THE HIGH COURT

[2016 No. 864 S]

BETWEEN

AIB MORTGAGE BANK

PLAINTIFF

AND

NADINE THOMPSON

DEFENDANT

JUDGMENT of Ms. Justice Baker delivered on the 31st day of July, 2017.

1. By loan agreement made on 9th December, 2003, Allied Irish Banks plc agreed to lend to the defendant the sum of €240,000 to be secured by a mortgage for a term of 25 years. The proceedings have been commenced by a different entity, AIB Mortgage Bank which claims to have taken the benefit of the loan and security.

2. The plaintiff seeks summary judgment in the sum of €244,591.69.

3. The defendant argues that the proceedings are not properly constituted as the plaintiff has failed to show that it has taken a valid transfer from the original creditor. She denies that the proceedings issued on 20th May, 2016 can succeed against her by reason of the failure to give her express written notice of the assignment as is required by s. 28(6) of the Supreme Court of Judicature (Ireland) Act 1877.

4. The matter came on before me as a motion for summary judgment but proceeded on the basis that the defendant argued that the proceedings are not validly brought and must fail.

5. Written legal submissions and supplemental submissions were prepared by both sides and the factual circumstances surrounding the loan facility are not disputed.

6. The matter accordingly is one suitable for determination without oral evidence.

7. In the third affidavit of John Basquille sworn on behalf of the plaintiff on 9th February, 2017, the specific loan and mortgage account with the plaintiff has been identified as having been transferred to the plaintiff. The loan facility and default have been shown to my satisfaction. The argument of the defendant that the plaintiff cannot prove the debt and default from its books and records must fail as the plaintiff took custody of these books and records, and became entitled to rely on them as proof of debt, on the assignment.

8. A number of different questions fall to be considered.

Was there a valid assignment to the plaintiff?
9. The first question whether the original lender Allied Irish Banks plc validly assigned to the plaintiff the benefit of the debt.

10. The evidence in the form of three of the five affidavits sworn, the grounding affidavit of John Basquille sworn on 24th June, 2016, the affidavit of Gerry Gaffney sworn on 30th November, 2016, and a third affidavit of John Basquille sworn on 9th February, 2017, show to my satisfaction that the defendant's loan and the security therefor were assigned to the plaintiff on 13th February, 2006, the effective date of the transfer between Allied Irish Banks plc and AIB Mortgage Bank.

11. The assignment of the debt as between assignor and assignee has been shown in the circumstances. However because of the provisions of the Section 28(6) of the Supreme Court of Judicature (Ireland) Act 1877 certain formal requirements are to be met in order that an assignment of a chose in action is actionable at law.

The Supreme Court of Judicature (Ireland) Act 1877
12. Section 28(6) of the Supreme Court of Judicature (Ireland) Act 1877 provides in its relevant part as follows:

> "Any absolute assignment, by writing under the hand of the assignor, … of any debt or other legal chose in action, of which express notice in writing shall be given to the debtor trustee or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be and be deemed to have been effectual in law, … to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for for the same, without the concurrence of the assignor: …."

The purpose of the subsection
13. The common law recognises the right of a person to contract with a person of his or her choosing, and prior to the enactment of the Supreme Court of Judicature (Ireland) Act 1877 the common law did not recognise the right of an assignee of a debt or chose in action to sue the original debtor or obligor. At common law a debt was looked upon as a strictly personal obligation and although over time the common law recognised the right of anyone with a pecuniary interest in a debt to sue in the name of the creditor, the common law did not recognise the right of the assignee to sue in his own name: *Fitzroy v. Cave* [1905] 2 K.B. 364.

14. An assignment may be valid under s. 28(6) as between assignor and assignee if it is an absolute assignment made by writing by the assignor. However, as between the assignee and the original debtor or obligor, the power to give a good discharge for the debt without the concurrence of the original creditor vests in the assignee only and insofar as express notice in writing has been given to the debtor.

15. The statutory provision enabling the legal assignment of debt without the concurrence of the debtor or obligor is a recognition of the reality that a right to sue on debt is an asset capable of the being assigned either for value or otherwise, and the Act created a statutory means by which an assignment is actionable by an assignee at common law. It does not however create a statutory right

to sue a common law without proof of prior notice to the original obligor and evidence must be shown that the obligor was formally and in writing notified of the assignment.

