AN CHÚIRT UACHTARACH
THE SUPREME COURT

Appeal No.: 353/2012

O'Donnell J.
MacMenamin J.
Charleton J.

BETWEEN/

ARNAUD D. GAULTIER

APPELLANT/APPLICANT

AND

THE REGISTRAR OF COMPANIES

RESPONDENT/RESPONDENT

AND

THE REVENUE COMMISSIONERS, THE MINISTER FOR FINANCE, LOIRE VALLEY LIMITED

NOTICE PARTIES

AND

Appeal No.: 449/2012

IN THE MATTER OF LOIRE VALLEY LIMITED AND THE COMPANIES ACTS 1963-2009

AND

Appeal No.: 450/2012

BETWEEN/

ARNAUD D. GAULTIER AND LOIRE VALLEY LIMITED

APPELLANT/INTENDED APPLICANT

AND

ALLIED IRISH BANKS PUBLIC LIMITED COMPANY

RESPONDENT/INTENDED RESPONDENT

Judgment of O'Donnell J. delivered the 12th day of December, 2019.

1. These three appeals, which can be dealt with together since they are closely related, concern orders or applications made in a short period in 2012. The first appeal concerns an application made before Murphy J. on the 5th of July, 2012. The second relates to an application made before Laffoy J. on the 31st of July, 2012, and the third, and last, appeal concerns a short hearing in a vacation sitting before de Valera J. on the 9th of August, 2012. Each was an *ex parte* application in the High Court, and, accordingly, there was no appearance by, or on behalf of, the respective respondents or notice parties, either in the High Court or in this court.

2. Although these three appeals relate to a period of less than a month in July and August 2012, the background appears to be matters which occurred much earlier, although capable of being discerned only imperfectly from the limited papers before the court. Mr. Gaultier contends that he was the sole member of a single-member company, Loire Valley Limited, which may have had a claim against the Revenue Commissioners in respect of the business of the importation of wine in relation to events that occurred in 2006. It appears that there had been negotiation between the parties, resulting in the Revenue Commissioners making a substantial offer with a view to settlement which was, however, not accepted. The situation became, however, much more complicated, because it also appears that any claim would be that of the company, and Loire Valley Limited had been struck off the Registrar of Companies for failure to make annual returns with effect from the 6th of April, 2012.

3. There is a clear and reasonably simple procedure for seeking to restore a company to the Register, and this most commonly occurs when it is necessary to restore a struck-off company for the purposes of proceedings. Under s. 12B of the Companies (Amendment) Act 1982 ("the 1982 Act"), as amended by s. 46 of the Companies (Amendment) (No. 2) Act 1999, (now s. 738 of the Companies Act 2014), where a court application is necessary, an application is made to the High Court (and now, in certain circumstances, to the Circuit Court). The procedure is set out comprehensively in the leading texts: Hutchinson, *Keane on Company Law* (5th ed., Bloomsbury Professional, 2016), pp. 498 to 501; Courtney, *The Law of Companies* (4th ed., Bloomsbury Professional, 2016), pp. 2019 to 2043; Conroy, *The Companies Act 2014: Annotated and Consolidated* (Round Hall, 2018), pp. 972 to 983.

4. The procedure normally involves notice to interested parties: the Minister for Public Expenditure, the Revenue Commissioners and the Registrar of Companies, and it may, in an individual case, require advertisement and/or other notification to creditors. Where the reason for striking-off is the non-filing of statutory accounts, the application normally involves the preparation of annual returns and an undertaking to lodge such returns. However, it appears that this course was not taken by Mr. Gaultier, and in many ways these three appeals and other proceedings reflect his differing attempts to circumvent the requirement of proceeding in accordance with the relatively simple statutory procedure.

5. Prior to any of the applications giving rise to the three appeals before this court, it appears, from the documentation submitted, that an application had been made by Mr. Gaultier to the High Court and heard by Laffoy J. on the 18th of June, 2012. It appears that Mr. Gaultier sought leave of the court to issue proceedings on behalf of the company Loire Valley Limited which at that point stood dissolved. Since the company had no legal existence at that time, and since in any event there is a general rule, to which it will be necessary to refer in greater detail later in the judgment, that a company cannot represent itself, or be represented by a shareholder or director, or other interested party, it appears that the Central Office refused to accept the proceedings and Laffoy J., correctly, it would appear, refused to grant leave to bring the proceedings. There was a clear statutory procedure which would permit the restoration of the struck-off company,

and thereafter it ought to have been possible to prosecute any claim. Instead of taking that step, Mr. Gaultier sought to recast his proceedings in a fashion which might avoid the difficulty posed by both the dissolution of the company and the question of the representation of the company.

The first proceedings: *Gaultier v. Registrar of Companies*, *Revenue Commissioners and the Minister for Finance and Loire Valley Ltd*., Supreme Court Appeal No.: 353/2012

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6. Again, some of the background must be gleaned from the papers, but it appears that on the 5th of July, 2012, Mr. Gaultier made an application in his own name for leave to seek judicial review directed to the Registrar of Companies and seeking, it appears, to require the Registrar to restore Loire Valley Limited to the Register.

7. According to the report prepared by the High Court judge of the subsequent proceedings, the judge (Murphy J.) pointed out that there was a proper procedure for reinstating the company, but Mr. Gaultier "insisted, without specifying dates, that he did not have the time to do so as the day of the application was the last day in which he could apply for a review of the refusal by the Registrar of Companies". On that basis, the court, taking into consideration that the applicant was French, with a good knowledge of English but with a limited appreciation of the procedure, granted the leave sought, which simply meant that the applicant had liberty to bring proceedings in the nature of judicial review.

