Neutral Citation [2013] IEHC 434

THE HIGH COURT

[2009 No. 7356P]

BETWEEN

Frank Brownrigg

Plaintiff

AND

Aidan Leacy

Carrying on business under the style of Phoenix Estates

AND

Ben Kavanagh Auctioneers Limited

Defendants

Judgment of Mr. Justice Hedigan delivered on 20th of September 2013.

This case relates to a claim for damages by the plaintiff Mr Frank Brownrigg arising from the alleged negligence of the defendants in respect of valuations they carried out of his lands in 2007.

The plaintiff is a farmer and resides at Crory, Ferns, Co. Wexford. The first named defendant is Mr Aidan Lacey an auctioneer carrying on business under the name Phoenix Estates and the second named defendant is Ben Kavanagh Auctioneers Limited. The second named defendant has discharged his legal team and does not appear before the court.

The plaintiff owns a 120 acre farm at his home in Ferns Co. Wexford. He owns two other farms near Enniscorthy- one comprising 46 acres at Clonhaston, Enniscorthy and the other at Ballyorell, Enniscorthy which comprises 28 acres.

From 1996 to July 2006 the plaintiff also rented lands (73 acres) adjacent to the home farm, on Coolbawn farm which belonged to Mr Thomas Dunbar, the plaintiff's neighbour. Mr Dunbar died in 2006. The farm comprises 237 acres and was advertised for sale on the 16th May, 2007, to be sold at public auction on the 27th June, 2007.

The plaintiff wished to purchase those lands since they were adjacent to his own farm and would enable him to consolidate his holding. In order to finance the purchase of the lands he needed to sell his lands at Clonhaston.

To better consider the possible purchase of Coolbawn and the sale of his lands at Clonhaston the plaintiff sought valuations from the defendants in respect of his lands at Clonhaston. To this end, according to the plaintiff, in February 2007 he contacted the first named defendant who he claims attended the lands at Clonhaston in February/March 2007 and following this advised the plaintiff that the lands were valued somewhere between Euro220,000-Euro 240,000 per acre as unzoned lands giving a total value of between Euro 10,120,000 and Euroll,040,000. A new local development plan for Enniscorthy was to issue shortly thereafter and the first named defendant advised the plaintiff that it was likely that the lands would be rezoned residential and would therefore increase in value to more than Euro350,000 per acre.

At the plaintiff's request the defendant put this in writing by way of letter dated the 18th June, 2007. In this correspondence the lands were described as "a very saleable commodity". Mr Leacy explained in evidence that in employing the word "saleable" he meant that if marketed properly the lands should get a good reaction from potential buyers. Mr Leacy states that he was unaware that the plaintiff intended to bid at auction or that this was the purpose of the plaintiff seeking a valuation.

The defendant also contends that the first he ever heard from the plaintiff about Clonhaston was in May 2007 not in February 2007 as indicated by the plaintiff, and asserts that any contact between the parties prior to May was in respect of enquires made by the plaintiff about the purchase of residential property.

In this regard the plaintiff has made discovery of his phone records, showing calls made to the first named defendant from February 2007, to June of that same year. Evidence was shown to the court that on the 2nd February, 2007, the plaintiff made a call lasting 8 minutes 21 seconds to the defendant's landline. The plaintiff asserts that it was made regarding the sale of Clonhaston. The defendant however contends that it was in relation to the purchase of residential property. The defendant argues that only calls received from the plaintiff after the end of May 2013 were in relation to Clonhaston and accepts that those were to discuss the letter of the 18th June 2007- what he terms a "thinking of selling letter". He explained that a "thinking of selling" letter is drafted for someone who is thinking of selling their property however it does not go into detail about the method of sale, the cost of selling, the possible division of the lands into lots etc.

The plaintiff asserts that he requested Mr Leacy to look for a buyer for the lands without advertising them and Mr.Leacy was to get 1% of the sale price if he sold. Mr Leacy denies that he was ever retained by the plaintiff either to advertise or sell the lands and says that if he had been that fact would have been mentioned in his letter of the 18th June. He argues that if he were instructed to sell the lands he would have required a map of the lands (which he was never given) and he would obtain aerial photographs of the lands, maps to identify the land, and proof of identity of the owner.

