

Case Details

Case Details

National ID	[2014] IEHC 330
Member State	Ireland
Common Name	link
Decision type	Other
Decision date	09/05/2014
Court	High Court
Subject	
Plaintiff	National Asset Loan Management Limited
Defendant	Coughlan & anor
Keywords	consumer, unfair terms

Directive Articles

Unfair Contract Terms Directive, [Article 2, \(b\)](#)

Headnote

The Court found that the second named Defendant satisfied the threshold to show that she could be a consumer for the purposes of the Consumer Credit Act and the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995, despite having signed certificates stating the contrary. The second named Defendant could thus be allowed to defend the action of the Plaintiff .

Facts

A loan facility letter dated 12th February, 2008 by Anglo Irish Bank agreed to make loan facilities available to the Defendants as follows:

- (i) Loan facility in the amount of €172,241 (Facility A);
- (ii) Loan facility in the amount of €731,000 (Facility B).

By way of letters of amendment dated 16th June, 2008, 16th December, 2008, 26th February, 2009, 27th April, 2009, and 5th August, 2009, the loan facility was amended. A final amendment letter of 6th January, 2010, provided that whilst the facilities were repayable on demand, the facilities were to be reviewed on or before 31st July, 2010.

The application before the Court only related to Facility B, as Facility A was fully repaid.

Certificates had been signed by the Defendants confirming that they were not consumers for the purpose of the Consumer Credit Act.

Legal issue

Can a party rely on being a consumer even they have signed certificates to declare that they are not consumers for the purposes of the Consumer Credit Act?

Decision

The judge in this case sent the proceeding forward for plenary hearing, noting that the second named Defendant was arguably a consumer despite signing the certificate indicating otherwise. It was not decided as to whether or not the whether the second named Defendant could be permitted to contradict and disavow the certificate which she had signed.

URL: <http://www.courts.ie/judgments.nsf/6681dee4565ecf2c80256e7e0052005b/03506b004dc28ef680257d0e0038faca?OpenDocument>

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Result

The judge in this case sent the proceeding forward for plenary hearing.