8. The matter then appeared in the Judicial Review List heard by a registrar of the High Court who, on the 10th of July, 2012, adjourned the motion for directions to the 2nd of October of the same year for mention. It appears, from correspondence between Mr. Gaultier and the registrar, that Mr. Gaultier was anxious to seek an injunction seeking to compel the restoration of the company to the Register on an interim basis.

9. It might be observed at this point, however, that while the judicial review proceedings themselves were unusual and faced formidable difficulties, an application for an interim or interlocutory injunction pending the hearing of any such review requiring the restoration of the company to the Register would have been extraordinary. However, the court registrar, acting as a deputy master, gave liberty to issue a notice of motion grounded in an affidavit seeking injunctive relief in the usual way. It was anticipated that the motion would be served on the other parties, who could then attend for the hearing.

10. What occurred next is somewhat confused, but it appears that Mr. Gaultier appeared in court on the 19th of July before Murphy J. to make an application. He had a notice of motion dated the 18th of July, 2012, with a blank for the return date for the date in July. The body of the motion sought:-

> "the following interim injunctive reliefs: (a) voiding the dissolution of the Third Notice Party; (b) restoring the name of the third Notice Party on the Register of Companies and (c) additional just reliefs." (Emphasis in original).

The affidavit, which was sworn on the 17th of July, referred to a conversation with counsel for the respondents on the 10th of July (this being, it appears, the date on which the matter appeared before the deputy master) and recording that it was "outlined that the word "injunctive" slipped out of the section "corrective reliefs" of the statement of ground. The word "injunctive" should apply to the said reliefs J & K". Paragraph 5 of the affidavit recorded that "[*t*]he Court agreed on amending the statement of ground/applying for the said injunctive relief by issuing a Notice of Motion and new Grounding Affidavit".

11. This, it should be said, although a little hard to follow, appears to correspond reasonably closely with the account given in the correspondence from the deputy master provided to the court by Mr. Gaultier. The affidavit then continued:-

> "I beg this honourable Court to grant the following *interim injunctive reliefs* based on the said grounds:
>
> J-(i) an order of mandamus voiding the dissolution of «the Company»,
>
> (ii) as the dissolution being the result of misfeasance and malfeasance by the Respondent;
> (iii) or pursuant to section 310 of the Companies Act 1963-2009;
>
> K (i) an order of mandamus restoring the name of «the Company» on the register of companies;
>
> (ii) as the strike-off being the result of misfeasance and malfeasance by the Respondent;
> (iii) or pursuant to section 12B(3) of the CAA 1982." (*Emphasis in original*).

Paragraph 7 of the affidavit then stated: "I beg this honourable Court to construe the above paragraph as part of the statement of grounds dated 5th *Inst*.".

12. It is now apparent, from what is advanced to the court by Mr. Gaultier, that there may have been a misunderstanding in the court on the 19th of July. It appears that Mr. Gaultier may have misunderstood that the order that was made on the 10th of July permitted him to issue a notice of motion seeking an interim or interlocutory injunction. He now says that on the 19th of July he was only seeking to amend his statement of grounds which, however, was not a necessary step. On the face of the affidavit, however, and the terms of paragraph 6 quoted above, it would be understandable if the court considered that an application was being made for an interim *ex parte* injunction pending the hearing of the judicial review.

13. The court has a report from the High Court judge dated the 3rd of August, 2012, and Mr. Gaultier has also obtained a transcript of the DAR for that day and, moreover, has prepared his own transcript having heard the audio recording. Mr. Gaultier informed the

court that he had been told he had been provided with the audio recording in error, and was highly critical of the suggestion that the audio recording was somehow being withheld from him. In fact, it is unusual for the audio recording to be provided, as it is normally easier to work from a transcript and there is no need to consult the audio record unless there is a dispute or difficulty about the transcript.

14. In this case, Mr. Gaultier fairly acknowledges that he has a strong French accent, and that the transcriber, accordingly, may have missed some of the exchanges. He produced his own transcript and contended that there were some things in it not present in the official transcript of the DAR, being firstly the introductory remark that he had an application "for leave" and that the closing remarks of the judge were "the Court doesn't want to entertain your correspondence or affidavits at this stage" (although, on my reading, this is to be found in the DAR transcript).

15. It does not appear there is a significant or material distinction between the two transcripts, but in the hope of avoiding further misunderstanding and confusion, I am prepared, for these purposes, to use the transcript prepared by Mr. Gaultier, without suggesting that that is a desirable or appropriate course to follow in most cases. It appears likely that the exchange was recorded without notifying the court or seeking permission. If so, then, quite apart from the undesirability, and indeed illegality, of such a course, it suggests a high degree of suspicion on Mr. Gaultier's part.

16. When Mr. Gaultier introduced the application, the judge intervened and referred to the fact that Mr. Gaultier had been before the court on the 5th of July, 2012, and had not disclosed to the court that Laffoy J. had previously refused leave issue a plenary summons. Mr Gaultier responded:- "Yes, exactly". He was asked to explain what had happened between the 18th of June and the application on the 5th of July, and he responded that he had totally redrafted the documents. The first application was in a plenary summons format, with three grounding affidavits which were very hard to read and the applicants were two applicants: himself (Mr. Gaultier); and a limited company. The judge intervened to observe that the company was dissolved, and enquired if that was correct. Mr. Gaultier agreed. The judge then observed that Mr. Gaultier should have disclosed the fact that he had been refused leave to issue a plenary application. There followed a long exchange, and Mr. Gaultier then said that he had mentioned on the 5th of July that he had come before Laffoy J. but his application was so confusing that he did not bring that order (of the 18th of June).