16. A debtor with notice of absolute assignment is entitled, and indeed bound, to treat the debt as transferred to the assignee. Payment by the debtor to the assignor will, therefore, not give him a good discharge and he will remain liable to pay the debt again: *Jones v. Farrell* [1857] 1 D&J 208, Chitty on Contracts (32nd Ed.) Vol. 1, para. 19-018.

17. In the absence of proof of notice an equitable assignment may still be operative. I consider this proposition later in the judgment.

The operation of the subsection
18. Finlay Geoghegan J. considered the statutory requirements in *O'Rourke v. Considine & Ors*. [2011] IEHC 191 and at para. 18 set out the four conditions to be met for a valid assignment under s. 28(6) as follows:

> "(a) The assignment was of a debt or other legal chose in action.
>
> (b) The assignment was absolute and was not by way of charge only.
>
> (c) It was in writing under the hand of the assignor.
>
> (d) Express notice in writing thereof was given to the debtors."

19. The assignment by Allied Irish Banks plc to the plaintiff was an absolute transfer and not by way of charge, and was done in writing under the hand of the assignor. It is the fourth element of that test that falls for consideration in the present case.

20. Costello J. further considered the matter in *LSREF III Stone Investments Limited v. Morrissey* [2015] IEHC 603. She dealt, inter alia, with the argument of the defendant regarding the validity of what purported to be a deed of assignment, and whether it is necessary to seal such assignment. She held that an assignment could be effected by writing under the hand of the assignor, a deed is not required, and accordingly there was no requirement of sealing. The fact that the notice of assignment was not dated was regarded by her as irrelevant, as the question was whether notice had, in fact, been given which she held to be the case.

21. At para. 41 of her judgment, having noted that the plaintiff was substituted in the proceedings by prior order of the High Court, she went on to say as follows:

> "It is submitted that the defendant, therefore, had notice of the assignment within the meaning of the Act long before the plaintiff was a party to the proceedings. I accept that this is correct and I hold that the defendant had notice of the assignment within the meaning of the Act prior to the plaintiff being substituted as plaintiff in the proceedings. The fact that the document headed *'NOTICE OF ASSIGNMENT'* gave no date for the assignment does not mean that no proper notice of the assignment was given in this case as the plaintiff is entitled to rely upon the other documents which referred to above which clearly did identify the date of the assignment."

Consent of debtor
22. An assignment may be binding between assignee and original obligor by the giving of consent to novation. There is no evidence that the debtor ever gave consent to the assignment of the debt. The plaintiff argues that the defendant has waived the right to notice, or has given a prior general consent by clause 14 of the loan agreement, which provides in its relevant part under the heading "Securitisation" as follows:

> "The Customer hereby irrevocably and unconditionally consent(s) to the Bank at any time or times hereafter transferring, assigning, disposing or sub-mortgaging or sub-charging the benefit of this agreement,…whereupon all powers and discretions of the Bank shall be exercisable by the transferee and the Bank may include the benefit of this agreement, any collateral or ancillary security and the secured monies as aforesaid, in the mortgage pool the subject of any such scheme without any further consent of or notice to the Customer."

23. That clause governs the power of the transferor to transfer or assign the debt and makes that transfer effective as between transferor and transferee such that on completion of a transfer, the powers of the original creditor are exercisable by the transferee. The debtor has by reason of clause 14 waived any entitlement to be consulted in regard to such transfer or to require that he or she be notified or consent thereto. The customer has in effect given consent to the transfer or assignment of the agreement without further action by notice to him or her.

24. At para. 19 of her judgment in *LSREF III Stone Investments Limited v. Morrissey Costello* J. dealing with a similar clause to the one in the present case said the following:

> "The terms of the Clause 18.2 are clear and explicit. Under the contract entered into by the defendant with the Bank, the Bank is expressly entitled to assign the benefit of the Agreement and the security documents to any person as part of a loan transfer without notice to the defendant. In fact, the defendant was put on notice of the intended transfer by the Special Liquidators prior to the entering into of the Loan Sale Agreement. However, that is, in fact, irrelevant to the legal position. The Bank (albeit in special liquidation) was entitled to transfer the defendant's facilities including the right to recover on foot of the loan advanced and this is what occurred in this case."

