

THE HIGH COURT

[2001 No. 15154 P]

BETWEEN

DAVID WALSH

PLAINTIFF

AND

JONES LANG LASALLE LIMITED

DEFENDANT

Judgment of Mr. Justice Quirke delivered on the 24th day of January 2007

In this case the plaintiff, David Walsh, is claiming damages from the defendant to compensate him for loss and damage allegedly sustained by him as a result of negligence and negligent misstatement on the part of the defendant.

The plaintiff claims that on the 28th September, 2000 he purchased a property, (No. 77 Upper Gardiner Street in Dublin), for the sum of IR £2,342,000.00 for investment purposes. It was his intention to let the property in units to commercial tenants.

The defendant is a well-known firm of auctioneers which was retained by the owner to sell the property.

The plaintiff claims that it was expressly represented to him by the defendant that the property comprised a total floor area of 23,057 square feet. The precise measurement of the floor area of the property was so described within the defendant's sales brochure, which was provided to the plaintiff by the defendant. The plaintiff claims that he relied upon the defendant's calculation of the floor area when making his decision to purchase the property.

In fact the total floor area of the property was 21,248 square feet, (1,817 square feet less than what was represented to the plaintiff by the defendant). The plaintiff claims that by miscalculating the floor area of the property the defendant acted negligently and that, by publishing this incorrect calculation of the floor area within its sales brochure, the defendant was guilty of negligent misstatement.

He says that the defendant failed to exercise the requisite and appropriate standard of care which a purchaser is entitled to expect from a reputable auctioneer and valuer and breached the duty of care which was then owed by the defendant to the plaintiff. The plaintiff claims that as a result of the defendant's negligence and negligent misstatement he has suffered losses including loss of income.

Relevant Facts

1. In July, 2000 the defendant was retained, (by the owner), to sell a two storey corner building at Upper Gardiner Street in Dublin, by private treaty for the best possible price.

The defendant prepared and published a single-page sales brochure which advertised the property *inter alia* as "a mixture of retail, storage and office accommodation over two floors..... situated in the heart of Dublin's north inner city approximately five minutes walk from Dublin city centre"

On the front page of the brochure the property was described under its address as "2,142 m²- (23,057 square feet). - Site Area 0.13 Hectares (0.31 Acres)"

On the back page of the brochure, under the heading "Accommodation", (a), the ground floor was described as having an area of 12,594 square feet, (b), the first floor was described as having an area of 10,463 square feet, and (c), the total area of the property was described as having a total area of 23,057 square feet. Corresponding measurements were provided in square meters.

The correct measurement of the first floor area was 8,573.5 square feet. The correct measurement of the total floor area of the property was 21,248 square feet.

The brochure contained a coloured photograph of the premises, a location map, descriptions of the use to which property could be put, its location and other similar details. The following paragraph was published in small print at the bottom of the front page:

"Whilst every care has been taken in the preparation of these particulars, and they are believed to be correct, they are not warranted and intending purchasers/lessees should satisfy themselves as to the correctness of the information given."

2. In July, 2000 the plaintiff was interested in acquiring a premises for business and investment purposes in the north inner city of Dublin. He was at that time the owner of a property at Cumberland Street North, in Dublin.

He became aware that the property, No 77, Gardiner Street was for sale. He visited the premises on the 13th July, 2000 and returned to the premises on the 14th July, 2000.

He spoke to Mr. "Woodie" O'Neill of the defendant company and expressed an interest in purchasing the property. Mr. O'Neill provided him with the sales brochures, to which reference has been made earlier.

3. By letter dated the 21st July, 2000, Mr. O'Neill advised Mr. Walsh *inter alia* as follows:

"Dear Dave,

77 Upper Gardiner Street.

I refer to on-going discussions in relation to the sale of the above property. A number of interested parties have shown an interest and we are instructed to finalise offers on the premises. Each of the interested parties are notified that final and "best offers" on the subject property are to be received in writing to this office no later than 12 noon on Friday next 28th July, 2000."

The letter enclosed a copy of a draft contract and conditions of sale in respect of the property and directed enquiries to the vendor's solicitors.

4. The plaintiff engaged a solicitor to examine the title to the property and retained a Mr. Val O'Brien, (a property surveyor), to conduct what was described as "an informal condition survey" of the property. Mr. O'Brien stated in evidence that he regularly carries out "condition surveys" of properties but has never been required by prospective purchasers to take measurements of the floor areas of properties prior to the submission of offers.

5. By an undated hand written letter, submitted by the plaintiff to Mr. O'Neill on the 28th July, the plaintiff advised the defendant *inter alia* as follows.

"I refer to your letter of the 21st July and would offer IR£2,342,000.00 for this property. ... Please contact me at 4961753 if anything requires clarification."

In evidence the plaintiff said that his offer was based upon a "back of an envelope" calculation that he could recover the following rental incomes as owner of the property:

- (1). Shop unit at the front of the ground floor – I.R. £20.00 per square foot.
- (2). Storage area at the back of the ground floor – I.R. £8.00 per square foot.
- (3). First floor – I.R. £20.00 per square foot.

Based upon his calculation, the total rental income recoverable from the property was likely to be approximately IR £320,000.00 per annum and he estimated that the overall gross value of the property was in the region of IR£2,500,000.00 (after deduction of substantial costs). His offer was based upon the floor areas stated in the brochure.