17. Mr. Gaultier is very critical of this exchange. He says it must mean that either the two judges spoke about the case, or the registrars involved had spoken and alerted Murphy J. Either way, he says that this was a fundamental breach of the obligation to administer justice in public under Article 34.1 of the Constitution. This contention is, however, misconceived. There is no reason why judges should not correspond or communicate about the management of cases appearing in court. The obligation that justice shall, save in those cases provided for by law, be administered in public requires that where decisions and orders are made, they should be made after a public hearing and on the

basis of the evidence and arguments submitted on that occasion. That is what occurred here.

18. It was put to Mr. Gaultier that he had not disclosed the fact of the prior application to Laffoy J. He addressed the matter and, in the event, the court did not make any decision against him in that respect. His application did not fail on that basis. All of this occurred in public and was in compliance with, rather than in breach of, the obligation to administer justice in public under Article 34.1.

19. Mr. Gaultier then suggested that the registrar, acting as deputy master, had accepted that he should be allowed to incorporate the new interim injunctive relief, which had been forgotten from the statement of grounds by a mistake for which he was responsible. This appears, however, to be a source of some, at least, of the confusion in this case. Mr. Gaultier had been permitted to issue a notice of motion seeking injunctive relief. However, he seems to have understood that to have required an amendment of the statement of grounds.

20. After further exchanges in which it is clear that the judge was struggling to understand what Mr. Gaultier was seeking, the judge asked:- "I'm still unsure, other than you want injunctive relief, the matter is in for the 2nd of October, did you tell the Court?" Mr Gaultier replied:- "Yes". The judge enquired as to why the matter could not be left until the 2nd of October. Mr. Gaultier replied that he needed the status of the company to be reinstated as normal. Again, the judge responded:- "No. That will be dealt with on the 2nd of October." Mr. Gaultier then asked:- "Can I have that in the interim an injunctive relief between that?". Later, he said he sought the relief against the Registrar of Companies. Later again, he said:- "Yes, for the interim injunction."

21. It is apparent that the judge understood, reasonably, it must be said, that this was an application for an interim injunction compelling the restoration of the company to the register. The judge observed that that was a matter for the hearing, but nevertheless enquired as to what prejudice Mr. Gaultier would suffer. Mr. Gaultier suggested that there was a statute of limitations involved. The judge observed that this had already been the basis upon which he had been persuaded to grant leave to seek judicial review. Mr. Gaultier said there were two statutes: the three-month period (presumably that provided under the Rules of the Superior Courts for judicial review), and another statute of six years which related to the dealings of the Revenue Commissioners, which he said had prevented his company from trading for the last six years.

22. At the risk of reading between the lines, and further confusion, it now appears, in the light of everything that has been said, that what Mr. Gaultier had in mind was an interim injunction restoring the company to the Register so as to permit proceedings to be commenced against, perhaps, the Revenue Commissioners although, in fairness, there was no evidence explaining why the statute of limitations in respect of any such claim was due to expire or, indeed, why proceedings had not been commenced at any earlier point when, moreover, the company had not been dissolved.

23. Furthermore, and understandably, the judge was approaching the case on the basis that the claim was against the Registrar of Companies when it now appears that was only an intermediate step, intended to permit a claim or claims to be brought against other parties. It now seems clear that the whole application was driven by a desire to avoid the statutory procedure for restoring the company to the Register.

24. The judge observed that Mr. Gaultier was appearing without notice to anyone or to the Registrar of Companies, and asked whether a letter been written to the Registrar asking them to stay their hand and not to do anything until the motion was heard on the 2nd of October. Mr. Gaultier said he had not done that and the judge then concluded:-

> "Why don't you do that? Why are you coming to court to do something you can do by letter? You have got the order of the Court granted. That's returnable for the 2nd of October. The Court will not allow any further application to be made in relation to this matter. Judicial review is judicial review. It's what you chose, not what the court suggests that you should've done. But the Court is not going to allow you to do anything further but suggests that you might write to the Registrar of Companies pointing out -- you presumably have done this before and the Court doesn't want to entertain your correspondence or affidavits at this stage."

It is apparent from the transcript, and the report of the judge on the hearing, that the judge considered that he was being asked to grant an interim injunction to provide the relief being sought on the judicial review itself, that is the restoration of the company to the Register, something which would itself be extraordinary to grant at a substantive hearing. It is, accordingly, not surprising that, insomuch as the application was being made for an interim injunction, it was refused.

25. Subsequently, Mr. Gaultier entered into correspondence with the registrar who had acted as deputy master. Mr. Gaultier, in an e-mail of the 20th of July, 2012, explained that he believed that his notice of motion would be heard before the end of term, and continued:-

> "However, this did not happen and a kind of confusion has been created. I would be very much obliged if you could precise if I was wrong in thinking that this notice of motion could be heard before the end of this term, or it is just to be an amendment to be heard on the 2nd of October."

The registrar who had acted as deputy master responded that the motion for directions in the judicial review had been adjourned to the 2nd of October, 2012. Liberty had been given to issue a notice of motion grounded on an affidavit seeking injunctive relief, which would mean that the Central Office would assign the earliest available hearing date. That motion would be served on all the other parties. She then continued:-

> "Despite the direction given, I note from our computer system that you made an application *ex parte* to Mr. Justice Murphy yesterday for injunctive relief pending the hearing of the judicial review. This application was refused. In the event you

are unhappy with that decision you should appeal that order to the Supreme Court."

