Client Update

Summer 2017

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Contract Law

Farmer who provided guarantee for his brother wins battle against Bank

The Court of Appeal has ruled in favour of a farmer who provided a guarantee over his brother's loan in his defense to his case against ACC Bank.

In the case of ACC Loan Management Ltd v Sheehan [2016] IECA 343 the Court decided that the famer did have an arguable defense to the case and therefore was entitled to a full hearing of the matter.

ACC Bank had sought judgment against Gerard Sheehan for €166,746 along with interest on foot of a guarantee he signed in March 2008.

However it was a requirement of the loan that the Bank would receive a letter "from the Guarantor Solicitor confirming the Guarantor received independent legal advice prior to execution of Guarantee & Indemnity document".

The court held that the failure of the bank to ensure that the guarantor had been provided with independent legal advice may have breached the terms of the guarantee and therefore was void.

Mr Sheehan had pleaded in his affidavit that he had not received independent legal advice and was not aware of its consequences

ACC Bank had relied on assurances from the guarantor's brother's solicitor; however this legal professional was not independent as required under the terms of the guarantee.

The court also held this advice was "wholly deficient in that he was never advised that his entire farm and livelihood was potentially being put at risk under the guarantee"

The proceedings had been taken under a summary summons, which is a fast-track method for the courts to deal with debt claims. If a defendant has no defense to a claim, a debtor can be granted judgment relatively quickly.

However if a defendant can show that they have an arguable defense to the case, the court will order a full hearing of the matter.

From left to right:
Geraldine Arthur-Dunne - Solicitor
Paul McKnight - Solicitor
Mark Felton - Solicitor
Mary Redmond - legal executive

Making a unilateral change to your company's Terms and Conditions

A well-drafted set of terms and conditions will minimise the potential for disagreement and ensure that if your dispute ever does go to court that the agreement between the parties was clear from the outset.

However, for a contract of indefinite duration, many companies will wish to amend their general terms and conditions in response to market changes or business practices.

Sometimes such a contract will include a clause that will allow the company to unilaterally change. If yours do not, it may be worthwhile considering putting one in going forward.

Such clauses may seem unfair as it affords far too much bargaining power to the party in circumstances where even the most diligent customer is unlikely to have read the small print prior to agreement.

However, the EC (Unfair Terms in Consumer Contracts) Regulations 1995 do allow for such clauses to be enforceable in certain circumstances.

These regulations prevent a seller or company from relying on manifestly unfair contractual terms that they have imposed upon their customers.

The regulations provide that any contractual term will be regarded as unfair if "contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer".

A unilateral amendment clause imposed by a seller may be deemed fair depending on the circumstances.

If the consumer contract is of indefinite duration and the seller or company is required to give the consumer reasonable notice of the changes, and also the consumer is free to dissolve the contract at their behest, then the clause will likely be found fair and enforceable.

This 'notice period' is usually given in contracts as 30 days for a consumer to object to the changes upon being notified.

Defamation

Facebook defamation award is wake-up call to social media users

The Circuit Court has made a substantial award in compensation to a man who was defamed by a Facebook post.

In awarding the maximum award of €75,000 Judge John O'Hagan warned that users of social media must take responsibility for the statements that they publicise on the internet.

Defamation law does not distinguish between print and online publication, and the judge urged internet users "to be very careful".

The past number of years has seen a remarkable increase in the amount of defamation proceedings taken as a result of publications on social media.

The case shows how serious the courts are taking online defamation, as well as their willingness to penalise the perpetrators.

Personal Injuries

Man has compensation reduced by 50% for failing to look where he was going

The Circuit Court recently reduced a €50,000 award by 50% after ruling that a man had failed to look where he was going at a train station when boarding a train.

The plaintiff had taken a case against Irish Rail after he had sustained an injury at Tara Street Station in Dublin.

The man had disembarked his train only to realise that he was at the wrong station. He quickly turned to re-board but slipped and fell through the gap between the train and the platform.

The plaintiff was able to bring himself back onto the platform and board the train to continue his journey. He reported the incident at his destination and was required to go to hospital the following day for treatment for a fracture to his shoulder.

