



Cúirt Uachtarach na hÉireann
Supreme Court of Ireland

Sean Harte, Patrick McCarthy, John O'Meara and Geraldine Balfe v The Governor and Company of the Bank of Ireland

On appeal from: [2025] IECA 233

Judgment delivered on 20 October 2026

[2026] IESC 44

Headline

The Supreme Court held that the change effected to the method of calculating the interest rate for the appellant's loan agreement did not comprise a breach of contract as it was one within the respondent's discretion under the contract. The Supreme Court consequently dismissed the appeal.

Composition of Court

Woulfe, Hogan, Murray, Hyland and O'Moore JJ.

Judgment

Hogan J. (with whom Woulfe, Murray, Hyland and O'Moore JJ. agree).

Background to the Appeal

In November 2009, the plaintiffs (the appellants in this appeal) borrowed two separate sums of €12.2m and €2.8m from Bank of Ireland ("the Bank"). In October 2011, the Bank communicated to the plaintiffs that there would be a change in the method of calculating the interest rate, namely, that instead of using the EURIBOR reference rate (Euro Interbank Offered Rate), the BCOF reference rate (Bank Cost of Funds) would now be used. This change was effected pursuant to Clause 5 of the standard terms and conditions appended to the offer letter. The relevant part of Clause 5 provides:

"The method for calculating interest and the interest rate may be changed in respect of all facilities from time to time at the Bank's absolute discretion, whether to take account of a change in prevailing market conventions in Ireland or otherwise."

The BCOF rate was applied to the mortgage from late 2011 until it was redeemed in 2017. The plaintiffs commenced these proceedings claiming that the change in the method of calculating the interest rate amounted to a breach of contract and they maintained that they have been overcharged €738,440 in interest as a result.

In the High Court, Barry O'Donnell J. rejected the claim of the plaintiffs and held that pursuant to Clause 5 the Bank had an absolute discretion to change both the method for calculating interest and the interest rate. In the Court of Appeal, McDonald J. (with whom Binchy and Pilkington JJ. agreed) dismissed the appeal. McDonald J. held that Clause 5 did not limit the circumstances in which the Bank may exercise this power to those involving a change in market conventions (which did not arise in the present case). The Bank's discretion was, however, "limited to circumstances where a change has taken place which has affected the Bank's position". On the present facts McDonald J. concluded that the change to the interest rate was conditioned by a change in market conditions which affected the Bank's funding in a material way, with the consequence that it was a change within the scope of Clause 5. By a determination dated 20th March 2026, the plaintiffs were granted

leave to appeal to this Court pursuant to Article 34.5.3^o of the Constitution on the single issue of the construction of Clause 5 and whether there were any limits placed on the discretion of the Bank therein.

Reasons for the Judgment

Hogan J. first addressed the manner in which a clause such as Clause 5 should be interpreted. He noted that it was clear that the language of Clause 5 appeared to give the Bank sweeping powers to unilaterally negate and override key provisions of the contractual agreement. **[16]** Hogan J. referenced a number of examples in case law and EU legislation – the context of such being consumer contracts, “public law contracts” and disciplinary clauses dealing with professional persons – where clauses such as Clause 5 were viewed with some reserve and where the courts insisted that such clauses not be unreasonable or unfair. **[17-21]** Hogan J. moreover took notice of the fact that in 2009 Bank of Ireland occupied a dominant position in the retail banking market in Ireland with the result that the capacity of bank customers to freely negotiate clauses of this kind was limited. **[21]** Such clauses should consequently be construed with some strictness and the discretionary powers contained therein must be construed in a manner not dissimilar to similar powers governed by administrative law. Hogan J. opined that the Court should be slow in the context of a standard-form contract to infer from language which is doubtful or ambiguous the existence of a unilateral power of a dominant contracting party to alter a fundamental feature of the bargain. At the same time, the Court could not rewrite the parties’ bargain or disregard clear contractual language. Hogan J. held therefore that Clause 5 had to be examined with care to ascertain whether it clearly empowered the Bank to make the alteration effected in the present case. **[22]**

Hogan J. then turned to the issue at the heart of the appeal which, he considered, was whether the Bank was entitled pursuant to Clause 5 to unilaterally alter the terms of the prevailing interest rate. **[24]** Hogan J. outlined the two arguments of the plaintiffs on this issue: first, that the contract distinguished between the concept of the calculation of the interest and the interest rate (which the plaintiffs agreed the Bank had the power to change) and the selection of the interest rate components (which the plaintiffs denied the Bank had the power to change unilaterally); second, that the “absolute discretion” referred to in Clause 5 was conditioned by the words appearing after the conjunction “whether” (“...whether to take account of a change in prevailing market conventions in Ireland or otherwise”). **[24]**

Hogan J. addressed the second argument of the plaintiffs first and was unpersuaded that the apparent “absolute discretion” of the Bank was circumscribed by the reference to “market conventions”. **[26]** He held that the word “whether” was used here as a conjunction to give a certain example of events – namely, a change in prevailing market conventions – which would definitely be within the scope of the Bank’s absolute discretion to effect a change. **[27]** This conjunction, however, was not intended to confine or limit this discretionary power, and this is confirmed by the use of the term “or otherwise” later in that sentence. **[27]** Hogan J. accordingly held that the reference to changes in market conventions is simply confirmatory and was inserted for greater certainty and illustrative purposes rather than to restrict the scope of the Bank’s discretion. **[29]**

Hogan J. then turned to address the first argument of the plaintiffs. He held that while Clause 5 should be construed strictly in view of its sweeping and unilateral character, he could not accept the plaintiffs’ construction of Clause 5. Rather, in his view, changing one of the component elements of the interest formula directly came within the scope of the words “method for calculating interest” in Clause 5. **[30]**

Lastly, Hogan J. considered that the *contra proferentem* principle was not engaged in the present case as there was no residual ambiguity as to the interpretation of Clause 5 upon which this principle could properly operate. **[32-34]**

In concluding, Hogan J. held that the language of Clause 5 did in fact give the Bank a wide power to alter the method of calculating the interest rate and that such power was not simply confined to instances where market conventions had changed. **[35]** However, the “absolute” nature of the discretion apparently conferred on the Bank by Clause 5 was more confined than that which the apparent breadth of the language actually suggested. The courts moreover could intervene if this power had been exercised in an arbitrary or manifestly unreasonably way (which had not been suggested in the present case). **[36]** Hogan J. consequently upheld the decisions of the High Court and Court of Appeal and dismissed the appeal. **[38]**

Note

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.

Case history

16 th June 2026	Oral submissions made before the Court
[2026] IESCDT 35	Supreme Court Determinations granting leave
[2025] IECA 233	Judgment of the Court of Appeal
[2024] IEHC 714	Judgment of the High Court