26. It is now clear that there was confusion here, but a large part of it was due to Mr. Gaultier's desire to avoid the obvious route for the restoration of the company to the Register, and his own misunderstanding of the procedures involved. Insomuch as he was seeking an interim injunction before Murphy J. on the 18th of July – and at times it appears from his transcript that he was – then Murphy J. was entirely correct to refuse any such application. Insomuch as Mr. Gaultier now suggests that all he was seeking was leave to amend his statement of grounds to seek an interim injunction, then that relief was entirely unnecessary since he had already been granted leave to bring an application for such an injunction in advance of the hearing in October.

27. Furthermore, and in any event, this matter is now plainly moot, since the only purpose of such an application would have been to grant an injunction pending the hearing of the substantive judicial review. That hearing proceeded, and Mr. Gaultier has informed the court that the High Court, perhaps unsurprisingly, refused the substantive reliefs sought.

28. Quite apart from the matters already addressed, it is therefore apparent that the question which Mr. Gaultier now maintains was being agitated in court on the 18th of July, namely an application to amend the statement of grounds to include an injunction application, is both academic and moot. In all the circumstances, the appeal on this matter must be dismissed.

The second set of proceedings: In the matter of Arnaud D. Gaultier and the Companies Acts 1963-2009, Supreme Court Appeal No.: 449/2012

29. It does not appear that Mr. Gaultier ever issued the notice of motion seeking an injunction which he had been permitted to issue by order of the registrar who had acted as deputy master on the 10th of July. Instead, Mr. Gaultier's response to the events of the 18th of July and the subsequent correspondence with the registrar who had acted as deputy master was to recast the matter once more, and to bring an application before Laffoy J. a few days later on the 31st of July, 2012.

30. It was an *ex parte* application, but Mr. Gaultier had prepared a motion paper recording that he was "an Entrepreneur, Sole Trader, Consultant in Innovation (MSc. Innovation & Strategic Information) and *Sole Member of Loire Valley Limited*" (*Emphasis in original*). The relief he sought was that the court would vest in him the powers under subs. 231(1) of the Companies Acts 1963 – 2009 ("the 1963 Act"), including the power ""*with the sanction of the court or of the Committee of inspection to bring or defend any action or other legal proceedings in the name and on behalf of the"* Loire Valley Limited*"* (*Emphasis in original)*.

31. The grounding affidavit observed that s. 231 commonly applies to a liquidator in a winding-up by the court, which Mr. Gaultier contended was "in other words *an individual enjoying the powers of both General and Extraordinary meetings* of a Company" (*Emphasis in original*). He then contended that, as a sole member of Loire Valley Limited,

he enjoyed the powers of both general and extraordinary meetings and, by analogy, therefore should be entitled to be vested with the powers under subs. 231(1) of the 1963 Act. At paragraph 10 of the affidavit, he observed that nothing in the application was prevented by the decision of the Supreme Court of the 21st of December, 1965, in *Battle v. Irish Art Promotion Centre Limited* [1968] I.R. 252 ("*Battle*"), where the applicant was the managing director and major shareholder of the defendant company.

32. Laffoy J. refused the relief. In a careful and comprehensive report prepared for the Supreme Court appeal, Laffoy J. explained that she was aware from the previous application that the company had been struck off the Register, and had been dissolved with effect from 6th of April, 2012. She also recorded that, on that occasion, she had explained to the applicant that he could only issue proceedings in his own name, not in the name of the company, and referred him to the decision in *Battle*. She also explained to the applicant that "there is no shortcut for restoring a company to the Register of Companies. There is a procedure for applications to restore a company to the Register and, as a precondition to making a restoration order, outstanding returns have to be filed".

33. She refused the application on the basis that the jurisdiction conferred by s. 231 only applied where the company was being wound up by the court and there was an official liquidator in place, and she considered that it would be an abuse of the process to give Mr. Gaultier a way around the requirements of the Companies Act. Laffoy J. explained that what had happened on the previous occasion had informed her decision on the 31st of July, 2012.

34. It is plain that that s. 231(1) of the 1963 Act is not applicable in this case. It provides as follows:-

> "(1) The liquidator in a winding up by the court shall have power, with the sanction of the court or of the committee of inspection—
>
> (a) to bring or defend any action or other legal proceeding in the name and on behalf of the company; …"

That provision is entirely unremarkable in the context of a liquidation, but it has no application here.

35. Mr. Gaultier made two arguments, however, as to why, notwithstanding the fact that he plainly fell outside the words of s. 231, an order should nevertheless have been made in his favour. First, he contended that s. 12B of the 1982 Act could somehow be employed in aid of his case. S. 12B is indeed the statutory section permitting restoration to the Register. He contended that, in some way which I must confess I found difficult to follow, because there was a procedure for restoring the company to the Register, and the company could therefore be revived with the capacity to bring proceedings, he should be able to benefit from s. 231 to commence the proceedings on behalf of the company. It does not appear to me that s. 12B is of any assistance to Mr. Gaultier: instead it stands

as the obvious course which he has refused to adopt, and which would at least have allowed him to surmount the difficulty posed by the dissolution of the company.

36. Mr. Gaultier also sought to rely on Directive 2009/102/EC in the area of Company Law on Single-Member Private Limited Liability Companies ("the Directive"). Mr. Gaultier referred to Recital 5 which provides:-

> "A private limited liability company may be a single-member company from the time of its formation, or may become one because its shares have come to be held by a single shareholder. Pending the coordination of national provisions on the laws relating to groups, Member States may lay down certain special provisions and penalties for cases where a natural person is the sole member of several companies or where a single-member company or any other legal person is the sole member of a company. The sole aim of this power is to take account of the differences which exist in certain national laws. For that purpose, Member States may in specific cases lay down restrictions on the use of single-member companies or remove the limits on the liabilities of sole members. Member States are free to lay down rules to cover the risks that single-member companies may present as a consequence of having single members, particularly in order to ensure that the subscribed capital is paid."