25. The precise question raised in the present case did not however come to be considered by Costello J. in her judgment, namely whether, as argued by the plaintiff, an assignment could be deemed to be effective by virtue of a clause in a loan agreement by which it was acknowledged that the contractual right to assign the benefit of an agreement did not require notice to or consent of a debtor.

26. The answer requires consideration of the purpose of the subsection.

The purpose of s. 28(6)
27. That a debtor be given notice of the assignment of a debt or chose in action is important for practical and legal reasons. A debtor must know to whom the debt is due, and from what date a debtor may with certainty pay a debt to an assignee.

28. Section 28(6) identifies the date at which the assignment of a debt or chose in action becomes effectual in law to transfer or

pass the legal right to such debt or chose in action and all legal remedies for enforcement. Thereafter, and following upon notice, the power to give a good discharge for the debt thereby vests in the assignee without concurrence of the assignor.

29. As I stated in *Irish Bank Resolution Corporation (In Special Liquidation) v. Lavelle* [2015] IEHC 321 at para. 12:

> "An assignment of a debt or *chose in action*, thus, is made in writing under the hand of the assignor, and express notice in writing is to be given to the debtor. The effective date of assignment is the date of such notice."

30. I consider that a general waiver or consent does not of itself therefore operate to obviate the need for proof of notice.

Contracting out?

31. Some argument was had in the course of the hearing as to whether a debtor may contract out of the requirement for notice of the assignment under the statutory scheme. The plaintiff argues that no issue of waiver or contracting out arises because s. 28(6) of the Supreme Court of Judicature Act 1877 does not bestow any rights upon the debtor, and relies on the dicta of Widgery L.J. in *Van Lynn Developments Ltd. v. Pelias Construction Co. Ltd*. [1969] 1 Q.B. 607, referring to a notice required under s. 136 of the Law of Property Act 1925 which is broadly similar to section 28(6):

> "The notice is a notice given by the assignee for his own protection. It is given by the assignee in order to prevent the debtor continuing to deal with the assignor." (p. 615)

32. While that dictum correctly states the law, it does not make reference to the fact that the notice by the assignee to the debtor fixes the debtor with certain knowledge as to the identity of the person or body to whom payment was to be made, and also fixes the date at which the assignment is effective as between debtor and assignee in law and not merely in equity.

33. I do not consider that the matter is to be considered by a reference to a question of whether a debtor or an obligor may contract out of or waive an entitlement to be notified of the assignment. The provisions of s. 28(6) of the Supreme Court of Judicature Act 1877 fix the date at which an assignment is effective, and the legal import of such an assignment thereafter, namely that an absolute discharge may be given by the assignee. It is not so much that the right to such notice may be waived, but rather that in the absence of such notice as a matter of law the debtor or obligor remains indebted to the original contracting party, and will at his peril perform the obligations owed to the debtor by payments to another.

34. Section 28(6) identifies the means by which the legal right to sue on a chose in action or debt will be assigned. A court must be satisfied that the statutory proofs are met in a claim at common law. Absent such the claim may sound in equity only.

Form of Notice

35. Costello J. considered the form of a notice in her judgment in *LSREF III Stone Investments Limited v. Morrissey*, and quoted with approval the statement by Widgery L.J. in *Van Lynn Developments Ltd. v. Pelias Construction Co. Ltd*. at p. 615 that no formality was required and where he said:

> "I agree and would point out that the only formality required by the section is that express notice in writing be given to the debtor. The section does not speak of 'a notice': it speaks of 'notice'. Accordingly, it is wrong to suppose that a separate document purposely prepared as a notice, and described as such, is necessary in order to satisfy the statute. The statute only requires that information relative to the assignment shall be conveyed to the debtor, and that it should be conveyed in writing."

