Neutral Citation: [2015] IEHC 136

THE HIGH COURT

[2010 No. 2515 S]

BETWEEN

ALLIED IRISH BANKS plc

PLAINTIFF

AND

PATRICK PIERSE AND HELEN PIERSE

DEFENDANTS

JUDGMENT of Mr Justice David Keane delivered on the 14th January 2015

Introduction

1. The plaintiff in these proceedings ("the bank") seeks judgment in the sum of €1,986,132.55, together with continuing interest, against the defendants arising out of a loan facility provided by the bank to the defendants, as husband and wife, in April 2006. The purpose of that facility was to provide bridging finance to enable the defendants to purchase two blocks of apartments on the French island of Corsica, pending the execution of a contract for the sale of a 7 acre plot of land ("the 7 acres") on the first named defendant's farm ("the farm"), appurtenant to the defendants' home at Ballinorig House, Ballinorig, Tralee, County Kerry, and the sale of a separate property owned by the first named defendant at Castlegregory, County Kerry.

2. The following facts are not in dispute between the parties. By letter of sanction dated the 6th April 2006 and addressed to the second named defendant, the bank offered the defendants a bridging loan facility in the sum of €2 million on specified terms. That letter recites that, within three months from the date upon which it was drawn down, the loan was to be repaid in full from the net sale proceeds of the land and property already described, with interest to roll up in the interim. The letter of sanction also states that the loan is subject to the bank's "*General Terms and Conditions Governing Business Lending*" as set out in a booklet, dated the 4th May 2004, a copy of which was stated to be enclosed.

3. The facility was drawn down in full on the 10th April 2006. The defendants each signed the letter of sanction on the 11th April 2006. However, in circumstances addressed in greater detail below, the loan facility was not repaid in accordance with its terms. In consideration of successive extensions of the loan period and repayment terms, each of the defendants signed subsequent letters of sanction dated the 13th November 2007, the 22nd October 2008, the 23rd December 2008, and the 30th January 2009. On the 9th March 2009 the bank sent letters of demand to each of the defendants requiring repayment of the balance of €2,053,249.68 then outstanding on the loan. The defendants do not dispute that the sum now claimed by the bank is currently outstanding on the loan account at issue. However, they do contend that the bank is not entitled to judgment against them.

The history of the proceedings

4. The proceedings commenced by way of summary summons issued on the 28th May 2010. In the special indorsement of claim, the bank sought judgment in the sum of €2,053,249.68. The defendants entered a memorandum of appearance on the 28th of June 2010. Hanna J. heard the application for summary judgment on the 20th December 2012. The application was refused by the learned judge and the matter was adjourned to plenary hearing.

5. In a statement of claim delivered on the 9th January 2013 the bank seeks: judgment in the sum of €1,892,960.99 (€452,106 of the outstanding debt having been re-paid by the defendants on 21st June 2012); continuing contractual interest at current bank rates; and the costs of these proceedings.

6. A defence was delivered on the 25th February 2013. A reply to defence was delivered on the 21st June 2013, in which the bank denies each of the points of defence raised on behalf of the defendants.

7. The action was tried before me on the 6th, 7th, and 8th May 2014 and I reserved judgment in order to consider the evidence adduced and the defences raised.

The defences raised

8. While the defence delivered includes a series of general denials, including a denial of the loan agreement and an assertion in the alternative that the said agreement is unenforceable because the bank provided either no consideration or only past consideration for it, the defendants (in my view, rightly) did not rely on any of those arguments at trial.

9. The two arguments upon which the defendants did rely are the following: first, that the bank assumed, or ought to have assumed, a fiduciary duty or a duty of care to the defendants under which, in the particular circumstances of the case, the bank should not have entered into the relevant loan transaction with them; and second, that the loan agreement is invalid as between the bank and the second named defendant by operation of the relevant terms of the Consumer Credit Act 1995 ("the 1995 Act"), because the second named defendant must be considered a consumer in relation to that agreement for the purposes of the 1995 Act and did not receive the statutory protection to which she was entitled under that legislation. I propose to deal with each of those defences in turn. Just before doing so, it may be helpful to note that, since the only controversy between the parties was whether the defendants could make out any such defence, the parties agreed that the defendants should go first, and the trial before me proceeded in that way.