37. Mr. Gaultier in these proceedings, and indeed in the earlier appeal, sought to contend that this provision means that the only penalty which could be imposed upon a single-member company was a removal of the limit of liability on sole members, and that therefore it was disproportionate to permit the dissolution of a company for failing to make statutory returns. He also contended that this was an issue of European law which was not clear, and which accordingly would require a reference to the Court of Justice of the European Union ("the CJEU") pursuant to Article 267 of the Treaty on the Functioning of the European Union.

38. It is, I think, plain that this argument is entirely misconceived. Apart from the fact that what has been set out above is merely a recital to the Directive, I consider that what is clear is that Mr. Gaultier is misinterpreting the provision. There is, first, no suggestion that single-member companies should not be subject to the regulation which applies to other companies. What the recital addresses is the possible abuse of single-member companies where, for example, a natural person is the sole member of several companies or a single-member company is, in turn, the sole member of another company.

39. In those circumstances, Member States may, but were not required to, lay down restrictions on the use of single-member companies or remove the limits and liabilities of the sole members. Nothing in the recital supports the contention advanced by Mr. Gaultier and, accordingly, I am satisfied that there is no issue of European law which would require a reference to the CJEU.

40. Returning to the substance of the matter, I consider that the decision of Laffoy J., given on a particularly busy day, was impeccable as a matter of law. It is plain that s. 231(1) of

the 1963 Act cannot be invoked by a person who is not a liquidator, and outside a winding-up. Furthermore, it would have been an abuse of process to permit Mr. Gaultier to avoid both the rule in *Battle* and the consequence of dissolution by permitting him to commence proceedings in the name of a dissolved company without complying with the statutory procedure for restoring the company to the Register. As Laffoy J. observed, that would have been to allow Mr. Gaultier to circumvent the plain requirements of the Companies Act. Accordingly, I would dismiss the appeal.

The third set of proceedings: Arnaud D. Gaultier v. Allied Irish Banks Public Limited Company, Supreme Court Appeal No.: 450/2012

41. In these proceedings, Mr. Gaultier sought to issue proceedings on his own behalf or on behalf of Loire Valley Limited in respect of an alleged breach of contract by Allied Irish Bank plc ("the Bank"). The indorsement of claims sought the following relief in respect of Mr Gaultier's own claim against the Bank. It is apparent however, that the claim arises out of a withdrawal of service "before the expiry of the due given notice and against the principle of reciprocity of terms". A total of €44,000 was claimed personally under the following headings:

(a)	Loss of good will	€ 2,000
(b)	Damage for loss of value of property	€40,000
(c)	Damage for inconvenience and harassment	€ 2,000

The second-named plaintiff, in this case Loire Valley Limited, claimed a total of €127,542.69 as follows:-

(d)	Damage for loss of business during business interruption consecutive to the breach of contract (from August 06 to February 07)	€35,125
(e)	Provision for loss of business during reestablishment of business to where it should be after the said business interruption (from March 07 to February 08)	€91,817
(f)	Loss of good will	€ 2,000
(g)	Additional expenses: for research and arrangement of new bonded warehouse facility	€ 2,000

Total:	€130,942

Then allowing a deduction of debit left on account of €3,399.31, producing the total claim of €127,542.69.

42. Greater detail is apparent from an affidavit sworn by Mr Gaultier described as "setting out Ground of Plenary Summons" and containing two exhibits. It appears from a reading of that affidavit that the Bank had agreed to provide minimal facilities to the company, and in particular a bank guarantee to the Revenue Commissioners (presumably in respect of bonded products) for €300. In April, 2006, that was extended to €2,000 and a credit facility in the sum of €1,500 allowed. A personal savings account had also been opened in August, 2005.

43. On the 8th of August, 2006, however, the Bank notified the company that all banking facilities would be withdrawn after the expiry of a three-week period on the 29th of August, 2006. This, in itself, however, was not the basis of the claim. Instead, it is contended that, before the expiry of the notice period, the Revenue Commissioners withdrew the bank guarantee to the Revenue Commissioners on the 10th of August, 2006. It is said that it is a consequence of the breach of contract, negligence, and breach of duty that the company suffered and endured the following: business interruption with loss of customers; the cancellation of a non-proprietorial warehouse keeper between Drink Trade Logistics ("DTL") and the Office of the Revenue Commissioners; the cancellation of a transfer of the full stock to DTL premises worth in excess of €50,000; and the detention of the full stock of wine by Customs and Excise for the Revenue Commissioners awaiting for new facilities to be arranged.

44. The exhibits to the affidavit contain a letter of the 8th of August, 2006, from the Bank to the secretary of the company, informing them that the Bank was exercising its contractual right to close the account maintained with the branch from the close of business on the 29th of August, 2006, and that the company should arrange alternative banking facilities.

45. A letter of the 16th of August, 2006, from the Revenue Commissioners to Mr. Gaultier at the company, was also exhibited and refers to an e-mail of the 11th of August which, it appears, in turn referred to the cancellation of the bank guarantee and also the cancellation of the company's direct debit deferred payment arrangement by an entity referred to as "A.E.P. bureau".

46. The letter set out three options in respect of duties suspended excisable product held by the company at the tax warehouse of Wincanton, namely: to pay all excise duty and VAT on the above-mentioned product; to return it to suppliers; or, alternatively, to sell the product to an excise trader properly approved to hold duty suspended excisable product. The letter also recorded that the only correspondence from the company had indicated that the possibility of liquidating the company was being considered. No reference had been made to the duty suspended excisable product. The company and Mr. Gaultier were notified that if one of the options offered was not taken in respect of the duty suspended

excisable product before the closure of the Wincanton Tax Warehouse, it was Revenue's intention to move this product to the State Warehouse.

