

## **Settlement Agreements and Waivers\***

This issue arose in the case of Philomena Hennessy and Ladbrooks Payments (Ireland) Limited and Ladbrooks (Ireland), 2022 IEHC 60 being a Decision of Ms Justice Bolger delivered on the 3<sup>rd</sup> February 2022.

The defendant in this case contended that the waiver agreement precluded the plaintiff from issuing or pursuing proceedings.

The plaintiff in her replying Affidavit stated that she did not take legal advice on the terms or effect of the agreement and was not advised to do so. The plaintiff described the agreement as having been put to her on a 'take it or leave it' basis and stated that she was informed that if she did not sign the document that another employee would be offered redundancy instead of her.

Her Honour in paragraph 7, stated that the defendant sought to excuse what seemed to be an untrue statement in the waiver agreement on the basis that any obligation that they may have had to advise their employee to take legal advice fell away when the employee signed a document saying that she had done so. The defendant contended that she had not done so. The defendant contended that the plaintiff must take responsibility to read and have some understanding of the document, and that she is bound by what she signed. The defendant relied on the case of ACC -v- Kelly (2011) IEHC 7 and Quinn -v- IRBC (2011) IEHC 470.

In paragraph 8, her Honour stated that had the plaintiff taken legal advice, as the agreement claims she did, then the defendant may have been entitled to rely on the waiver contained in the agreement. Her Honour pointed out that absent such advice, the question arises whether the defendant was required to take proactive steps to advise its employee of the benefit of such advice and/or to ensure that she did take it or if she chose not to, that she understood any compromise of her entitlements that may be included in that agreement.

In paragraph 9, her Honour referred to the case of Board of Management of Malahide Community School -v- Conaty, 2019 IEHC 486.

At paragraph 10 of the Decision, Her Honour points out that the defendant sought to distinguish the judgement of Mr. Justice Simons

given that the case before him involved a statutory claim. Her Honour pointed out that nevertheless she found his comments persuasive, particularly as his conclusions were premised on an implied contractual entitlement located in the implied obligation of mutual trust and confidence between an employer and employee. Her Honour pointed out that she did not accept the defendant's contention that the case law on mortgage agreements (such as Kelly and Quinn) in which the courts have confirmed that a borrower is bound by what they signed, whether they took or were advised to take independent legal advice, can necessarily be applied to an agreement between an employer and an employee to waive the employee's legal rights and causes of action that would otherwise be available to them, whether in statute or in tort.

Her Honour pointed out that in these circumstances she did not consider the bare existence of a waiver agreement on which the defendant seeks to rely, means that the plaintiff's claim is bound to fail. Ms. Justice Bolger held that this is a matter for preliminary application at the hearing of the case.

This is an extremely important decision following on from the case of the Board of Management of Malahide Community School.

Our comments in relation to matters is that it is always advisable that an employer when having an employee sign any waiver ensures that they do get independent legal advice or clearly sets out to the employee the effect of the agreement and what the effect of signing that agreement is, whether they obtained legal advice or not.

**\*Before acting or refraining from acting on anything in this guide, legal advice should be sought from a solicitor.**

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