Background

10. The first named defendant testified that he inherited the family farm from his father in 1988. The defendants were married in 1996 and reside in the farmhouse on the farm. The farm is situated on the outskirts of Tralee and, when the first named defendant inherited it, comprised some 90 acres. The first named defendant did not see himself as a farmer and leased the farm to a cousin of his. He has earned his own modest income at various times by playing music in local pubs and hotels, by breeding dogs, and by providing gardening services, but has been otherwise effectively unemployed.

11. The second named defendant gave evidence that she had become an employee of the bank prior to her marriage to the first named defendant. She worked at different times in the bank's Killorglin and Castleisland branches. She moved from full-time work to a job sharing arrangement in 2003, before finally resigning her position in 2010. The defendants have three teenage daughters.

12. The first named defendant gave evidence that he has supplemented the family income at various times by selling off plots of land from the farm. For example, in 2004 he sold 10 acres of land to a third party, who subsequently sold it on to two identified persons, who were then property developers in the Tralee area, for a sum of €300,000. For ease of reference, I will refer to those persons, whose role is central to the main defence advanced, as "the developers." In 2005, the first named defendant sold a 15 acre site directly to the developers. The first named defendant asserts that, in return, they agreed to pay him €1.2 million in cash and to build two houses for him in Castlegregory, County Kerry. The first named defendant asserts that only one house was provided to him and that the developers still owe him the further sum of €550,000.

13. The first named defendant testified that, at the time of the loan agreement which forms the subject matter of these proceedings, 62 acres of the farm that he had inherited from his father remained in his ownership. Prior to entering into the loan agreement, the first named defendant had entered into two separate agreements with the developers. The first was an oral agreement with the developers to sell them the 7 acres for €1.8 million. The second was an agreement giving the developers (in conjunction with another developer) an option to purchase the remaining 55 acres of the farm for €12 million in exchange for a payment of €50,000.

14. It will be evident at once that the value attributed to the lands for the purpose of these transactions was far in excess of their agricultural value. While no evidence was adduced directly on this point, it appears to be accepted on all sides that what was anticipated in early 2006 was the construction of a ring road around the town of Tralee across the lands and the development upon the lands of a "medical campus", comprising a hospital and nursing home.

15. Through a contact that the first defendant made when he attended an exhibition of foreign properties in Dublin in early Autumn 2005, the defendants contracted in February 2006 to purchase two apartment blocks, consisting of nine units in total, which were then under construction on the French island of Corsica, at a total cost of €2.2 million. While each of the defendants gave evidence that the Corsican transaction was solely the brainchild of the first named defendant and while the first named defendant testified to his understanding that the relevant properties were only acquired in joint names because the applicable French law does not permit the acquisition of property by a married person in his or her own sole name, it seems to me that nothing turns on that point. If the acquisition of property by married persons in joint names is, in fact, a requirement of French law, then the defendants were plainly faced with a choice whether or not to proceed with the transaction on that basis. It is clear from the evidence that they elected to proceed and that they were therefore seeking bridging finance to acquire that foreign property as joint purchasers (and joint borrowers).

16. The defendants proposed to finance the purchase of the two apartment blocks with the proceeds of sale of the first named defendant's 7 acres, together with a further sum in cash representing the proceeds of a previous sale of land by the first named defendant.

17. Since the sale of the 7 acres had not yet been effected, the first named defendant testified that he was advised by one of the developers to approach the bank's regional commercial lending team in Cork to apply for bridging finance. However, on doing so, the first named defendant was informed that the regional commercial lending team did not deal with transactions valued at less than €5 million and was referred by the bank to its Tralee branch. There he was referred to Mr. Patrick Laide, an assistant manager in that branch. Although Mr. Laide is a distant cousin of the first named defendant and the two men knew each other socially, there had been no prior commercial dealings between them. Similarly, while the first named defendant had transferred his accounts to the bank after his marriage to the second named defendant, the defendants had not previously dealt with its Tralee branch. Prior to the loan agreement at issue, the first named defendant had never applied to the bank for a business loan.

18. While the first named defendant was not entirely clear on this point in his evidence, I am satisfied, in particular from the evidence of Mr. Laide, that a meeting between them lasting approximately half an hour took place on the 31st March 2006, having been pre-arranged by telephone. At that meeting, the first named defendant sought to borrow €1.8 million (which sum was later increased to €2 million) as a bridging facility pending the sale of the 7 acres. He informed Mr Laide that he had come to a verbal agreement with the developers for the sale of the 7 acres. Mr Laide said that the first named defendant should obtain an unconditional written contract in that regard so that the bank could have proof of the existence of the contract. The bank received confirmation that this had been done from the defendants' solicitors on the 7th April 2006. In his evidence, the first named defendant accepted that the urgency in relation to the completion of the loan agreement was at all material times on the defendants' side and not on the bank's. On the 10th April 2006, the bank effected the international transfer of the sum of €2 million on the defendants' behalf to a firm of lawyers representing the vendors of the Corsican properties. As already noted, the properties were purchased in the joint names of the defendants.