The plaintiff asserts that two parties (the identity of whom he was unaware) had shown interest in the lands to Mr Leacy but nothing came of it. He believes that one person offered E120K/acre on the 20th June, 2007, which offer was communicated to him. However, Mr Leacy disputes the assertion that he had two potential buyers or had any offer. He argues that if he had received an offer he would have contacted the plaintiff since he would have been seeking his 1%.

The plaintiff also sought and obtained a valuation from the second named defendant, Mr Kavanagh whose services were recommended to him by a mutual friend. The plaintiff received a written valuation from him on the 20th June, 2007, valuing the holding at E6.9 million. The plaintiff asserts that, at Mr Kavanagh's suggestion, he agreed to place an advert for the sale of the lands in the Irish Independent. Mr Kavanagh, according to the plaintiff, said he got 4-5 calls of interest from the north east of the country but it went no further.

The plaintiffs plan was to sell Clonhaston following his purchase of Coolbawn. He explained in evidence that he did not wish to sell Clonhaston first since if his bid for Coolbawn was not successful he would lose his lands and not gain Coolbawn. This would mean the loss of a feed source for his animals requiring him to buy in feed for them. He said he had invested heavily in milk quotas. Consequently, he required a loan from AIB in order to finance the purchase of Coolbawn pending the sale of the lands at Clonhaston. The plaintiff asserts that the bank requested written valuations of the lands that were to be sold in order to consider his request for financing and it also sought the previous year's farm accounts. The bank, he argues, like him, accepted the defendants' valuations as being correct and placed reliance on them in ultimately agreeing to provide him with a loan facility of Euro7.7 million maximum to enable him to bid to a maximum of Euro7 million for Coolbawn. This loan was to be provided subject to an irrevocable contract in the sum of Euro7.5 million minimum for the sale of the lands at Clonhaston being in place. It is accepted by the plaintiff that the bank protected itself by making this contract a condition of the loan however he argues that as a result one cannot tell if the bank also placed reliance on the valuations.

The plaintiff claims that the first named defendant's letter of the 18th June was a valuation of the lands. The first named defendant disputes this arguing that the word "valuation" never appears in the letter. He does not accept that the reference to "current market value" in the letter means that it is a valuation and he points out that his letter, unlike that of Mr Kavanagh, did not state explicitly that it was a valuation. He argues that no bank would rely on the letter without at least a map and in any event he was not told that the letter was for the bank. He points out that there is no reference to the valuations in AIB's facilities letter to the plaintiff of the 25th June, 2013, and contends that the letter does not suggest that the facility was subject to the valuations but rather was subject to the irrevocable contract.

The plaintiff argues that if the letter was not a valuation it would be of no purpose to the plaintiff and would be pointless. The plaintiff is of the belief that Mr Kavanagh unlike the defendant, does not seem to have misunderstood what he was instructed to do. He argues that he asked both defendants to do the same thing i.e. value the lands, so he cannot understand how Mr Leacy could have come to a different understanding regarding what he was asked to do than Mr Kavanagh.

The plaintiff argues that Mr Leacy's letter is an incompetent valuation as opposed to not being a valuation at all. As evidence that this was a valuation and therefore a letter important to the plaintiff he points to phone records showing that he made multiple phone calls to the defendant just prior to the auction around the time he requested the valuation in writing. Moreover he drove to Enniscorthy the week prior to the auction to collect the letter from the defendant's offices. He argues that if it was simply a "thinking of buying letter" he would not have gone to this effort.

The defendant denies that the letter is negligent or incompetent since the market can change at any future date and that can affect the figure quoted. He argues that Clonhaston did not reach the price forecast by him due to a change in market conditions following the valuation.

The defendant submits that he conducted background research into the lands before writing the letter however he did not record this research. He does admit that he did not analyse what portion of the lands might be rezoned (despite the letter averring to the fact that part of the lands may be rezoned) but confined himself to making general planning permission enquiries.

