

## THE HIGH COURT

2000 4316 P

BETWEEN

COURTYARD ASSOCIATES LIMITED

PLAINTIFF

AND

ELSIE MCGEE AS PERSONAL REPRESENTATIVE AND EXECUTRIX OF THE ESTATE OF GEORGE MCGEE DECEASED

DEFENDANT

**Judgment of Mr. Justice de Valera delivered on 18th day of December, 2009.**

The plaintiff's claim in this matter is for damages for breach of contract and/or negligence in respect of the purchase of an area of land at Rosbrien in the County of Limerick (on the outskirts of Limerick City) comprising approximately 28.34 acres from George McGee, now deceased and whose estate, represented by Elsie McGee, is the defendant in these proceedings.

The defence entered on behalf of the defendant denies that this purchase was for the entirety of the 28.34 acre site but rather for a slightly smaller area of approximately 27.5 acres.

The area of land which constitutes the difference between the parties is a small triangular shaped area of approximately three quarters of an acre and is clearly identified on the maps submitted in evidence.

The purchase was effected by an agreement in writing dated 29th January, 1999 to which agreement a map of the overall site area was attached. This map, it is common case, showed, outlined in red, the area purportedly being conveyed which, most importantly, included as part of the overall site area the three quarter acre portion.

It is also common case that this three quarter acre area had, in fact, been compulsorily acquired by Limerick County Council on the 18th November, 1998, some ten weeks before the purported sale which is the subject matter of these proceedings.

It is the plaintiff's case that at all times it, the plaintiff, believed that the three quarter acre area (which was of considerable significance to the plaintiff's plans) was part of the area being conveyed to it. The defendant claimed that though the map attached to the agreement, admittedly in error, showed the three quarter acre area to be part of the lands being conveyed, this error was known to the plaintiff who realised, or should have realised, that this portion had been compulsorily purchased by the Limerick County Council on the 18th November, 1988 some ten weeks prior to the agreement between the parties of the 29th January, 1999. In support of this contention the defendant seeks to rely on previous proceedings between the plaintiff herein and George McGee (High Court Record No. 2000/4361P) but this, in my view, is of little relevance.

Having heard the evidence, and the submissions put forward on behalf of both the plaintiff and the defendant, I do not accept that the plaintiff could, or should, have been, or in fact was, aware of the compulsory purchase of the three quarter acre portion. I do accept that it, the plaintiff, through Mr. O'Sullivan a director of the plaintiff company believed and was entitled to believe that it had purchased the entire area which included both the 27.5 acre portion and the .75 acre portion and had not become aware of the actual situation until in or about October 1999 when it sought planning permission, inter alia, over the said three quarter acre portion seeking to develop this portion with a commercial building from Limerick County Council. This application was refused on the ground that these lands were owned by the County Council having been transferred to the Council in November 1998.

It may well be that George McGee genuinely believed that he was conveying the 27.5 acre area only and also genuinely believed that the plaintiff was aware of this (though this is not a logical conclusion from the evidence) but, and it is well settled law, the onus is on the vendor in a transaction such as this to give good title to the lands being conveyed. This principle is well enunciated in *In Re Flynn and Newman's Contract* [1948] I.R. 104 where Kingsmill Moore J. states:

"In the absence of any express provision to the contrary, the vendor undertakes and is bound in law to show good title to the property to be sold and to convey land corresponding substantially, in all respects, with the description contained in the contract..." (At page 112)

(Emphasis added).

The question of a map forming part of a contract is specifically dealt with in *Doran v. Delaney* [1996] IRLM (p. 490):

"In these circumstances, there was a clear duty on the vendors, having had produced to the plaintiffs the map which had been submitted to Wicklow County Council, as showing the area to be sold, to inform them that the ownership of a portion of the area was claimed by Mrs. McKimm."

Applying these principles to the instant matter it is clear that the onus of ensuring that the map attached to the contract was accurate and corresponded "substantially, in all respects with the description contained in the contract" rested with the vendor, the defendant in this matter and that this onus has not been discharged.

**Damages**

In these circumstances, as I have found them to be, the plaintiff is entitled to recover damages. These damages must be based on

valuations current at the time of the contract and particularly at the time the plaintiff sought to develop the lands by seeking planning permission in October 1999.

I am of the opinion that the loss to the plaintiff is not the value of the three quarter acre portion based upon its size as a proportion of the whole area (calculated by the defendant's witness, Mr. de Courcy, at IR£62,455) but rather the loss to the plaintiff of the three quarter acre portion as an essential component of access to the whole area of proposed development, the overall site area of 28.34 acres. This is the basis of the valuation of IR£350,000 by Mr. Cross, the plaintiff's valuer. The three quarter acre portion of the site had a particular significance, both as an entry point from an existing roundabout and as being on the periphery of the site near a main road, a significance greater than the value of its actual dimensions. Therefore the basis on which Mr. Cross based his calculation is more appropriate than Mr. de Courcy's purely mathematical calculation. It is to be noted that Mr. de Courcy was not examined on the development value of the lands.

However, Mr. Cross's reluctance, actually his refusal, to engage with defendant's Senior Counsel, Mr. Ó hOisín's questioning in cross-examination leads me to the conclusion that this is a maximum or even inflated figure and that I should substitute an amount which I consider more appropriate. This must, necessarily, be somewhat speculative and/or arbitrary but it is the best I can do in the circumstances taking into account the generality of the figures which have been given in evidence. I am therefore prepared to award the plaintiff the sum of €200,000 in general damages to which must be added the agreed figure of €24,130 special damages.

I therefore award the plaintiff the sum of €224,130.