19. Unhappily, things went badly for the defendants after they entered into the loan agreement with the bank and purchased the two apartment blocks in Corsica. There were delays in the completion or fitting out of those properties. When completed, the apartments were difficult to lease and the first named defendant asserts that, in several instances, tenants were intimidated and apartments vandalised. The first named defendant testified that, in the end, the defendants were compelled to sell the properties back to the original vendor for €500,000 payable in installments over a period of 15 years, thereby incurring a substantial loss. Under cross-examination, the first named defendant accepted that he had begun to speculate in foreign property investment in anticipation of the sale of the farm lands but had not done his due diligence properly in relation to the acquisition of the apartment blocks in Corsica.

20. Equally unhappily, the anticipated sale of the 7 acres to the developers was never completed. The lands were not rezoned in June 2006, as had been anticipated, although the first named defendant testified that the rezoning of the lands did subsequently occur in February 2007. The developers did not exercise the option to acquire the remaining 55 acres of the farm lands for €12 million. 4 acres of the farm land were subsequently made subject to a compulsory purchase order ("CPO") (presumably, in connection with the construction of the ring road) and the first named defendant received €515,000 for them. Of that sum, the bank subsequently received the sum of €452,106 - representing the net proceeds of sale under the CPO - in part repayment of the defendants' loan.

A fiduciary duty or a duty of care?

21. Against this background, the defendants assert that the bank owed them a fiduciary duty or a duty of care, or both, and that the bank breached that duty, or those duties, thereby disentitling it to repayment of the monies owed to it by the defendants.

22. While Counsel for the defendants did not open any law on this issue, Mr Shipsey S.C. for the bank relied upon the decision of the Supreme Court (per Hamilton C.J., *nem. diss.*) in *Kennedy v. Allied Irish Banks plc.* [1998] 2 I.R. 48 in which (at p. 57 of the report) the Supreme Court quoted with approval the following passage from the judgment of Scott L.J. in *Lloyds Bank Plc. v. Cobb*

(Unreported, English Court of Appeal, 18th December, 1991) :

> "If a customer applies to the bank for a loan for the purposes of some commercial project, and the bank examines the details of the project for the purpose of deciding whether or not to make the loan, the bank does not thereby owe any duty to the customer. It conducts the examination of the project for its own prudent purposes as lender and not for the benefit of the proposed borrower."

23. That passage from the judgment of Scott L.J. continues in the following terms:

> "If the borrower chooses to draw comfort from the bank's agreement to make the loan, that is the borrower's affair. In order to place the bank under a duty of care to the borrower, the borrower must, in my opinion, make clear to the bank that its advice is being sought. The mere request for a loan, coupled with the supply to the bank of the details of the commercial project for whose purposes the loan is sought, does not suffice to make clear to the bank that its advice is being sought…people who engage in speculative commercial ventures must accept the consequences of the failure of their ventures just as they will accept the consequences of their success. They cannnot be allowed to transfer the burden of the failure of their ventures onto the shoulders of a bank lender which was never asked to and never assumed to give advice on the wisdom of the venture."

24. In considering the point, I derive additional assistance from the decision of Ryan J. in *ACC Bank plc v. Deacon & anor.* [2013] IEHC 427 in which he, in turn, quoted with approval the following extract from the *Encyclopaedia of Banking Law* (Issue 123, April 2013 at para. 69:

> "Where a bank assumes the role of financial adviser to its customer, it owes the customer a duty to exercise reasonable care and skill in the execution of that role. However, a bank does not usually assume the role of financial adviser to a customer who merely approaches it for a loan or for some other form of financial accommodation. As Scott LJ said in Lloyd's Bank plc v Cobb (18th December 1991):
>
> > '…the ordinary relationship of banker and customer does not place on the bank any contractual or tortious duty to advise the customer in the wisdom of commercial projects for the purpose of which the bank is asked to lend money. If the bank is to be placed under such a duty, there must be a request from the customer, accepted by the bank, or some other arrangement between the customer and the bank, under which the advice is to be given.'"

