

Between:

ALLIED IRISH BANKS PLC

Plaintiff

– and –

JOHN JOSEPH COSTELLO

Defendant

JUDGMENT of Mr Justice Max Barrett delivered on 3rd May, 2019.

1. AIB seeks repayment of monies allegedly owed by Mr Costello on two loan accounts (numbers 8843 and 8926). Loan No. 8843 fell to be repaid on 16.03.2010. Loan No. 8926 fell to be repaid on 16.03.2011. The summary summons issued on 25.03.2017, outside the six-year limitation period applicable under s.11(1)(a) of the Statute of Limitations 1957. AIB claims that a letter date-stamped by it as having been received on 17.04.2015 was an acknowledgement within the meaning of s.56(1) of the 1957 Act and so sufficient to re-start the 6-year limitation period. Mr Costello maintains that: (1) the letter containing the alleged acknowledgement is unsigned (his name was typewritten at the bottom) and so is not an acknowledgement that complies with s.58(1) of the 1957 Act; and (2) there is no acknowledgement within the letter.

2. As to (1), Mr Costello intended when he typed (or authorised the typing of) his name at the end of his letter (a) to identify who the signor was and (b) to indicate his approval of its contents. That suffices to render his typewritten name a signature. (*Good Challenger Navegante SA v. Metalexportimport SA* [2003] EWHC 10 (Comm), para.61, as later affirmed). Mr Costello claims that the sum to which the acknowledgment relates is not "*capable of ascertainment by calculation or by extrinsic evidence without further agreement of the parties*". (The words are those of Denning MR in *Good v. Parry* [1963] 2 All ER 59, 61, as adopted by Finlay P. in *Smith v. Ireland and ors* [1983] ILRM 300, 307). But Mr Costello, with respect, is wrong: the amounts claimed are readily calculable by reference to the loan account statements furnished to Mr Costello.

3. As to (2), the letter does contain an acknowledgement of debt. On 04.03.2015, AIB wrote a pre-demand letter to Mr Costello. A follow-on email issued on 24.03.2015. By reply, Mr Costello does not dispute the liability arising; he merely indicates why he cannot pay the amounts sought. A statement that 'here's why I can't pay you the money you claim' involves an acknowledgement that the money claimed is owed. Who would bother to explain why he could not pay money if he did not owe it?

4. Mr Costello wishes to agitate a (counter-) claim arising from the fact that when he sought to sell certain shares in 2007, AIB, it is alleged, having agreed to release the share certificates, did not do so, the market in the shares collapsed, and he was rendered unable to clear his liabilities with AIB. The finding as to any (if any) liability of AIB in this regard is so integral as to the ultimate financial position existing between the parties that the court, having regard, inter alia, to the judgments of Hardiman J. in *Aer Rianta cpt v. Ryanair Ltd* [2001] 4 IR 607, 623 and McKechnie J. in *Harrisrange Ltd v. Duncan* [2003] 4 IR 1, 7, including that "*discernible caution*" to which McKechnie J. refers in *Harrisrange*, does not consider that this is a case in which it is appropriate to grant summary judgment and will instead refer the matter to plenary hearing.