47. From this limited material, a number of things are nevertheless apparent. First, it appears that the core of the dispute is that it is suggested that a bank guarantee in favour of the company in a modest amount was cancelled prematurely, along with a direct debit. It is not apparent how this could give rise to any claim on behalf of Mr. Gaultier personally. Furthermore, given the dates involved, it is plain that a very significant issue arose in relation to the Statute of Limitations since the alleged breach appeared to have occurred in August, 2006.

48. Mr. Gaultier sought to issue proceedings on the 9th of August, 2012, which, on the basis of the allegation of breach set out in the plenary summons, was the very last day upon which proceedings could be commenced. It appears that the Central Office refused to accept the proceedings because one of the plaintiffs was a limited company which was not represented by a lawyer, applying, in this respect, the decision in *Battle*. As it happens, there was a more fundamental problem because, as we now know, the company at that point stood dissolved.

49. It appears then that Mr. Gaultier appeared in the High Court on the 9th of August, before de Valera J., who was sitting as the "vacation duty" judge. It is apparent from both the official transcript and Mr. Gaultier's own transcript that the judge made considerable efforts to try and understand what was, on any view, a rather unusual application, and furthermore had considerable difficulty in understanding Mr. Gaultier both in relation the detail of his argument, and because of his strongly accented English. This is an observation, and is in no sense a criticism, of Mr. Gaultier, who was seeking to take some complex steps in a legal system in which he was not qualified and with which he was unfamiliar through a language which was not his mother tongue. It seems clear, however, that these difficulties contributed to the confusion in court on that day.

50. The judge struggled manfully to understand the nature of the application. First, he said that he did not understand why the plaintiff needed the leave of the court to issue proceedings. He was told by Mr. Gaultier that the Central Office had refused to accept the summons by reference to the "decision of the Supreme Court 1963", which must be a reference to the decision in *Battle*. Mr. Gaultier then referred to the expiry of the limitation period. The judge sought to ascertain the date upon which the limitation period would expire. He then asked, perhaps not unreasonably, why Mr. Gaultier had left it until the very last minute to commence proceedings.

51. At that point, there was a further unfortunate turn in that Mr. Gaultier referred to his application before Laffoy J. on the 31st July, and said, revealingly, that because of "the 1963 decision" he had "tried to make some application in other ways tried to get permission of the court on a general basis, I did that on the 31st of July with Ms. Justice Laffoy, an application on a general basis to represent the Company in a court of law …". At this point, the judge enquired if an application had been made to Laffoy J. to allow him to represent the company and if that application was refused. When Mr. Gaultier

confirmed this, the judge enquired if the application had been appealed and Mr. Gaultier replied:- "not yet because there's the four-day rule of appeal".

52. The judge then reverted to his concern that he did not understand why the Central Office would not accept lodgement of the entry of a plenary summons and the following exchange took place:-

> "Judge: Well, representation is different from filing, insofar as I can understand your application to me. Appearing in court on behalf of the Company is one thing. Lodging documents on behalf of the company is different. I don't know why the Central Office won't accept documents that you're lodging. That's my difficulty, and I can't make an order until I understand what I am doing.
>
> Mr. Gaultier: Should I go back to them?
>
> Judge: Well, it might be a good idea. If you can get some more information that will help me. I'll still be here, and I'll deal with it insofar as I can. My difficulty is I don't know why they're not allowing you to enter plenary summons on behalf of yourself or the Company and until I know that, I can't deal with the matter. My Registrar tells me that these documents have to be lodged by a solicitor and that that's the relevant rule of court. If that is the relevant rule of court, I can't, unless there is a provision that you can show me in the rules that allows me to circumvent to overcome that rule or difficulty, I can't give you permission. It might be a good idea in the circumstances to reconsider your situation in relation to a solicitor. It shouldn't be too expensive to get a solicitor to just do this one particular aspect of the matter.
>
> Mr. Gaultier: Thank you.
>
> Judge: I'm sorry I can't be of more assistance to you."

53. The order of the High Court was made up and provided:-

> "Upon Motion of the first named Plaintiff in person made ex parte to the Court on this day for leave to issue the within proceedings and upon reading the Affidavit of Arnaud D Gaultier sworn 9th day of August 2012 and the documents and exhibits referred to therein and the draft Plenary Summons herein and upon hearing said first named Plaintiff in person the Court doth make no Order herein and noting the fact that one of the Intended Plaintiffs is a Limited Company indicates to the first named Plaintiff the necessity to engage a Solicitor for the purpose of filing the intended proceedings".

The judge's note, obtained by Mr. Gaultier for the purposes of this appeal, records that Mr. Gaultier was a French national who spoke English with a heavy accent and that Mr. Gaultier first appeared in the morning and the judge "persuaded him to return to the Central Office to try and regularise his position". It is recorded that Mr. Gaultier then

returned again in the afternoon and the judge pointed out to him that it was necessary to retain the services of a solicitor. He concluded:-

> "I did everything reasonably possible to emphasise to Mr. Gaultier the necessity of obtaining proper legal advice and assistance but he either did not understand the importance of such advices or, perhaps, was unable to make the necessary arrangements.
>
> As the intended matter was not embarked upon, no formal order was made".

Battle v. Irish Art Promotion Centre Limited [1968] I.R. 252

54. The decision in *Battle* has loomed large in these appeals. Mr. Gaultier has strongly criticised the decision and must, I think, be taken as inviting the court to reverse it. It is true, as he says, that it is a short judgment taking no more than two pages of the *Irish Reports*, and is moreover a decision given a relatively long time ago.