25. There is no suggestion in this case that the defendants asked the bank to act as their financial or investment adviser either in relation to the concluded agreement to purchase the foreign properties that they were proposing to finance with the loan facility that they were seeking or in respect of the concluded land sale agreement from which they anticipated obtaining the necessary funds to repay that loan. Nor is there any evidence before the Court of any other arrangement between the defendants and the bank whereby the bank was to advise them in relation to either of those two agreements (each of which, at pain of repetition, had already been concluded – though neither agreement had been executed – when the defendants first approached the bank).

26. Mr Sreenan on behalf of the defendants skillfully contends that, while the position at law may be as I have just described it, on the particular facts of this case the bank ought to be recognised as owing the defendants a duty of care. Specifically, he submits that, in requiring written confirmation from the defendants' solicitors that an unconditional contract had been signed by the developers for the purchase of the 7 acres for €1.8 million, the bank somehow 'crossed the line' and entered into a fiduciary relationship with the defendants, under which it assumed a duty to provide financial advice to them in respect of that transaction. I am satisfied that there is simply no basis for that proposition, which seems to me to be an obvious *non sequitur*. There is nothing to suggest that, in requiring the relevant confirmation that an unconditional contract had been signed for the purchase of the 7 acres from the first named defendant and an undertaking to provide security over those lands or the proceeds of sale thereof, the bank was doing anything other than seeking to protect its own obvious commercial interest in the repayment of the bridging finance it was being asked to provide. I can see no basis for the proposition that any financial insitution that requires some obvious comfort of that sort is, somehow by implication, assuming a duty to advise the customer in relation to the commercial prudence or wisdom of the underlying transaction in which the customer proposes (or, as in this case, has already agreed) to engage.

27. Equally, I cannot accept that the fact that the first named defendant was referred to the bank's regional commercial lending team in Cork by one of the developers who were proposing to acquire the first named defendant's land in some way created a duty of care on the part of the bank to adopt the role of financial adviser to the defendants in respect of the already concluded agreement for the sale of the 7 acres by the first named defendant to the developers. Even leaving aside the fact that the bank's regional commercial lending team in Cork simply referred the defendants back to its Tralee branch to apply for that bridging finance there, the suggestion that the provision of a referral to the bank by one of the developers involved in the land purchase transaction with the first named defendant creates, in and of itself, a duty of care on the part of the bank to advise the defendants on the financial prudence of that already agreed transaction is, again, a *non sequitur*.

28. Nor do I accept, as was suggested in argument, that the bank owed the defendants a duty of care to provide them with financial advice because the second named defendant was at that time an employee of the bank. This submission appears to derive from the assertion in evidence by the second named defendant that she trusted the bank as her employer when she signed the letter of sanction in respect of the bridging finance that the defendants were seeking. While there is obviously nothing to prevent any financial institution that wishes to provide general or specific financial advice to any of its employees from doing so, there is no obligation on any such financial institution to provide such advice that I can see or that was identified to me on behalf of the defendants in argument. Insofar as the second named defendant trusted the bank to properly consider the defendants' application for bridging finance, that trust was evidently vindicated by the bank's decision to make that finance available. On the other hand, insofar as the second named defendant trusted the bank to provide financial advice on the commerical wisdom or unwisdom of the agreement that the first named defendant had already entered into to sell the 7 acres to the developers concerned, I cannot see any basis upon which that expression of trust can have been warranted, as I can find no evidence that the bank had been requested to assume, or had assumed, any such duty or responsibility.

29. The argument ultimately put forward on behalf of the defendants is that the bank owed them a duty of care whereby it was obliged to refuse to provide them with the bridging finance that they were seeking. That contention is based on two propositions. The first, accepted on behalf of the bank, is that Mr. Laide was not only the contact point for the defendants' application for bridging finance but was also both the assistant manager with responsibility for certain accounts held with the bank by one of the developers and the contact point (at certain times described as the relationship manager) for the developers in their dealings with the bank's regional commercial lending team in Cork. The second proposition, vigorously disputed by the bank, is that the bank was, or should have been, aware when the defendants entered into the bridging finance agreement with it that the developers were unlikely to

complete the purchase of the 7 acres - upon the anticipated proceeds of which the defendants were relying to repay that loan - because of the developers "poor financial position" at that time.

