



February 2016

## High Court Decision – Definition of a Consumer

### Introduction

On 15<sup>th</sup> December 2015, the Irish High Court (the “**Court**”) handed down an important decision in the case of *KBC Bank Ireland Plc v Osborne [2015] IEHC 795* in relation to the definition of a consumer in the context of the provision of a loan facility. This judgment provides useful clarity on the law in this area.

### Background

The case related to an application by the KBC for summary judgment against the borrower for non-payment of loans that were granted by the bank in 2002 and 2004 to refinance existing debt and to allow for the development of a business park in Co. Wexford. In seeking to resist the application, the borrower argued that he was a consumer for the purposes of the Consumer Credit Act, 1995 (as amended) (the “**Act**”) and that KBC had not complied with the relevant terms of the Act.

### Decision of the Court

The judge dismissed the borrower’s arguments and granted summary judgment in favour of KBC. The Court was of the view that the commercial nature of the lending between the parties and the fact that the loan documents clearly indicated that the facilities had

For further information on any of the issues discussed in this article please contact:



**Kate Curneen**

DD: +353 (0)1 673 1738

[kate.curneen@dilloneustace.ie](mailto:kate.curneen@dilloneustace.ie)



**John O’Riordan**

DD: +353 (0)1 673 1792

[john.oriordan@dilloneustace.ie](mailto:john.oriordan@dilloneustace.ie)

been provided for commercial purposes meant that the Act did not apply. In addition, the borrower had also provided confirmation under a facility letter that he was “*availing of the facility in connection with his business or profession ..... and accordingly, he is not borrowing as a consumer for the purposes of the Consumer Credit Act 1995*”.

In coming to his conclusion, Barrett J distinguished the recent decision in *ACC Loan Management Ltd v Browne and Anor [2015] IEHC 722* (delivered on 10 November 2015) where Ms. Justice Baker found that from her reading of the Act:

*“..a person is a consumer unless it can be shown that the person is acting inside the person’s business.....the legislation is drafted such that in a sense the default position is that all natural persons are consumers unless it can be shown they [are not]”.*

Barrett J stated that he “*respectfully and regretfully, cannot agree with this particular conclusion*”.

He went on to say:

*“It seems to the Court, with respect, that the default position under the Consumer Credit Act, as amended, is that some natural persons are consumers and some are not, and no more. A natural person does not benefit from any default position or presumption as to his or her status, and his opponent has no default position or presumption to overcome in this regard. The only default position arising under the Act of 1995 is that a person other than a natural person cannot, at this time, be a consumer thereunder.”*

## Implications of the Court’s Decision

This decision provides clarity on the application of the Act and in particular, the definition of a “*consumer*”. In reaching its decision the Court looked to identify the true nature of the lending relationship between the lender and the borrower. Having considered all of the relevant facts the Court was of the view that the borrower was manifestly not a consumer and therefore he could not seek to avail of the protections provided for in the Act.

**Dillon Eustace**  
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DILLON  EUSTACE

**Dublin**

33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

**Cayman Islands**

Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022 Fax: +1 345 945 0042.

**New York**

245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

**Tokyo**

12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.

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