He queries the level of responsibility he had towards the plaintiff given that the plaintiff did not retain him for the sale of the lands. He argues that the plaintiff should have had a contract that was conditional on the sale of Clonhaston. However the plaintiff argues that it was not feasible to execute a contract conditional on the sale of the Clonhaston as no vendor would accept such a contract. He, as a farmer, could not simply sell the farm or a large portion thereof without first buying other lands or he would run the risk of losing his livelihood and contends that is standard practice in the farming community.

In any event the plaintiff argues that he had regard to the valuations provided by both defendants in assessing whether he was in a position to buy the Coolbawn farm and in reliance thereon he purchased 2 lots of that farm for Euro 5,900,000 at the public auction. He asserts that he only bid for 2 lots at the auction since he believed the price of the remainder of the lands had gone above the lower valuation of Euro 7,000,000 million for Clonhaston provided by Mr. Kavanagh i.e. he felt he was being prudent by not paying more money than he had so he did not want to take that risk. He rejects the defendant's assertion that this is evidence that he relied mainly on Mr Kavanagh's valuation.

Following the auction the plaintiff approached the auctioneers dealing with the sale of the Coolbawn lands- Me Guinness Lambert, in the hope that they would assist him in selling his lands at Clonhaston. Me Guinness Lambert suggested that the lands be sold jointly with the second named defendant. The first named defendant Mr Leacy was not instructed in the sale of the lands.

Marketing of the lands began immediately and the auctioneers advised that the selling price start at Euro50,000-Euro100,000 per acre to attract buyers. The plaintiff received one offer ofEurol million for 65% of the lands at Clonhaston in July 2007 which was far less than the defendants' valuations. No other offers were made.

Ultimately the plaintiff was unable to sell Clonhaston and therefore could not raise the monies necessary to purchase Coolbawn. His deposit was forfeited. Coolbawn was resold in 2008 and the plaintiff believes it was sold for E 4.7 million.

Initially the vendors of Coolbawn issued proceedings against the plaintiff for the E1.2 million shortfall between the purchase price of E5.9 million and the price ultimately obtained for the lands. These proceedings have since been discontinued. AIB have obtained judgment against the plaintiff for the deposit plus interest, which is registered against the plaintiff’s lands. They are further seeking possession orders against the lands at Ballyorrel which the plaintiff and his wife own jointly.

The plaintiff is not in a position to repay the deposit to AIB. He began to pay it off in the first year but could not continue repayments. He indicates that he is stressed due to the matter, that merchants will not give him credit and he cannot get people to do contract work for him.

Mr Ross Shorten of Lisney Chartered Surveyors was called by the plaintiff to give expert evidence. In 2008 he valued the lands at Clonhaston as of the 20th June, 2007 at Euro2.2 million He explained that a new development plan was to issue when Mr Leacy conducted his valuation but as of June 2007 the plaintiffs holding was still outside the plan. In October 2007 the draft new plan issued

and part of the lands were shown as rezoned however the balance of lands being 18.96 acres remained unzoned. Mr Shorten gave evidence that the lands slope away from the main road, contain forest and would not be good residential development land. There are no public services on the lands and the 2001 development plan (which was available to the public) showed this. He is of the view that a valuer should have taken this into account in any valuation and should have indicated to the plaintiff that his lands may not be rezoned. He should also have advised the plaintiff to hold off until the plan was published and then get the valuation done.

The land across the road from Clonhaston was sold a year previously and Mr Shorten opines that the first named defendant committed a substantial error in failing to take into account what those lands sold for. He believes that Mr Leacy should have examined all comparable evidence and if he had he would not have come up with a valuation which was deficient. Mr Leacy contends however that those lands (which sold for E59K/acre) were worth less than the plaintiff's lands owing to the fact that there are monuments of archaeological interest on them, rendering them more expensive to develop and also the fact that the lands are subdivided by the Dublin-Wexford train line.

