

## Case law

### Case Details

**National ID:** High Court, Judgment 685

**Member State:** Ireland

**Common Name:** Cronin v Dublin City Sheriff & anor

**Decision type:** Court decision in appeal

**Decision date:** 17/10/2017

**Court:** High Court

**Subject:**

**Plaintiff:** Patrick Cronin

**Defendant:** Dublin City Sheriff and Tanager DAC

**Keywords:** unfair terms; loan and mortgage contract; re-possession order granted; injunction to prevent possession of family home; principles of finality and certainty; abuse of process;

### Directive Articles

Unfair Contract Terms Directive, [link](#)

### Headnote

In refusing to set aside a repossession order in respect of a family home on the grounds that the courts granting the order had not assessed the mortgage contract under the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (which transpose Directive 93/13 in Irish law), the High Court held that the proceedings constituted an abuse of process in circumstances where the plaintiff had not made those arguments in the various proceedings dealing with the repossession order.

### Facts

In 2014 the Circuit Court granted an order of possession in respect of the plaintiff's property. The plaintiff did not attend the Circuit Court hearing but appealed the possession order to the High Court which affirmed the order. No issues of European law were raised in those proceedings.

In 2016, the plaintiff commenced proceedings in the High Court, claiming an agreement with the second named defendant, Tanager DAC whereby Tanager agreed not to take possession of the property provided the plaintiff made weekly payments of €600 to Tanager. The proceedings were dismissed. The plaintiff was represented at the hearing of that application and again, European law issues were not raised. In March 2017, the plaintiff appealed and for the first time raised arguments relating to the Unfair Terms Regulations and the Directive. That appeal had not been heard at the time of this hearing.

In April 2017, the plaintiff commenced these proceedings seeking an injunction to prevent repossession of his family home. He submitted that the European Court of Justice case law on the Unfair Terms Directive required domestic Courts, when considering whether to enforce a consumer contract, to consider whether the contract may contain unfair terms and that the Court was obliged to raise the issue on its own motion, even if the parties had not done so. The plaintiff argued that, as no assessment as to the impact of the Unfair Terms Directive was carried out by any judge or county registrar involved in the proceedings, this was a breach of EU law and the repossession order was unenforceable.

### Legal issue

The issue before the Court was whether applying for an order to set aside a repossession order in respect of a family home on the grounds that the mortgage contract had not been assessed by the Courts in terms under the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (which transpose Directive 93/13 in Irish law), in terms of fairness, when the applicant had never raised such an argument in any previous proceedings, was an abuse of process.

### Decision

The High Court held that the legal issues raised by the plaintiff, under EU law, could have been raised in the earlier proceedings. Therefore, the only question before the Court was whether the normal principles concerning finality of proceedings and abuse of process required adaptation by reason of ECJ jurisprudence, concerning the Unfair Terms Directive.

The Court reviewed the case law of the ECJ and observed that the principles of finality and certainty had been emphasised repeatedly by those authorities. The Court found that, in the present case, the plaintiff had the opportunity to raise points of European law in the original Circuit Court proceedings but failed to participate in those proceedings; he had another opportunity on appeal to the High Court, but while he participated in those proceedings and did so with the benefit of legal representation, he did not raise the EU law arguments.

The Court held that the jurisprudence of the ECJ concerning the Unfair Terms Directive did not require an exception to this principle of finality in the present circumstances. Accordingly, the Court dismissed the proceedings.

Moreover, the Court noted that it was not deciding the question of the extent of any obligation placed upon the Irish Courts in repossession cases that were still "live" before the Courts by virtue of the Directive. The Court's decision was limited to a conclusion that it would be an abuse of process to allow the plaintiff to maintain the proceedings where the arguments had not been raised in previous proceedings.

URL: <http://www.courts.ie/Judgments.nsf/0/BCAB4E95BFC2A862802581DE004024EE>

Full text: [Full text](#)

### Related Cases

No results available

### Legal Literature

No results available

### Result

The Court refused to set aside a repossession order in respect of a family home on the grounds that the Courts granting the order had not assessed the mortgage contract under the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995, on the basis that the proceedings constituted an abuse of process in circumstances where the plaintiff had not made those arguments in the various proceedings dealing with the repossession order.