



### Settlement Agreements \*

In the case of Flynn and Desmond being a decision of the Court of Appeal, appeal number 14/685 citation number 2015 IE CA 34, is an interesting judgement delivered by Mr. Justice Alan Mahon.

The facts of the case are a lay litigant settled a personal injury claim for some €5,000.00. The individual then sought to rescind the agreement.

The Court of Appeal looked at the Law in relation to this and stated that

“The absence of legal advice will not usually prove fatal to a contract, but may do in certain circumstances. In *Lloyds Bank –v- Bundy* 1974 Q.V. 326-339 Lord Denning R. stated the following “...English Law gives relieve to one who, without independent advice, entered into a contract upon terms which are very unfair or transferred property for a consideration which is grossly inadequate, when his bargaining power is grievously impaired by reason of his own needs or desires, or by his own ignorance or infirmity, coupled with undue influence or pressure brought to bear on him by or by benefit by the other”.

The Court went on to state that the fact that a plaintiff is litigating in person does not in itself and cannot be a reason for allowing a settlement to be undone. This is particularly so when the individual is advised to seek independent advice prior to concluding the settlement.

The Court held that there were difficulties with the claim and that the settlement figure could not be said to be unwise. The Court also went on to state that the Court was satisfied that the absence of legal advice to the plaintiff at the time of his agreement to compromise the proceedings does not, in the circumstances of the particular case, undermine that agreement.

What is interesting about this decision is that while the Court identified the importance of upholding settlements the Court pointed out that it was in the circumstances of this particular case that the absence of legal advice did not undermine the agreement.

It would therefore appear that simply advising a lay litigant to obtain legal advice is not in itself sufficient. If the agreement is improvident or imprudent then the Courts may well set aside any agreement even if the individual has been offered the opportunity to obtain legal advice.

It would appear advisable that where an individual is been asked to sign away particular rights that they are advised of the importance of obtaining independent legal advice. In many employment cases particularly where there is a termination employers are now providing



a sum of money to enable the individual to obtain independent legal advice. This appears to be good practice if the individual is not legally represented.

Improvident agreements could well be open to challenge.

- \* In contentious cases a Solicitor may not charge fees or expenses as a proportion or percentage of any award or settlement.