Mr Terry O'Leary, chartered surveyor, was called as an expert witness for the defendant. In his evidence he referred to various property transactions comparable to that of Clonhaston which took place around the same time as the Clonhaston transaction showing the high prices land was achieving at that time. He points to a parcel of unzoned land in Tomhaggard, a village located south of Wexford Town and noted in evidence that despite no local development plan being in place it sold by private treaty for E100 K/acre. He notes a 6.4 acre parcel of zoned land located in Wexford Town and states that although zoned it is a comparable piece of land to Clonhaston since it was sold in June 2007. E600K/acre was paid for this land by private treaty.

Mr O'Leary indicated he does not believe the defendant's letter to be a valuation report since it does not follow international valuation standards and much research would have been required to do a full valuation of the lands. He explained that before a contract exists between an auctioneer and a client commission rates and other outlays must be disclosed to the client and he understands the first named defendant never discussed this with the plaintiff. He stated that the differing valuations ofE7 and Ell million in Mr Leacy and Mr Kavanagh's reports could be explained if one has regard to factors that may be considered as per IAVI guidelines when drawing up a valuation. This means that one valuer may proceed to value on the basis that much of the land will be zoned and another valuer may work on the assumption that only a small part of the land will be zoned. He stated that he is of the view that when the defendant inspected the lands at Clonhaston the price valued could have potentially been achievable. He gave the examples of Arklow and Gorey where values increased with the advent of the M11 and suggested that it was not improbable that the same could not have happened in Enniscorthy had it not been for the deteriorating market and the prevailing economic climate which began to change in the summer of 2007.

Mr Michael O'Leary (no relation of Terry O'Leary) also gave evidence for the defendant. He is an auctioneer, valuer and fellow of the Institute of Professional Auctioneers and valuers. He gave evidence that if the first named defendant had been conducting a formal valuation such would only be done when the auctioneer knew the purpose of the valuation and it would be normal practice that the client would have to pay for the valuation. He gives examples of different properties in the area such as Rectory Road, Enniscorthy where land with planning permission of 1.39 acres sold at auction on the 7th April, 2006, for EI.380 million. He points to this as an example of the very high prices that land was going for at that time. He also refers to 20.6 acres at Killagoley, Enniscorthy which sold on the 23rd February, 2007, for E3.7 million. He notes that this would not be considered a particularly desirable area but it still went for a high price. He also points to agricultural land in Blackwater, an area which had a development plan. Mr O'Leary had expected this land to sell for E700-800K however it sold for E2.5 million despite the fact that it was unzoned, outside the development plan and was unlikely to ever come within the plan. He has stated that considering those comparisons Mr Leacy was justified in his valuation.

He is of the view that if things had continued as they were going in 2007 the price estimated by Mr Leacy could have been achieved. He believes that the plaintiff was unlucky simply getting caught at the wrong time as the economy had begun to slow down. He also queries the plaintiffs failure to obtain professional advice regarding his situation and opined that if he had taken advice from a solicitor or an auctioneer he may have been advised to get a deal with a builder whereby he would sell the lands in Clonhaston if he was successful in his bid for the lands in Colbaun and he would sell at a slightly reduced price because of that condition.

The defendant alleges contributory negligence on the part of the plaintiff in failing to sell his own lands before trying to buy Coolbawn. He argues that it was not reasonable for him to hope that he could conclude a contract for the sale of his lands in Clonhaston within the eight week period stipulated by the bank. Counsel for the defendant also has argued that it was not reasonable for the plaintiff to get a document which he maintains is a valuation from the defendant, not pay for it and then attempt to rely on it. He argues that when he attended at the auction he should have been accompanied by a solicitor.

The plaintiff argues that there is a duty of care on a valuer who is retained to value a property for a vendor irrespective of whether that vendor had paid for such valuation. The standard of care is the usual standard of care required of any professional in that the valuer must exercise the standard of care and skill possessed by a competent valuer.

