

Thursday the 20th day of December 2001

BEFORE MR JUSTICE KEARNS

**IN THE MATTER OF AN APPLICATION PURSUANT TO REGULATION
8(1) OF THE EUROPEAN COMMUNITIES (UNFAIR TERMS IN
CONSUMER CONTRACTS) REGULATIONS 1995**

THE DIRECTOR OF CONSUMER AFFAIRS APPLICANT

This matter coming on for hearing before the Court on the 5th day of
December 2001 and being mentioned before that Court on the 14th day of
December 2001 and this day

Whereupon and on reading the Special-Summons herein and the
Affidavits of Carmel Foley sworn 21st May 2001 Ciaran Ryan sworn 10th July
2001 Colm Price sworn the 28th July 2001 Mary Finnegan sworn 24th July 2001
and Mark Griffin sworn 4th December 2001 and the exhibits therein referred to

And on hearing Counsel for the Applicant and Counsel for the
Notice Parties

And It Appearing to the Court proper to make the Order as set out
hereunder

By Consent IT IS ORDERED that ^{for} ~~this~~ ^{be} Consent ^{annexed to this Order} be received and filed
and be deemed to be part of this Order

By Consent IT IS ORDERED

1. That no person or body shall use or if appropriate continue the use in
building contracts any terms in the form of the First Schedule hereto
annexed or any term which is intended to or does in fact have like
the effect the said terms having been adjudged by the Court to be

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THE HIGH COURT

unfair terms pursuant to the provisions of the European
Communities (Unfair Terms in Consumer Contracts) Regulations
1995

2. Without prejudice to the issue of the propriety or impropriety of stage payments or interim payments in any such contract no such building contract providing for such stage or interim payment shall provide for any interim payment such as will exceed the percentages specified in the Irish Homebuilders Association Code of Practice being the percentages set out in the Second Schedule hereto or which exceed the extent and value of works carried out at the date specified for such a payment
3. That the Applicant do advertise in Iris Oifigiuil and at least two other National Newspapers the making of this said Order
4. Liberty to apply
5. The Court doth make no Order as to costs

B. Needy
REGISTRAR

A Copy which I attest

P. Kearney
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Superintendent of Copyists

O'Mara Geraghty McCourt
Solicitors for Applicant

ac222Sp(br)

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First Schedule

Term 1

The Employer hereby acknowledges that this Building Agreement and the Contract for Sale between the Employer and _____ of even date hereto constitutes the entire Agreement between the parties and hereby admits that he/she has not entered into this Building Agreement or the aforementioned Contract for Sale in reliance on any other warranty or representation whether verbal or in writing. The Employer further admits and agrees that he/she will not seek to enforce this Building Agreement without a similar enforcement of the aforementioned Contract for Sale.

Term 2

If the Employer shall fail to pay any instalment of the Contract Price or the balance of the Contract Price within fourteen days of the same becoming due for payment then without prejudice to any other right which the Contractor may have at Law or in Equity, the Contractor shall be at liberty to rescind this Agreement by giving either directly or through his Solicitors to the Employer or the Employer's Solicitor seven days notice in writing of such rescission and on the expiration of such notice the Contractor shall be entitled to resell the Site with the Works thereon whether by way of private treaty or public auction and at such price as the Contractor may determine upon giving seven days prior written notice to the Employer's Solicitors. Any deficiency realised on such sale shall be payable by the Employer and shall be recoverable as liquidated damages but any excess realised on the sale shall belong to and be the sole property of the Contractor. Any notice under this Condition shall be effectively given if sent by post or delivered by hand to the Employer or his Solicitors at his or their last known address. Where such notice is sent by post the notice shall be deemed to have been served on the day after the date of such posting.

Term 3

If the Employer shall prior to the payment of any instalment of the Contract Price or the balance of the Contract Price make or raise any objection to or make any claim or demand in respect of the Works or in any wise appertaining thereto or the materials or workmanship thereof or in respect

of the area of measurements or dimensions of the Site or in respect of any other matter whatsoever arising out of this Agreement which the Contractor shall either be unable or unwilling to remove or comply with any planning or building regulation requirement or if the compliance with any planning condition or local authority requirement shall cause delay in the completion of the Works or other developments in the estate of which the Site forms part then, notwithstanding any negotiations, litigation or attempt to remove, comply with or satisfy same and notwithstanding anything contained in Clauses 11, 12 and 13 hereof the Contractor shall be at liberty to rescind this Agreement by giving either directly or through his Solicitor to the Employer or the Employer's Solicitor seven days notice in writing of such rescission and on the expiration of such notice this Agreement shall be at an end and neither party hereto shall have any claim against the other save that the Contractor shall be bound to refund to the Employer all monies actually paid by the Employer to the Contractor or the Contractor's Solicitor in return for all documents furnished to him. Any notice under this Condition shall be effectively given if sent by post or delivered by hand to the Employer or his Solicitor at his or their last known address. Where such notice is sent by post the notice shall be deemed to have been served on the day after the date of such posting.

