20,000 Distressed Mortgagors in the Irish Courts forced to seek protections under the EU Charter of Fundamental Rights & jurisprudential authorities of the ECJ:

Spirit of éireann
Nation - Vision - Solutions

Press release by James Miller European Election Candidate for Midlands-North-West Constituency.

22nd May, 2019

I believe that there is no hope for the 20,000[1] distressed Mortgagors in the Irish Courts. In fact, the only legal hope open to distressed Irish Mortgagors is to avail of a range of protections available under EU Law, such as the Charter of Fundamental Rights of the European Union,[2] and various jurisprudential authorities from the European Courts of Justice, which the Irish Courts are refusing to implement for the past two decades, despite being required to do so by law.[3]

I suggests that all mortgage holders should be granted free legal aid under the Civil Legal Aid Act 2005 together with the provisions of both the European Charter and Convention, underscored by the provisions of the Irish Constitution. Furthermore, I believe that mortgage holders, who find themselves before the Courts, should seek to refer questions of the application of Consumer Law to the European Courts of Justice under the provisions of Article 267 of the Treaty on the Functioning of the European Community.[4]

I do, however, accept that very recently the Courts have been forced to recognise their obligations under EU law, pointing in particular to cases such as AIB -v- Counihan,[5] and, more recently, the Judicial Review case in Grant and Another -v- the Laois County Registrar.[6]

Ends

James Miller:

Contact James Miller - jamiller17@hotmail.com

REFERENCES:

1. Community Action Network report, Life in Mortgage Distress
http://www.canaction.ie/wp-content/uploads/2018/11/life_in_mortgage_distress_report.pdf

2. The Charter of Fundamental Rights of the European Union
https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:12012P/TXT

3. The European Court of Justice (ECJ) is the highest court on matters of EU law.

For all EU member countries, EU law takes "supremacy" over domestic law—to ensure that rules are applied uniformly throughout the EU.

The UK has accepted the supremacy of EU law for some time—since parliament passed the European Communities Act in 1972.

https://europa.eu/european-union/about-eu/institutions-bodies/court-justice_en

The Governor and Company of the Bank of Ireland -v- McMahon & anor, [2018] IEHC 455
21. Moreover, since it is not possible, in practicable terms, for a borrower to drawdown a mortgage loan without instructing a solicitor, it is clear that borrowers have the benefit of independent legal advice to explain any technical legal language, as well as the legal effect of the mortgage documentation generally. ***To suggest that the Regulations or the Directive apply to the deed of mortgage itself is in my view an absurd proposition, which, if accepted, might very well undermine the domestic mortgage market.***
http://www.courts.ie/Judgments.nsf/768d83be24938e1180256ef30048ca51/16da54121761ffab802582dd0044073d?OpenDocument

4. Article 267 (ex Article 234 TEC)
Article 267 of the Treaty on the Functioning of the European Community.

The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

(a) the interpretation of the Treaties;

(b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay.

https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E267:en:HTML

5. Allied Irish Bank PLC -v- Counihan & anor
http://www.courts.ie/Judgments.nsf/68d83be24938e1180256ef30048ca51/254a4010b7ff5873802580a4005df8ab?OpenDocument

6. Grant & anor -v- The County Registrar from the County of Laois & anor
http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/ac37c2b4fcd77ba1802583d6003f9927?OpenDocument