36. I agree with the proposition. No particular form of notice is required.

37. The defendant in *Van Lynn Developments Ltd. v. Pelias Construction Co. Ltd*. sought to argue that it had not received a valid or effective notice of assignment. The letter for which the plaintiff contended was a demand letter which identified the amount due as outstanding to the assignee of the original lender "following the assignment of the debt to them". The letter said that notice of the assignment had already been given, but that was wrong as no notice had been given. The Court of Appeal for England and Wales noted that there was relatively little authority on the subject, but that with regard to material matters such as the date of an assignment, these cases showed that:

> "…if a notice of assignment purports to identify the assignment by giving the date of the assignment, and that date is a wrong date, then the notice is bad." (p.612)

38. Widgery L.J. summarised his view of the matter as follows:

> "It seems to me to be unnecessary that it should give the date of the assignment so long as it makes it plain that there has in fact been an assignment so that the debtor knows to whom he has to pay the debt in the future. After receiving the notice, the debtor will be entitled, of course, to require a sight of the assignment so as to be satisfied that it is valid, and that the assignee can give him a good discharge. But the notice itself is good, even though it gives no date." (p. 613)

39. The court considered that the inaccurate statement was "merely an inaccurate surplusage", and could be ignored.

40. Widgery L.J. relied on an earlier judgment of Atkin J. in *Denney, Gasquet, and Metcalfe v. Conklin* [1913] 3 K.B. 177. The letter there argued to be sufficient notice to the debtor came from the solicitors for trustees who had taken the benefit of a debt by a deed of arrangement. The letter identified the deed of arrangement by its date, and as having been executed by the original creditor, and asked the debtor to provide an account. The court held that the letter, albeit it was not worded with the precision of a formal notice, constituted an express notice in writing of the assignment:

> "In my opinion this letter, though not worded with the precision of a more formal notice, does indicate with sufficient certainty to the defendant that Derham [the original creditor] has executed a deed which assigns to the trustees the debt formerly due to him; and that the debt when the amount is ascertained must be paid to the trustees and not to Derham." (p. 180)

41. Atkin J. regarded the absence of the names of the assignees as not relevant but considered that there was "an express and accurate reference to the deed to which the trustees are parties".

42. The statute does not mandate that the notice to the debtor be in particular form and as stated by Atkin J. in *Denney, Gasquet and Metcalfe v. Conklin* is a sufficient notice if it brings:

> "… to the notice of the debtor with reasonable certainty the fact that the deed does assign the debt due from the debtor so as to bind the debt in his hands and prevent him from paying the debt to the original creditor". (p. 180)

43. Earlier in his judgment, Atkin J. summarised his view of the requirement of s. 25(6) of the Supreme Court of Judicature Act 1873, in identical terms to s. 28(6) of the Irish Act:

> "It appears in the above section that the notice which has to be given in order to pass the legal right to the debt to the assignee is express notice in writing of any absolute assignment by writing under the hand of the assignor. The letter in question gives express notice to the defendant of the deed of assignment which I have said is an absolute assignment. It may be that the section is not complied with unless the notice further proceeds to bring to the notice of the debtor with reasonable certainty the fact that the deed does assign the debt due from the debtor so as to bind the debt in his hands and prevent him from paying the debt to the original creditor."

44. In *Denney, Gasquet and Metcalfe v. Conklin* the document which was considered as a valid notice made no mention of an assignment at all but referred to a deed of arrangement although it stated the date of that deed. There was no mention either of the amount assigned and the notice merely requested an account of dealings between debtor and assignor.

45. The authorities suggest that the person giving the notice does not have to do so with the intention of complying with the statutory requirements and as stated by Widgery L.J. *in Van Lynn Developments Ltd. v. Pelias Construction Co. Ltd.:*

> "… it matters not in the slightest that the writer did not think when he wrote the letter that he was performing the function of giving notice under the section".

46. I adopt that statement as to the requirements of the section and the function the notice of assignment plays.

47. Chitty at para. 19-016 of Vol. 1 of his *Law of Contracts* (32nd Ed., 2015) says that the "statute had been strictly construed" in that the notice must be unconditional and given even though the debtor cannot read. That statement may not be fully supported by the authorities as a degree of flexibility in the form of the notice is to be discerned.

Summary on formalities
48. The authorities suggest that a court will look to the substance and not the form of a notice.

49. I consider that in order to be a valid notice under s. 28(6) the debtor must be given express notice in writing of an assignment of his debt to another, that other must be identified, and the notice must contain sufficient information to enable the debtor to know with reasonable certainty that the assignment did assign the debt so that he may without acting at his peril pay the debt to the identified assignee. The absence of a date is relevant, and this must be so because s. 28(6) expressly provides in its terms that the date of the notice to the debtor is the effective date of the assignment for the purposes of the assignment at law.