He applied to the Injuries Board to assess the damage but Irish Rail declined to have the matter assessed.

The court held that it was an absolute requirement for Irish Rail to warn passengers to mind the gap between the train and the platform. In this case they had failed to do so. The judge pointed out that there had been eleven previous incidents of passengers falling between a train and a platform in the past five years; however no warning were being given by the train drivers for passengers to mind the gap as they alighted.

The court awarded the plaintiff €50,000 but reduced this award by 50% on the basis of contributory negligence. This means that the court found that the plaintiff was partly to blame for the accident as he had failed to look where he was going because he was distracted.

This finding reduced the award in half to an overall figure of €25,000.

Rise in Personal Injuries compensation evident from new Book of Quantum

A much-anticipated new edition of the Book of Quantum has been published following recent criticism from the High Court for the failure to update the previous book.

The Book of Quantum sets out the guidelines for compensation awards by categorising different types of injuries.

The new Book of Quantum is the first revision of the 2004 original in the last 12 years. The old edition was considered by many practitioners to be so out-of-date and removed from the actual awards that it had effectively become obsolete.

A judge is obliged to consider the Book of Quantum when awarding damages to a plaintiff. It is expected that it will become more commonplace for the Judge to ask the presenting barristers to refer to specific figures in the Book of Quantum while giving their closing arguments.

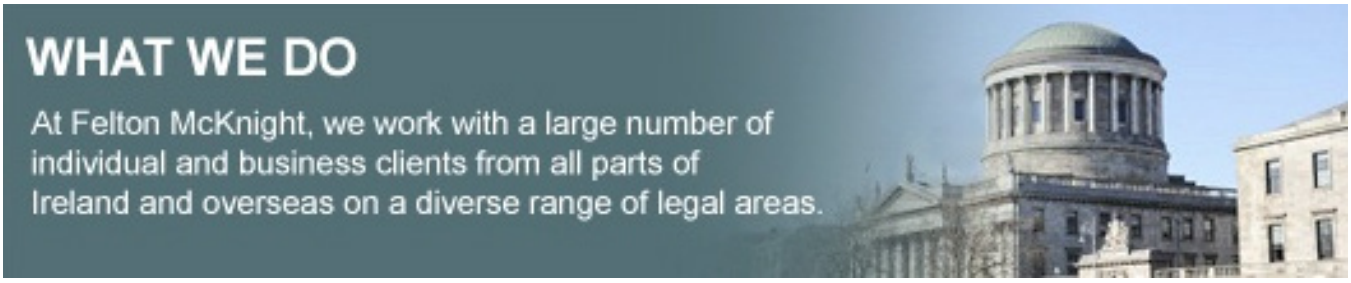
The new edition was compiled from an examination of over 50,000 closed personal injury claims during 2013 and 2014.

A comparison between the two editions is interesting as an indication of the changes in awards over the last decade. Under the new guidelines, a person who receives a fracture to their lower arm will have a recommended figure up to €38,000, which is an increase of about a third from the previous recommendation.

A minor whiplash or sprain in the neck following a road traffic incident could be awarded up to €15,700, an increase of €1,300. Whiplash injuries have a reputation of being notoriously difficult to disprove in a courtroom.

It is hoped that the revised Book of Quatum will bring stability to the personal injuries market and ensure fairness when awarding compensation.

It has faced criticism for being a missed opportunity to tackle the rising insurance costs, as the data is merely reflective of recent awards and not benchmarked against other jurisdictions.



Felton McKnight
Church Road, Greystones
Co. Wicklow, A63 P089, Ireland

DX 205001 Greystones
Tel: 012874341 / Fax: 012874073

Office Mobile: 0876862139
Office Email: info@feltonmcknight.ie
Paul McKnight Email: paul@feltonmcknight.ie
Mark Felton Email: mark@feltonmcknight.ie
Geraldine Arthur-Dunne Email.: Geraldine@feltonmcknight.ie
Mary Redmond Email: mary@feltonmcknight.ie
Adrienne Noonan Email: Adrienne@feltonmcknight.ie

www.feltonmcknight.ie