The plaintiff recognises that property valuation is an imprecise art and contains an element of opinion. As Watkins J noted in *Singer & Friedlander Ltd v John D Wood & Co* [1977] 2 EGLR 84 at p.86:-

> "The valuation of land by trained, competent and careful professional men is a task which rarely, if ever, admits of precise conclusion. Often beyond certain well-founded facts so many imponderables confront the valuer that he is obliged to proceed on the basis of assumptions. Therefore, he cannot be faulted for achieving a result which does not admit of some degree of error. Thus, two able and experienced men, each confronted with the same task, might come to different conclusions without any one being justified in saying that either of them has lacked competence and reasonable care, still less integrity, in doing his work. The permissible margin of error is said by Mr Dean, and agreed by Mr Ross, to be generally 10 per cent either side of a figure which can be said to be the right figure, so I am informed, not a figure which later, with hindsight, proves to be right but which at the time of valuation is the figure which a competent, careful and experienced valuer arrives at after making all the necessary inquiries and paying proper regard to the then state of the market. In exceptional circumstances the permissible margin, they say, could be extended to about 15 per cent, or a little more, either way. Any valuation falling outside what I shall call the "bracket" brings into question the competence of the valuer and the sort of care he gave to the task of valuation."

This approach was refined over decisions through a number of years in the UK as noted in the decision of *Merivale Moore Plc & and another v Strutt & Parker* [1999]2 EGLR 171 where the Court of Appeal stated:-

> "..... the conclusions of competent and careful valuers may differ, perhaps by a substantial margin, without one of them being negligent....[th]at has led to the courts adopting a particular approach to claims of negligence of the part of valuers.

In the general run of actions for negligence against professional men:

it is not enough to show that another expert would have given a different answer...the issue....is whether [the defendant]has acted in accordance with practices which are regarded as acceptable by a respectable body of opinion in his profession ....the first question is whether the valuation, as a figure, falls outside the range permitted to a non negligent valuer.

Third, where the valuation is shown to be outside the acceptable limit, that may be a strong indication, that negligence has in fact occurred".

In that case the Court found that a discrete breach of duty in arriving at a valuation figure would not give rise to liability, unless the valuation figure produced by the breach was outside the permissible bracket or margin of error.

The plaintiff in this case submits that the valuation by both defendants, but in particular the first defendant, is so far outside the "bracket" as to indicate negligence. Moreover, it is submitted that once the plaintiff succeeds in showing that the impugned valuation falls outside of the bracket, he has discharged an evidential burden. It is then for the defendant to show that, notwithstanding that the valuation is outside the range within which careful and competent valuers may reasonably differ, he nonetheless exercised the degree of care and skill which was appropriate to the circumstances.

It is submitted that the decision of Goff J in *Kenney v Hall, Pain & Foster* [1976]2 EGLR 29 is identical to these proceedings. In both cases the plaintiff, in reliance on an overvaluation of his property by the defendant, purchased additional property prior to selling off his existing, overvalued property. In both cases the sale of the overvalued property was essential to funding the purchase of the new property but ultimately failed to do so. Furthermore, both cases occurred at the end of a property boom which had a profound effect on the plaintiff's finances.

In *Kenney* the defendants conceded that they owed a duty of care to the plaintiff in relation to the advice given to him. On the issue of negligence Goff J held that the plaintiff had to establish two elements, firstly that the valuation was erroneous, and secondly that the defendant's employee was negligent in providing such an erroneous valuation. Goff J held that the valuation provided by the defendant had indeed been erroneous and found that following the plaintiffs request for a written valuation he was entitled to assume that the written valuation received had been the subject of fully informed consideration by the defendant. Goff J took the view that had it not been for the defendant's valuation the plaintiff would never have taken the risk of committing himself to purchasing another property before dispensing with the one he had. Goff J. found that in doing this the plaintiff had acted in reliance on the defendant's negligent advice. In that case it was not accepted that buying before selling constituted a novus actus interveniens, contributory negligence or that it was unreasonable.

In *Kenney*, the plaintiff notes, the courts also rejected the argument that the plaintiff was no longer reliant on the valuation at the time of purchase because he had other valuations done.