50. The Act does not make provision for who is to give the notice in writing of the assignment.

51. The contract between Allied Irish Banks plc and Ms. Thompson provided expressly that her debt and security could be assigned without notice to her and without her concurrence. That is the effect and purpose of clause 14 of the loan facility by which Ms. Thompson irrevocably and unconditionally consented to the transfer of her loan to another party without prior notice to her. As a matter of statute a person acquiring that asset from the original owner cannot give a discharge to Ms. Thompson, nor be capable of suing a common law unless the requirements of s. 28(6) are met. Ms. Thompson therefore may not object to the fact that her debt was assigned, but the assignee may not sue her without showing that she was expressly notified of the transaction by which her obligations lay with a new person or entity.

52. Atkin J. in *Denney, Gasquet and Metcalfe v. Conklin* expressly rejected an argument that to be compliant with the section a notice had to expressly state that there had been an assignment, identify the name and address of the assignee and identify what precisely had been assigned. Atkin J., giving that judgment and the three judges giving the judgment in the Court of Appeal in *Van Lynn Developments Ltd. v. Pelias Construction Co. Ltd.*, took the view, with which I agree, that the statute requires "notice", and not "a notice", and provided the written document contains the necessary particulars and records the fact of an assignment or assurance, it may be sufficient. The debtor is to be given information which tells him that an assignment has been made which sufficiently identifies the assignee and which identifies what, or what debt, has been assigned. I agree with the view taken by the Court of Appeal for England and Wales in *Van Lynn Developments Ltd. v. Pelias Construction Co. Ltd*. that it would be wrong to interpret the statutory requirements as imposing technical or procedural requirements which are not therein expressed. The test is in the circumstances of each case whether there was sufficient information to enable the debtor to know not merely that a third party claims to own his debt, and claims to have the right as a matter of law to give a discharge for that debt, but that that party has taken an assignment or assurance of that debt from the party with whom he or she originally contracted.

53. While a notice does not have to be sent with the intention of constituting a statutory notice, a notice must be sufficiently clear as the legislation requires that the notice be express. This precludes the argument advanced by the plaintiff that it is sufficient that documents sent to a debtor by implication identify an assignment, and I do not consider that s. 28(6) leaves open an argument that a notice which impliedly identifies an assignment can be sufficient, or that a prior general consent performs the statutory function of a notice. A notice must be given, it need not be formal, it need not refer to the statute, but it must be an express notice of an assignment and not merely a claim to the debt by another party. The existence of a prior assignment ought not to be implied. There is nothing in the statute to my mind which suggests that the notice must be contained in one document and for that reason the joinder of documents maybe sufficient to constitute a notice of assignment. Costello J. described the process of the sending of "goodbye" and "hello" letters by assignor and assignee to a debtor or obligor which taken together amount to an assignment and she had no doubt that the debtor had as a matter of fact sufficient notice for the purposes of her judgment in *LSREF III Stone Investments Limited v. Morrissey.*

Application to the facts: was there a valid notice?
54. The plaintiff argues that a valid and effective notice was given to the debtor by the combined effect of two documents. The first document was an account statement dated 29th December, 2006, addressed to the defendant which identified AIB Mortgage Bank as the sender and which contained on the right hand side in a column the following note:

"CUSTOMER MESSAGES

On 13th February, 2006, Allied Irish Banks p.l.c. transferred substantially all of its Irish mortgage business to AIB Mortgage Bank under the Asset Covered security Act, 2001, with approval from the Financial Regulator who requires this notice.

Repayment arrangements remain the same**. No action by you is required."**

(Emphasis in bold in the original).

A further note was contained immediately thereafter also on the right side:

"Please do not hesitate to contact AIB Home Mortgages at … should you have any queries about the information."

55. At the end of the document are the usual statutory particulars of the registered office of AIB Mortgage Bank and identifies it as a wholly owned subsidiary of Allied Irish Banks plc.

56. The second document is a letter dated 15th January, 2015, "the demand letter", sent on the headed note paper of Allied Irish Banks plc, by which the loan facility was terminated and demand was made for payment of the total sum then due with interest. The particulars at the bottom of the page referred to Allied Irish Banks plc and gave the registered office of that entity. The letter says that the claim is on foot of an agreement of 9th December, 2003 (the date of the original agreement) made between AIB Mortgage Bank and the defendant. This is clearly wrong and AIB Mortgage Bank did not take over the loan until 13th February, 2006. The loan agreement was made with Allied Irish Banks plc.

