

Case law**Case Details**

National ID: [2016] IEHC 320

Member State: Ireland

Common Name: N/A

Decision type: Other

Decision date: 14/06/2016

Court: High Court

Subject:

Plaintiff: Start Mortgages Limited

Defendant: Hanley

Keywords: consumer, contract law, unfair terms

Directive Articles

Unfair Contract Terms Directive, [Article 3, 1](#).

Headnote

A pre-formulated clause in a contract was deemed to be an unfair term when it prejudiced another clause of the contract.

Facts

This case concerned a challenge to a High Court judgment which was entered against the Defendant for failure to repay monies borrowed pursuant to a loan agreement entered into between the Defendant and Plaintiff on 18 September 2007.

The Defendant asserted that he had never received a letter of demand for repayment of the loan monies borrowed. The High Court noted that the notice of demand went, in error, to another Mr Hanley that had no connection to the Defendant.

The High Court considered whether the loan agreement required a demand notice to be made. It also considered whether a pre-formulated term in the loan agreement which allows the Plaintiff to commence proceedings notwithstanding other terms in the contract, such as the term relating to service of a notice of demand, is an unfair contract term.

Legal issue

Did a pre-formulated clause in the loan agreement which allows the Plaintiff to commence proceedings notwithstanding other contradictory terms in the contract, amount to an unfair term where it prejudiced one of the parties?

Decision

It was held that the Defendant had an arguable defence that the Plaintiff did not proceed in accordance with the requirements of the loan agreement.

The High Court clarified that the Plaintiff was under an obligation to issue a demand and a summons was not an adequate form of notice of demand.

The High Court was of the opinion that to the extent a clause extinguishes the need for a letter of demand to be served, it is an unfair contract term in breach of regulation 3(2) of the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995, as amended, given the pre-formulated nature of at least this aspect of the loan agreement.

URL: <http://www.courts.ie/judgments.nsf/6681dee4565ecf2c80256e7e0052005b/6321c6af18126e9980257fd50048fcc8?OpenDocument>

Full text: [Full text](#)

Related Cases

No results available

Legal Literature

No results available

Result

The High Court set aside the Master's order, declined to grant the summary judgment sought by the Plaintiff, and referred the matter to plenary hearing.