It is submitted by the plaintiff that the measure of damages should be assessed on the principle stated by Lord Denning MR. in *Esso Petroleum Co Ltd v Mardon* [1976] 1 QB 801 at 821:-

> "You should look into the future so as to forecast what would have been likely to happen if he had never entered into this contract: and contrast it with his position as it is now as a result of entering into it. The future is necessarily problematical and can only be a rough-and-ready estimate. But it must be done in assessing the loss."

This was applied in the *Kenney* case and it is the so called "no transaction" basis. Counsel for the plaintiff argues that this means a vendor must be put so far as money can in the position he would have occupied if the surveyor had properly discharged his duty. It is submitted that in this case had the plaintiff been advised that his lands were in fact worth less than the lands he was purchasing there would have been "no transaction".

Decision
The issues that arise for the decision of the Court seem to me to be as follows:

(a) was the defendant aware that the plaintiff would rely upon his letter of the 18th June, 2007 as a valuation,

(b) was this letter intended to be a valuation,

(c) if it was a valuation, was it prepared negligently,

(d) did the plaintiff rely upon this letter or did he rely upon the second valuation of Mr. Kavanagh or did he rely on both,

(e) is the plaintiff responsible for his own misfortune - if so, is he fully or partly responsible,

(f) the measure of damages.

(a) There is a conflict of evidence in this case in relation to this issue. The plaintiff says he told Mr. Leacy that he wished to sell Clonhaston to that he could buy Coolbawn. The defendant denies this. The key to resolving the question as to whether the defendant was aware the plaintiff would rely upon his letter of the 18th June, 2007 is the record of phone calls between the two. Whether the calls prior to May 2007 were or were not concerning the sale of Clonhaston is something the Court need not concern itself with. The important thing is that in the days prior to the 18th June, the plaintiff made multiple telephone calls to the defendant. He ultimately drove to Enniscorthy the week prior to the auction to collect the letter. This conduct is supportive of the plaintiff's evidence and not that of the defendant. If it was only a "thinking of selling" letter with the aim of attracting the plaintiffs business, I do not think it probable that the plaintiff would have had to pursue the letter so assiduously including driving himself over to collect it. This clearly was regarded by both as a letter of some importance and, in my view, was understood to be something which the plaintiff needed and upon which he intended to rely.

(b) Was the letter intended to be a valuation?

The defendant's solicitors in their letter of 11th August, 2008 states that the plaintiff approached the defendant "looking for a letter for an estimate of the value of his lands at Clonhaston". That indeed was his own evidence. He agrees there were multiple calls in the days prior to the letter of the 18th June, 2008. He said the plaintiff and he discussed the letter. The letter itself on Phoenix Estates notepaper states;

> "In my opinion, I would estimate these lands to have a current open market value in the region of €220,000 to €240,000 per acre."

This is described by Mr. Ross Shorten of Lisney as a valuation albeit an incompetent one. I consider Mr. Shorten to be an authoritative witness and I accept his professional characterisation of this letter as a valuation. This letter seemed on its face to be such a valuation. If it was not, it should have clearly stated that it was not so. In fact, in my view, on any simple reading of it, it is clearly intended to express a professional opinion on the value of the subject lands. The letter in my judgment was and was intended to be a valuation.

(c) If it was a valuation, was it prepared negligently;

Mr. Shorten stated that the Irish valuers need to be and were now in compliance with what he described as "the red book". This constituted the internationally accepted standard for valuation. The defendant had shown in his discovered evidence of research, no real information as to how he came to his valuations. No warning of uncertainty of valuation was provided. No warning was given of the risks attendant upon the zoning or non-zoning of the lands of any part of them. Bearing in mind that ultimately only twenty one acres of Clonhaston were rezoned, the defendant was actually valuing these re-zoned lands at about €500,000 per acre. Mr. Shorten considered this valuation totally out of keeping with the standard valuation. The valuation placed upon the lands by Mr. Shorten as of June 2007 was €2.2m as opposed to the €10m to €11m as assessed by the defendant. The evidence was that two weeks after being advertised for sale, an offer of €1m for sixty five per cent of Clonhaston was received. There were no other offers and no interest at all since then. This fact is strongly supportive of the validity of Mr. Shorten's valuation.