30. This brings me to what appears to me to be the most unusual feature of this case. In advancing the proposition that the developers were in a "poor financial position" in March or April of 2006, the defendants did not call any evidence on that point. Neither of the developers, nor any other person with any direct knowledge of the developers' financial standing at the material time, was called as a witness. Instead, the defendants sought to establish that proposition by cross-examination of the two witnesses called by the bank, Mr. Laide, already mentioned, and Mr. Jim O'Mahony, a senior lending manager with the bank who was familiar with the commercial dealings between the bank and the developers. In doing so, the defendants sought, and were permitted, to rely upon selected references to the contents of various internal communications within the bank concerning the developers' affairs. The Court has been given to understand that the developers obtained copies of those documents from the bank in exercise of their right to do so under the Data Protection Acts and subsequently furnished them to the defendants. However, the developers are not a party to these proceedings and were not called as witnesses at trial. For that reason, I have not identified them in this judgment.

31. Mr. Laide gave evidence that, from his own dealings with the developers on the bank's behalf, he considered them 'strong clients' at the material time and understood that the bank would have no difficulty in providing them with funding. Mr. Laide stated that, as of the 31st March 2006, he was well aware of the status of the developers' dealings with the bank and had no concern regarding their financial position. The bank's concern in respect of the developer's financial status first arose with the collapse of the property market in 2008. Both Mr Laide and Mr O'Mahony testified that the developers did not apply to the bank for funding in relation to their agreement to purchase the 7 acres from the first named defendant.

32. Mr Laide was questioned by reference to selected extracts from various internal communications within the bank in February and March 2006, which, it was suggested, tended to establish that the bank had some concerns in relation to the financial position of the developers at that time. First, there was an e-mail sent to Mr. Laide on the 16th February 2006 by a member of the regional commercial lending team in Cork, expressing a concern that certain required security documentation was then outstanding in respect of an existing commercial loan to the developers and warning that, if the position was not rectified over the next couple of days, the bank would start returning items drawn on the relevant loan account unpaid. However, that communication includes a reply received from Mr. Laide within an hour on the same date confirming that he had been informed by the developers that steps were then in train to rectify the position.

33. Second, there is a further e-mail exchange between the same member of the regional lending team and Mr. Laide on the 22nd February 2006, in which Mr. Laide was relaying a request on behalf of the developers for a redemption figure in respect of an earlier loan by reference to the contemplated sale of the lands against which that loan was secured (apparently part of the Ballinorig lands), to which the staff member concerned responded that the bank "would be looking for a fair chunk of the proceeds to go in debt reduction given that this was considered a high risk transaction by the bank day one."

34. Finally, in this context, there is an e-mail to Mr. Laide, dated the 28th March 2006, in which another employee of the bank points out that the developers have recently written cheques on a current account that was then €33,000 in debit (without any approved overdraft limit) and that the developers' loan account was "out of order."

35. Mr. Laide did not accept that these documents, individually or together, suggest, much less establish, any underlying concern on the part of the bank about the financial position of the developers at that time. Mr Laide testified that the developers had made deposits over which the bank held a lien that could be used, if necessary, to offset the developers' overdraft and that the bank's concern was simply to regularise the situation in that regard. Similarly, in contemplating the return of items drawn on the developers' account unpaid if the relevant security documentation was not put in place, the bank was simply seeking to ensure compliance with the security requirements associated with the relevant facility, rather than expressing any concern about the underlying financial position of the developers.

36. Moreover, Mr. Laide gave evidence that, subsequent to the loan transaction with the defendants (and, indeed, subsequent to the internal communications just described), the bank issued further loan facilities to the developers in 2006 and in 2007.

37. Mr O'Mahony gave evidence that the bank had no material concerns in relation to the solvency of the developers at the material time. He testified that the developers' borrowings with the bank stood at over €5 million at the time, and that those loans were then within term, which I take to mean that there had been no default in their repayment. He further testified that the developers had a credit rating of 2A or 2B at the time, which would be considered satisfactory. The lowest score on the credit grading system in use in the bank at the time was 8. Mr O'Mahony provided details in relation to additional loan facilities approved by the bank for the developers subsequent to the loan agreement with the defendants now at issue. He testified that a €700,000 facility was approved later in 2006 and another facility of €750,000 was approved in 2007.

38. Mr. O'Mahony corroborated Mr. Laide's evidence regarding the relevant communications within the bank, testifying that, in his view also, none of the internal e-mails relied upon by the defendants reflected any concern on the part of the bank in March or April 2006 about the underlying financial position of the developers.

