr O'Loughlin never had or gave, he cannot recover. If Sandbark wishes to sue over the arrangement into which it entered consequent upon certain representations made to its managing director it may do so, but that is a matter for it. It has been a fundamental principle of our company law since the decision of the House of Lords in *Salomon v. Salomon & Co* [1897] A.C. 22 that a company registered under the Companies Acts (or, as here, a foreign equivalent) is an artificial legal entity separate and distinct from the members of which it is composed. (See also in this regard, *e.g.*, *Fyffes plc v. DCC plc* [2009] 2 I.R. 417). No submission has been made by or for Mr O'Loughlin as to: (i) what, if any, reason presents as to why the court should treat Sandbark as identical with Mr O'Loughlin in the circumstances presenting; (ii) what, if any, reason presents as to why Sandbark ought to be treated as the agent of Mr O'Loughlin; or (iii) to the extent that the 'justice of a case' can properly be used as a basis for disregarding separate legal personality, how, for example, a comparative want of injustice to Sandbark, its members and creditors would justify the court so proceeding. Nor does the court see any reason presenting, on the evidence before it, as to why it should or could properly disregard the separate legal personality of Sandbark in the circumstances presenting.

8. For the reasons aforesaid, the court must respectfully refuse Mr O'Loughlin's claim for those "*breaches of contract, duty and trust*" to which reference is made in the plenary summons.