57. That letter said that AIB Mortgage Bank "is entitled to the benefit of the agreement", that Allied Irish Banks plc is a "service provider" to AIB Mortgage Bank and sent and signed the letter for and on behalf of that entity. The letter does not identify when and by what means the plaintiff became entitled to the benefit of the loan agreement, but it does in clear terms say that the owner of the loan is that entity, and demand is made on behalf of that entity. The letter in my view is to be viewed as one by which the plaintiff claimed to own the benefit of the loan agreement, not one which notifies the debtor of the fact or the means by which this had happened.

58. The two documents which the plaintiff contends might when joined together constitute notice cannot in my view, even when joined together, be properly construed as express notice of assignment. The bank statements sent some ten years ago did, it is true, say that Allied Irish Banks plc had transferred some of the debt to AIB Mortgage Bank, but the person receiving that notice could not have known that the individual debt of that person was included in the bundle assigned. The letter of 15th January, 2015, the demand letter, claimed that AIB Mortgage Bank was entitled to the benefit of the debt but not that it had taken an assignment of the debt, and while it was ultimately shown to my satisfaction that AIB Mortgage Bank had indeed taken the benefit of the debt, the debtor was not expressly told, and ought not to have been required to extrapolate that the benefit had been transferred from the original creditor to the company now claiming the benefit of the debt. A person receiving such a letter would be perfectly entitled to ask how or about what means that he or she ceased to have an obligation to the person or body from whom the money was being borrowed. The purpose of the so-called "goodbye" and "hello" letters is to do precisely what is required by the statute, provide a notice from the original lender of the assignment, and from the assignee who claims the debt thereafter.

59. I do not consider that the letter of 15th January, 2015, is adequate notice of the assignment to the plaintiff of the debt. It cannot be characterised as an express notice in writing of an assignment or even of the fact that an assignment has occurred. It is more readily understood as a letter of claim.

60. For this reason I am not satisfied that the bank had served sufficient and express notice to the debtor of the assignment of the debt, although the debtor could not have objected to that assignment, the claim is not one that may be maintained at common law against her by reason of the absence of express notice. The provisions clause 14 do not constitute such express notice, and in plain terms the clause does not purport to do so, and it does not, nor can it, constitute a waiver of the entitlement of notice contained in the statutory provision.

An equitable assignment

61. The absence of notice does not of itself prevent the assignee from starting the action although in that circumstance he is an equitable assignee: *Weddell & Anor. v. Pearce and Major & Anor.* [1988] Ch. 26 at 42.

62. A valid equitable assignment of an existing debt does not require notice to a debtor: *Law Society of Ireland v. O'Malley* [1999] 1 I.R. 162.

63. The defendant argues that an action on foot of an equitable assignment may be maintained only by the assignor, or at least in proceedings where the assignor is a party, and that this principle is one necessary to protect the debtor from later proceedings by the assignor.

64. The defendant relies on the judgment of Atkinson J. in *Holt v. Heatherfield Trust Limited & Anor*. [1942] 2 K.B. 1 at p. 4 that:

> "…under the Supreme Court of Judicature Act 1873 and now by the Law of Property Act 1925, s. 136 an absolute assignment of a debt of which express notice in writing has been given to the debtor is effectual in law to transfer the legal right thereto. Absence of notice does not affect the efficacy of the transaction as between assignor and assignee. Until notice be given the assignment is an equitable assignment but it is an assignment which requires nothing more from the assignor to be a legal assignment. The assignee may himself give notice at any time before action brought and further than that, even before that notice he may sue in his own name provided that he makes the assignor a party to the action, and as defendant if he does not consent."

65. Counsel argues in reliance on a quote from *Snell's Equity* (22nd Ed.) at p. 56 that:

> "if the assignment of the legal thing in action is only equitable, the original creditor must usually be joined… ".

66. The proposition stated by Atkinson J. in *Holt v. Heatherfield Trust Limited & Anor*. was quoted with approval by Barron J. giving one of two judgments in the Supreme Court in *Law Society of Ireland v. O'Malley* at p. 171 that:

> "…the assignment entitles the assignee to sue for the debt assigned even before notice given as long as he joins the

assignor on one side or the other."