55. However, any such argument faces a much more formidable hurdle in that the decision was recently reconsidered by this court in *Allied Irish Bank plc v. Aqua Fresh Fish Ltd.* [2018] IESC 49, [2019] 1 I.L.R.M. 19 ("*Aqua Fresh*"), and in a unanimous judgment of the court, Finlay Geoghegan J. upheld a decision of McKechnie J., sitting in the Court of Appeal (Ryan P. and Hogan J. concurring), that the rule in *Battle* continued to apply, subject, however, to an exception that it was acknowledged that a court had a discretion to be exercised in exceptional circumstances to permit a legal person to be represented by a natural person other than a barrister or a solicitor with a right of audience in the courts. This conclusion of law, it should be said, also accords with the general practice of the courts discussed in that judgment. Finlay Geoghegan J. considered the jurisprudence of the courts and the practice of permitting representations in cases to avoid injustice. She also carried out a careful survey of the law and concluded that it was more appropriate to speak merely of exceptional circumstances rather than rare and exceptional circumstances which had been a term hitherto employed (para. 42).

56. The judgment in *Aqua Fresh* also reviewed the law in other common law jurisdictions, and noted that an approach similar to that in *Battle* appeared to have been adopted in most other common law jurisdictions. In particular, in the United Kingdom it had been reaffirmed relatively recently in a decision of the Court of Appeal of England and Wales in *Radford v. Freeway Classics Ltd*.; *Radford v. Samuel & Anor*. [1994] 1 B.C.L.C. 445. Sir Thomas Bingham M.R. (as he then was) explained that the practice was not a freestanding rule designed to buttress the right of audience of members of the legal profession. It was, instead, a corollary of the fundamental feature of company law that a company is a separate legal entity from its shareholders. It followed that whereas a natural person can appear in court either through a lawyer with a right of audience or by himself or herself, an artificial legal person does not have the option of appearing personally and, rather, can only therefore appear through a solicitor or barrister with a right of audience.

57. Furthermore, the capacity to limit the liability of a company, which is one of the very valuable benefits of the capacity to incorporate, has consequences as well as advantages. As Sir Thomas Bingham M.R. (as he then was) put it, the rule rested on "a basis of fairness and good sense". In a passage, cited with approval by Finlay Geoghegan J., he said:-

> "A limited company, by virtue of the limitation of the liabilities of those who own it, is in a very privileged position because those who are owed money by it, or obtain orders against it, must go empty away if the corporate cupboard is bare. The assets of the directors and shareholders are not at risk. That is an enormous benefit to a limited company but it is a benefit bought at a price. Part of the price is that in certain circumstances security for costs can be obtained against a limited company in cases where it could not be obtained against an individual, and another part of the price is the rule that I have already referred to that a corporation cannot act without legal advisors. The sense of these rules plainly is that limited companies, which may not be able to compensate parties who litigate with them, should be subject to certain constraints in the interests of their potential creditors."

58. In any event, whatever justification is to be found for the rule, it is clear that it has recently been reaffirmed in a number of jurisdictions, and most recently in this court. Accordingly, any contention that it should be overruled cannot possibly succeed.

59. The argument that the law could not apply, or perhaps should not be applied, to single-member companies has no greater merit. It is clear that this does not distinguish the company from those companies discussed in the *Aqua Fresh* and *Battle* cases. Any such company has the two essential features of separate corporate identity and capacity to limit liability that were identified as underpinning the rule. There is no suggestion in *Aqua Fresh* that the principle set out there is not of general application to all corporate entities.

60. However, Mr. Gaultier also argues, at least as I understand it, that if *Aqua Fresh* now establishes that there is an inherent jurisdiction to permit an individual to represent a company in certain circumstances, then the very existence of that discretion means that he should have been permitted to issue the plenary summons as otherwise he would not have been in a position to argue in court that the inherent discretion of the court should be exercised in his favour.

61. It is necessary to return to the events which occurred on the 9th of August, 2012, as recorded in the transcripts. The judge plainly struggled to understand precisely what was being sought and the problem which had arisen. That is not surprising. There was only an oblique reference to a "legal precedent of 1963", the reference to the hearing before Laffoy J. was potentially confusing and unhelpful, and there was only a general reference to a "rule of court". The judge correctly expressed some puzzlement that the plenary summons had not been issued and, while offering to assist Mr. Gaultier as far as possible, understandably expressed some concern that the application was being made at the last minute without any explanation as to why no attempt had been made to commence proceedings earlier, but finally made the practical suggestion that, insomuch as it

appeared that the absence of a solicitor was preventing the urgent issuance of the plenary summons, perhaps a solicitor might be retained at least for the limited purpose of issuing those proceedings.

62. The judge cannot be criticised for anything said or done in the case, nor for failing to appreciate that the rule in *Battle* was concerned, or that it was being applied by the Central Office to the issuance of proceedings, and still less that, some six years after the short and rather unsatisfactory hearing in the High Court in 2012, this court would make it clear in *Aqua Fresh* that, while the general rule remained, there was an inherent discretion to permit an individual to appear on behalf of a company.

63. A judge that has received no papers or any advance warning of the issue to be raised on an *ex parte* application like this will not know even the area of law to be addressed, still less the precise issue, and accordingly is very dependent on a clear, accurate, and fair account of the issue from any applicant whether represented or not.