39. Mr O'Mahony testified that the developers (in conjunction with a larger commercial entity) ultimately applied for funding to purchase the 55 acres in April 2008, which application for finance was declined by the bank due to concerns it had by then developed regarding the state of the economy, declining land values, and the possible cancellation of the proposed ring road scheme.

40. In the context of the uncontroverted evidence that I have just described and which I accept, I can find no basis for the conclusion that the developers were in "a poor financial position" at the material time, still less that the bank knew, or ought to have known, that that was so.

41. Accordingly, the novel argument advanced on behalf of the defendants – that a bank is under a duty to decline a customer's application for finance in respect of any transaction in which another customer is involved if there is any basis for any concern on the part of that bank regarding the financial position of that other customer – cannot avail the defendants in the circumstances of this case, even if it were accepted as a correct statement of the position in law. For that reason, I do not propose to express any view upon it.

42. In summary, therefore, on the evidence before me and by reference to the various arguments advanced, I am satisfied that the bank did not breach any duty of care that it owed to the defendants in acceding to their application for bridging finance or, consequently, in entering into a loan agreement with them.

The alternative defence of the second named defendant
43. On behalf of the second named defendant, Mr Sreenan advanced the alternative defence that the loan agreement is invalid as between the bank and the second named defendant by operation of the relevant terms of the the 1995 Act, because the second named defendant must be considered a consumer in relation to that agreement for the purposes of that Act, yet did not receive the statutory protection to which she was entitled under that legislation.

44. The second named defendant gave evidence that, at the material time, she thought that the acquisition of the two apartment blocks on the island of Corsica would provide her husband with a project and that she was not going to stand in his way in circumstances where they both thought that the first named defendants farm lands were worth €12 million. She testified further that she entered into the transaction in the belief she shared with her husband that the money to repay the loan was going to come from a specific source, namely the proceeds of sale of the 7 acres that the developers had agreed to purchase from her husband. The second named defendant stated that she signed the letter of sanction on a wet day while sitting in her car, parked adjacent to the Tralee branch of the bank, when Mr Laide brought the relevant documentation out to her there, although she did not recall the date on which that event occurred. She acknowledged that she knew that she was signing the letter of sanction as co-borrower with her husband, although she had no discusssion with Mr Laide in that regard. Under cross-examination, the second named defendant accepted that, as a bank employee, she knew more about loans than the average person in the street, although she had never worked in the lending area. She accepted that she had signed the letter of sanction and acknowledged that the terms and conditions under which the loan was being advanced were highlighted in it. The second named defendant further acknowledged that she knew that the purpose of the loan was to facilitate the purchase of the two apartment blocks on the island of Corsica.

45. Against that background, it is submitted that the second named defendant must be considered a consumer for the purposes of s. 2(1) of the 1995 Act. That provision provides as follows:

> "*consumer*" means a natural person acting outside his trade, business or profession"

46. The significance of this point derives from the fact that, pursuant to s. 50 of the 1995 Act a consumer is entitled to a "cooling-off period" in respect of any credit agreement, under which they are entitled to withdraw from an agreement within 10 days of receiving it by giving written notice to the creditor.

47. The decision of Kelly J. in *AIB plc v. Higgins & Ors* [2010] IEHC 219 is a helpful authority on the interpretation of the definition of the term "consumer" under the 1995 Act. That Act transposed Council Directive 87/102/EEC, as amended by Council Directive 90/80/EEC, into Irish law. In defining the term "consumer" the learned judge stated as follows:

> "the concept of the consumer was confined to a person acting in a private capacity and not engaged in trade or professional activities. The self same person can be regarded as a consumer in relation to certain transactions and as an economic operator in relation to others. Only contracts concluded for the purpose of satisfying an individual's needs in terms of private consumption are protected by the Directive."

48. The learned judge further stated that:

> "These defendants acted as partners in a partnership which borrowed money from AIB. They did so with a view to investing in property and its development for profit. In so doing, they engaged in business and the Act had no application to them."

49. In this case, I cannot avoid the conclusion that, in seeking and obtaining loan finance to acquire jointly with her husband two apartment blocks on the island of Corsica, the second named defendant was not concluding that contract for the purpose of satisfying her individual needs in terms of private consumption. This was a case in which the defendants jointly were acquiring those foreign properties and investing in that development for profit. In doing so, they were both engaging in business, and the 1995 Act has no application to either of them, since neither falls within the definition of consumer, properly construed, for the purposes of that Act in respect of the loan transaction at issue.

Conclusion
50. There must be judgment for the plaintiff in respect of the monies owed under the loan agreement at issue.