Term 4

There shall also be excluded from the Contractor's liability pursuant to sub-clauses (a) and (b) of clause 8 any defects (patent or otherwise) which occur before the Employer enters into possession of the Works or pays the balance of the Contract Price (whichever shall first occur) unless the existence of any such defect has been acknowledged in writing by the Contractor.

Term 5

On receipt by the Employer or his Solicitor of notice from the Contractor that the works have been completed by the Employer shall be entitled to submit one snag list to site foreman only within seven days of the completion notice. If the said snag list is not submitted within this period the Purchaser wholly relinquishes his right to submit the said snag list.

The Employer shall not submit a second snag list and shall include in the first snag list all items which he regards or considered as outstanding in the works.

In the event of this agreement or contract of even date in relation to the sale of site , being rescinded or repudiated, the Employer shall surrender any interest that he might have in the site and shall return all documentation in relation thereto.

The Purchaser shall not be entitled to possession of the premises or the site thereof until completion of both this agreement and the contract for sale of even date.

Term 6

The time period mentioned in General Condition 4(c) is hereby amended from 14 days to 7 days.

Term 7

The Contractor may determine this Contract by notice in writing to the Employer and recover from the Employer payment for all work executed and for any loss sustained by the Contractor resulting from such determination with interest at the rate of 15% per annum from the date upon which payment became due of the losses incurred up to the date of actual payment which sums are to be paid to the Contractor.

Term 8

Notwithstanding Clause 4(c) hereof:

If the Employer shall not pay the balance of the Contract Price on the closing day the Contractor may (unless this Agreement shall first have been rescinded or become void) give to the Employer or his Solicitor notice in writing to complete the sale and pay the balance of the purchase price.

Upon service of such notice the Employer shall complete the sale and pay the balance of the Contract Price within 14 days after the day of such service (excluding the day of service) in respect of such period

time shall be of the essence of the Contract (but without prejudice to any intermediate right of rescission by the contractor).

If the Employer does not comply with such notice within the said period, (or within any extensions thereof which the Contractor may permit) he shall be deemed to have failed to comply with these conditions and his deposit shall be absolutely forfeited to the Contractor and the Contractor shall be at liberty to re-sell the property without notice to the Employer either by public auction or private contract and the deficiency (if any) arising on such re-sale (after giving credit for the deposit so forfeited) and all expenses and costs attending same or an attempted re-sale shall be made good and paid by the Employer as liquidated damages.

Term 9

The Purchaser shall procure that the premises to be erected in pursuance of the Building Contract is erected in accordance with the provisions of the said Building Contract within eighteen months from the date of execution of the Building Contract. In default of compliance with this provision and unless the within sale shall have been completed within the said period, interest shall accrue on the unpaid balance of the purchase price from the end of the eighteen months period until completion of the within sale. In the event of the erection of the premises not being completed within a period of two years from the date hereof due to the default of the Purchaser then and in that event the Vendor shall be entitled to rescind this Agreement and to forfeit the deposit and in this respect time shall be deemed to be of the essence. In the event of the Vendor rescinding the within Contract, the Vendor shall pay to the Purchaser 75% of all sums paid by the Purchaser to the Building Contractor under the Building Contract, and the Purchaser shall assign the benefit of the Building Contract to the Vendor subject to the Vendor indemnifying the Purchaser against all further obligations of the Purchaser under the Building Contract.

Term 10

The Employer shall not assign or part with the benefit of this Agreement or his interest in site without the previous consent in writing of the contractor.

The Contractor is entitled to assign the benefit of this Agreement and the Employer acknowledges this and the General Condition 9 is modified accordingly.

Term 11

The Vendor reserves the right to modify materials specifications and to vary dimensions of the site and building during construction.

Term 12

The Contractor shall not be liable to the employer in respect of any loss, expenses, costs or otherwise incurred as a result of any delay howsoever caused in completing the works referred to in Clause A hereof.

Term 13

It is further agreed between the parties hereto that any delay by the Contractor or Employer in completing the aforementioned work or works shall not operate so as to delay the closing date.

Term 14

The Contractor shall endeavour to keep all extras ordered by the Employer when supplied free from damage injury or dirt but it is hereby agreed that the Contractor shall not be responsible for any damages of same or other materials or work ordered by the Employer when supplied.

Term 15

If any part of the sum demanded by the Contractor for extras is not paid within 5 days from the date of the demand then interest shall be payable by the Employer to the Contractor on a day to day basis

at the rate of 20% per annum from the date of demand to the date of payment.

Second Schedule

Booking Deposit	4%
Contract Deposit	11%
Interim Payment at joist level	25%
Interim Payment at roof level	25%
Interim Payment at internal plastering stage	25%
Completion Payment	10%

5/11/01

THE HIGH COURT

The 20th day of December 2001

**OFFICIAL DUPLICATE
NO FEE**

RE:-

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(UNFAIR TERMS IN CONSUMER
CONTRACTS) REGULATION 1995

Nature of Document:-

ORDER



Entering Fee:-

TWO..... Pages

Solicitor:- O'MARA GERAGHTY MC
COURT

Address