The defendant's valuation is far out of line and clearly erroneous.

The defendant in his evidence was not able to show any real effort made by him to produce a true and reliable valuation of the lands. The overwhelming impression created by his evidence was that he hazarded a guess backed up by a vague general knowledge of the value of properties in the immediate area. He was, in my view, far outside the "bracket" referred to in *Singer & Friedlander Limited v. John D. Wood & Co.* [1977] 2 EGLR 84 at p. 86. The valuation does indeed seem to be, as characterised by Mr. Shorten, incompetent. It does not appear to have been prepared in accordance with minimum standards with regard to appropriate comparators nor did it contain any advice re the risks inherent in zoning as a factor. As a valuation it turned out to be hopelessly incorrect. The argument that this was a particularly difficult time does not carry much weight. The real collapse in the property market did not come until autumn of 2008. But the market throughout 2007 was, according to the evidence, in some difficulty and a cause of grave concern. The complete lack of interest following the €1m offer for sixty five per cent of Clonhaston supports this evidence. The defendant should have been aware of that. Unfortunately his valuation in its look to the future saw only increased value after re-zoning. In my view, this valuation was prepared negligently.

(d) The plaintiff’s reliance on the valuations;

It was obvious to the plaintiff that he was embarking on a course of action which was risky. I accept as entirely logical and essential that he had a reasonable idea of what he was likely to get for Clonhaston before he bought Coolbawn. He needed to know the broad parameters of the funds he would have available to him. Thus he obtained the two valuations. Their whole purpose was to enable him know what he had to spend. One valuation (the first defendant's) was of €10m to €11m. The other (the second defendant's) was of €6.9m. His evidence was that when the bidding for Coolbawn went past €7.9m for the whole property, he decided to bid just for Lots 1 and 2. He did this to be conservative and to ensure that he would have enough funds from Clonhaston to pay for the purchase. He bid €5.9m and got the two lots at that price. His evidence was that it was on the basis of the two valuations and the comfort they gave him that he bid this €5.9m. I accept his evidence because it is the only logical conclusion to which the Court can come. Why else get the valuations and why ignore them. As to whether he relied on one more than the other, this is very much a question of splitting hairs. He says he relied on both and that also seems logical. At €5.9m he would be getting perilously close to the second defendant's valuation. Knowing he also had a valuation that gave much greater comfort must have had a considerable bearing on this vital comfort balance and his decision to purchase Lots 1 and 2. I believe it is unrealistic to try determining which valuation was more relied upon by the other. I hold therefore that the two valuations were of equal value to the plaintiff in providing comfort for him.

(e) The contributory negligence of the plaintiff;

The plaintiff is quite clearly an experienced and knowledgeable farmer. He had no hesitation in dealing in millions for the betterment of his farm. He has invested heavily in milk quotas. He knew well there was a risk involved in buying before he sold. His searching for valuations shows he was well aware of that. His conservative approach to bidding also demonstrated a careful attempt to minimize risk. Yet he was the one to embark on this risk. He does appear to have been a buyer and seller at the wrong time. The market turned against him and he suffered the fate of many before. At any time over the previous ten years or more, he would have had no difficulty. This time what began as a falling back in land prices turned into a price crash as regards development land and he is the victim of that. Yet it was his decision to buy before he sold and the two valuations are, therefore, in my judgment, only partly responsible for the unfortunate consequences of that decision. I consider him fifty per cent responsible and the two defendant’s twenty five per cent each for the unhappy result.

(f) The measure of damages is, in my view, quite clear. The plaintiff’s loss is the value of the deposit. In this regard, the bank has obtained judgment against him in the amount of €590,000 plus interest. Thus, the measure of damages is that amount. I think the interest should be calculated up to today and there should be an order in favour of the plaintiff against the two defendants jointly and severally for fifty per cent of the total with their dividing liability between them in the ratio of twenty five per cent each in respect of the total amount.