67. The plaintiff argues that the joinder of the assignor is no longer necessary, albeit that it might still be the normal mode of proceedings. Reliance is placed on the statement at para. 3.16 of *Guest on the Law of Assignment* (2nd Ed.) that:

> "Joinder is desirable because it serves a useful purpose in that it ensures that all parties with an interest in the subject-matter assigned are before the court and that the assignor is bound by any order made. It also enables the assignor to dispute the assignment if he thinks fit and protects the defendant obligor by ensuring that, if he is found liable, he can obtain a complete discharge from his liability by paying the assignee, which avoids subjecting the debtor or obligor to more than one action arising from a single transaction. If the assignee has acquired only part of the chose, for example, if the assignment is of part of a debt or is by way of charge, or if the assignment is disputed, the assignor should be joined. But if this is not the case, and if the assignment is unconditional and there are no other special circumstances, joinder may be merely a formality. It will serve no useful purpose and it will not be insisted upon."

68. The Court of Appeal for England and Wales recently considered the question in *Kapoor v. National Westminster Bank plc & Anor*. [2012] 1 All ER 1201 where Etherton L.J. said at para. 30:

> "The current state of the authorities, binding on this court, is that an equitable assignee of debt is entitled in its own right and name to bring proceedings for the debt. The equitable assignee will usually be required to join the assignor to the proceedings in order to ensure that the debtor is not exposed to double recovery, but that is a purely procedural requirement and can be dispensed with by the Court. By contrast, the assignor cannot bring proceedings to recover the assigned debt in the assignor's own name for the assignor's own account. The assignor can sue as trustee for the assignee if the assignee agrees, and, in that event the claim must disclose the assignor's representative capacity. In any other case, the assignor must join the assignee, not because of a mere procedural rule but as a matter of substantive law in view of the insufficiency of the assignor's title. These points emerge clearly from the following authorities."

69. In *Three Rivers DC v. Bank of England* [1995] 4 All ER 312, Gibson L.J. explained the proposition as arising from what he described as "the confluence of the separate streams of common law and equity" (at p. 325) arising from the Judicature Act and from the fact that every court is to give effect to equitable rights, and the desirability of avoiding multiplicity of proceedings.

70. I do not propose entering upon consideration whether the "confluence of law and equity" has entirely obviated the requirement that the assignor join or be joined in proceedings, as for present purposes the rule seems to me to be explained by the Court of Appeal for England and Wales in *Raiffeisen Zentralbank Osterreichag v. Five Star Trading LLC* [2001] 3 All E.R. 257 where Mance L.J. said:

> "There is a rule of practice that the assignor should be joined but that rule will not be insisted upon where there is no need, in particular if there is no need of a separate claim by the assignor."

71. No argument is made in the present case that the assignor is a trustee for the assignee, or that the assignor retains any interest in the loan. This claim is brought in a statutory context. The transfer from Allied Irish Banks plc to AIB Mortgage Bank was a Scheme made for the purposes of s. 58 of the Asset Covered Securities Act 2001, and S.I. 60 of 2006, the Assets Covered Securities Act 2001 (Approval of Transfers between Allied Irish Banks plc and AIB Mortgage Bank) Order 2006.

72. By virtue of s. 58(9) the transferor ceases to have rights and obligations in respect of any of the assets thereby transferred:

> "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."

73. By virtue of the assignment, as a matter of statute, Allied Irish Banks plc has ceased to have any rights in respect of the debt, and by virtue of the Scheme which was approved, S.I. No. 60 of 2006, and the statutory provisions, there are no circumstances existing or capable of existing by which the assignor could pursue the defendant for the debt. In those circumstances, and albeit I consider that the claim arises in equity, I am not satisfied that there is any legal or practical reason why the assignor was required to join or be joined as a party.

74. The debt, therefore, is one that is actionable in equity, no argument has been made that any equitable principle is engaged, and no claim or argument which might require me to consider questions of priority have been raised.

75. Therefore, in the circumstances, and albeit that the debtor was not given sufficient express notice to meet the statutory requirements, I am satisfied that the claim of the plaintiff is one that has been validly made and accordingly will enter judgment for the amount claimed.