64. Nevertheless, it does appear to me that once it is accepted that there is a jurisdiction to permit an individual to appear and represent a company, even in exceptional circumstances, it must follow that the practice of blanket refusal to permit the issuance of proceedings, or indeed the entry of appearance to such proceedings, by or on behalf of a company is too rigid. Mr. Gaultier has also drawn to our attention two orders, one made in 1999 and the other made in 2000, by Kelly J. (as he then was) which appear to have given liberty to an individual to issue proceedings in the name of a company on this basis.

65. It appears to me that this precedent, had it been brought to the attention of the High Court judge, is one which could have been followed. Indeed, I should say that had the matter been set out as clearly and as painstakingly to the High Court judge as it has been on this appeal, and the materials assembled for this appeal put before him, I do not doubt that he would have taken this course. It is clear that the judge wished to assist Mr. Gaultier so far as he could to avoid having the claim statute-barred.

66. It remains to consider what order should now be made. As the trial judge observed, the application did not proceed, and in that sense no order was made, but insomuch as it can be said that an application was being made for leave to issue proceedings, then I think the order must be taken as refusing Mr. Gaultier leave to do so. It is not clear, however, that any useful purpose would now be served by setting aside that order, since the statute of limitations, which Mr. Gaultier calculated was about to cause his claim to expire on the 9th of August, 2012, must in all probability have now run.

67. Furthermore, Mr. Gaultier properly brought to our attention that in any event he had taken the precaution of issuing separate Circuit Court proceedings because, at least as I understood it, he had found that it was possible to issue the proceedings in the Circuit Court without the co-operation of the Circuit Court Office or the permission of any judge. Insomuch as those proceedings may still be extant or have proceeded, they would not allow any issue of fact or law to be ventilated. Indeed, it would not normally be possible to have two sets of proceedings in being litigating precisely the same issue.

68. Furthermore, and in any event, as already observed, the rule in *Battle* reaffirmed in *Aqua Fresh* is not the most substantial problem facing any proceedings. The claim, whatever its merits, seems entirely related to the withdrawal of a guarantee provided for the company and the impact it is said that withdrawal had on the business of the company. However, as of the 9th of August, 2012, the company was dissolved and could not have commenced proceedings even if represented by a full team of lawyers, and the *Battle* issue did not arise.

69. Nevertheless, Mr. Gaultier has appealed against the order of the 9th of August, 2012, insomuch as it is to be treated as an order refusing him leave to issue proceedings in which he was named as an individual co-plaintiff. It might be said that the refusal to permit the issuance of the proceedings could be justified on other grounds, namely the non-existence of the company, but that issue was not visible in the proceedings of the 9th of August, 2012. Furthermore, it is not at all clear how, even on every assumption favourable to him, the events described could give rise to any personal claim.

70. But Mr. Gaultier has clearly engaged in litigation on a number of fronts, and has become critical and suspicious of the procedures of the courts. It is apparent that much of his difficulty can be traced to his original unwillingness to follow a simple procedure for restoring a company to the Register and that his repeated, if ingenious, applications and proceedings have only increased the complexity of the net of entanglement in which he is caught.

71. Nevertheless, it is important, perhaps particularly in a case such as this, that the law be scrupulously applied. In those circumstances, I propose to allow the appeal and to set aside the order of the 9th of August, 2012, even though, for the reasons already touched on, that can have no practical or beneficial consequence, and if Mr. Gaultier were now to issue the proceedings they would appear doomed to failure on multiple grounds.

72. Finally, it is perhaps appropriate to comment on one further aspect of the case. While it is not set out in detail in this case, it does appear from the background set out above that Mr. Gaultier may have suffered some loss which moreover may have led to an offer of settlement from the Revenue which, as now appears, ill-advisedly, Mr. Gaultier or the company refused to accept. The flurry of litigation activity in July and August of 2012 may have been prompted, at least in part, by a desire to get back to that point. It now appears likely that any possible claim would be long since statute-barred.

73. However, it may be that if Mr. Gaultier were even now to take the step of seeking to restore the company to the register and comply with all necessary formalities, and if the company itself had no liabilities, that it might be possible, in those circumstances, that the Revenue Commissioners would consider making some payment, on an *ex gratia* basis, if it were the case that they were satisfied that there had been any error on their part which had caused loss to the company.

74. I raise this matter somewhat tentatively for two reasons. First, we have only heard one side of the story, and then only part of it. Even then, this aspect was not central to the

particular appeals before us and it may well be that the situation is much more complex than the simple outline set out above might suggest. Second, courts can only deal with legal rights and remedies and plainly the question of any discretionary payment would be a matter entirely for the Revenue Commissioners and only if they considered that that was an appropriate step.

75. Nevertheless, I make this suggestion because it is plain that Mr. Gaultier has devoted considerable time and effort to the pursuit of litigation, most of which now appears to be coming to an end without providing any satisfactory resolution for any genuine grievance he has. He would, perhaps, be better advised to pursue a course of compliance with the statutory requirements, and cooperation, negotiation, and, if possible, compromise. Had he taken this course years ago, it is possible that he, through his company, would be much better off. Even now, it may be a more productive focus for his efforts.

76. For the moment however, I would make the following orders:

(a) Dismissing the appeal in the first set of proceedings, Supreme Court Appeal No.: 353/2012: *Gaultier v. Registrar of Companies* from the order of Murphy J. of the 19th of July, 2012;

(b) Dismissing the appeal in the second set of proceedings, Supreme Court Appeal No.: 449/2012: *In re.: Arnaud D. Gaultier and the Companies Act 1963-2009* from the order of Laffoy J. of the 31st of July, 2012; and

(c) Allowing the appeal in the third set of proceedings, Supreme Court Appeal No.: 450/2012: *Gaultier v. Allied Irish Banks plc* from the order of de Valera J. of the 9th of August, 2012, refusing leave to issue proceedings.