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## The 'best evidence rule' – 'ACC Bank Plc v Michael Byrne and Sean O'Toole' and the Bankers Book Evidence Act

This case related to a claim by ACC Bank plc (the "**Bank**") for a summary judgment against the first named Defendant on foot of a personal guarantee of €250,000 in respect of a loan facility to a company of €3.9m. One of the grounds of defence related to the Bankers' Book Evidence Acts, 1879-1989 (the "**BBEAs**"). The Defendant argued that the evidence produced by the Bank did not satisfy the provisions of the BBEAs and was therefore inadmissible.

Cregan J. held that the purpose of the BBEAs was to relax the "*best evidence rule*" (which requires original documents to be produced in court) and the rule against hearsay. However, he held that the BBEAs provided for certain safeguards to ensure the accuracy of the evidence adduced in reliance on the BBEAs.

On the facts, Cregan J. held that the Bank's evidence was deficient. This was because in referring to copies of a statement of account and a spreadsheet detailing the total amount due, the deponent did not say:

- ▣ that at the time of "*the making of the entry the banker's book was one of the ordinary books of the bank*";
- ▣ that the entry was made in the usual and ordinary course of business; and
- ▣ the banker's book was in the custody or control of the bank.

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discussed in this article  
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In the circumstances he held that the formal requirements of section 5 of the BBEAs had not been complied with.

The case illustrates the difficulties inherent in relying on the BBEAs and the technicality of their provisions. It should be noted that the defendant in this case did not seek to allege that the monies were not in fact advanced or that his guarantee was in some other way invalid.

Banks seeking to rely on the BBEAs must try to ensure that:

- ▣ an employee or officer of the plaintiff gives evidence of the amount due and owing by the defendant;
- ▣ an employee or officer must also formally prove the contractual basis for the defendant's liability (i.e. the facility letter, loan agreement, guarantee etc.);
- ▣ in order to guard against the argument that this evidence is not "*best evidence*", if possible the original documents should be available for court;
- ▣ if an argument is made that the evidence of the bank's witness is hearsay, the evidential steps set out in sections 4 and 5 of the BBEAs should be followed insofar as possible. These sections provide that:
  - a copy of an entry in a banker's book will not be received in evidence unless it is first proven that the book was at the time of the making of the entry one of the ordinary books of the bank, that the entry was made in the usual and ordinary course of business and that the book is in the custody or control of the bank (this proof to be given by a partner or officer of the bank); and
  - a copy of an entry in a banker's book shall not be received in evidence unless it is further proven that the copy has been examined with the original entry and is correct (proof to be given by some person who has examined the copy with the original entry).

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