In relation to the "waiver" paragraph at the bottom of the front page of the brochure he stated "I would have been aware of the waiver. I cannot recall whether I read it with any care. I noted that.. every care had been taken. I knew that Jones Lang was a firm of the utmost probity."

He said that he had purchased properties on previous occasions and on subsequent occasions and had "...never had a building measured on any occasion before making a purchase... I depend on the reputation, credibility and integrity of the person advertising..."

6. On the 9th of August, 2000 the plaintiff entered into and executed a contract for the purchase of the property. He then commissioned Mr. Tony Rooney of Messrs. Palmer McCormack, Chartered Surveyors to assist him in the letting of the property (he was also considering occupying part of the property for his own business).

On the plaintiff's instructions Messrs. Palmer McCormack provided a report upon the property for his bankers (Messrs. ACC Bank). The report was contained in a letter from Palmer McCormack to ACC Bank dated the 15th August, 2000. The report provided *inter alia* that:

"The property ... comprises approximately 23,000 square feet gross on a site of almost a 1/3 of an acre. (We have not measured this building and have taken floor areas from the Jones Lang Lasalle sales brochure).

The office accommodation at the first level comprises approximately 10,463 square feet gross and in our opinion has a rental value of IR £15.00 per square foot net. Approximately 4,000 square feet at first floor level requires refurbishment and improvement and we understand that Mr. Walsh intends to upgrade this space to current office standards."

The plaintiff's bank made no enquiries as to the accuracy of the measurements and did not carry out a survey itself in relation to the property.

7. Mr. Rooney was successful in letting the first floor and a small part of the ground floor to the Commissioners of Public Works for a period of four years and nine months from the 1st April, 2001, at a rental of IR£20 per square foot. The letting was negotiated over a period of time and involved substantial internal alterations to the building in order to accommodate the requirements of the Health Service Executive, which ultimately took occupation of the relevant parts of the building after the negotiations had been completed.

8. By letter dated the 20th March, 2001 Mr. Val O'Brien who is a chartered building surveyor advised the plaintiff that the total floor area of the property was 21,248 square feet, (8,573.5 square feet at first floor level and 12,674.6 square feet at ground floor level).

The plaintiff, in evidence stated that he was astonished when he received this information since he had believed that the total floor area of the building to be almost 20% greater having regard to the precise measurements within the defendant's brochure. He said that commercial life would be "untenable" if every prospective purchaser was unable to rely upon the precise measurement provided by seemingly reputable auctioneers and estate agents.

He said that purchasers of commercial property believed that "waivers" of the type relied upon by the defendant were to be found in most auctioneers' brochures and were intended to safeguard auctioneers from liability in respect of "minor" miscalculations.

He stated that his view upon this was fortified by the fact that the defendant had acknowledged that between ten and twelve potential investors who were very interested in purchasing the property had viewed the property but had not measured it. If they had done so then the very substantial miscalculation of the floor areas would have been discovered before the property was sold.

9. Mr. Barry Smyth who is a chartered surveyor with Messrs. De Vere White Smyth stated in evidence that it would be most unusual for investors to measure properties before offering to purchase. He said that he had never encountered circumstances where that had occurred. He said that most auctioneers had some form of disclaimer on their brochures. He said that these disclaimers comprised "... an effort to protect the agent from relatively minor errors... I would expect their measurements to be correct... I would expect purchasers to rely upon my measurements..."

Mr. Peter Rowan of Lambert Smith Hampton, Auctioneers stated in evidence on behalf of the defendant that a prudent investor or intending purchaser should carry out a detailed inspection and measure all floor areas before purchasing a property. He said it would not be normal or prudent and would not be considered acceptable practice to rely solely on the measurements set out in a sales brochures prepared by a vendor's agent.

9. Mr. Nigel Healy who is a director of the defendant company described the "disclaimer" as a form of advice to a purchaser to carry

out inspections and measurements as a form of "due diligence." He said that the measurements on the brochures were as a "as a general guide" to prospective purchasers.

Issues

The plaintiff has not challenged the validity of the contract into which he entered for the purchase of the property. He has not claimed damages or rescission of the contract on grounds of misrepresentation or fundamental breach of the terms of the contract.

His claim is confined to the contention that, by miscalculating the floor area of the property and publishing the incorrect calculation within its sales brochure, the defendant acted in breach of a duty of care which it owed to the defendant. In consequence, it is claimed, the defendant was guilty of negligence and negligent misstatement, which resulted in the plaintiff sustaining loss and damage, (including an ongoing loss of income).

The issues for determination by the court are as follows:

1. On the facts of this case did the defendant owe a duty of care to the plaintiff to ensure that the calculation of the floor area of the property which the defendant published in its sale brochure was accurate?
2. if so was the defendant in breach of that duty?
3. if so, (a) was the plaintiff guilty of any negligence or breach of duty which caused or contributed to the loss allegedly sustained by him and, if so, (b), to what extent has the plaintiff caused or contributed to his own alleged loss and damage and
4. what damages, if any, is the plaintiff entitled to recover from the defendant.

1. Duty of Care

Mr. Sanfey SC on behalf of the defendant argued that the defendant owed no duty of care to the plaintiff to ensure that the details published in the defendants' sales brochure were accurate. He contended that such a duty will only come into existence when a "special relationship", of the kind identified by Lord Reid in *Hedley Byrne & Company Limited v. Heller & Partners Limited* [1964] A.C. 465 exists between the parties.

Pointing to the "disclaimer" published in the defendant's sales brochure Mr. Sanfey argued that no special relationship can be said to have come into existence between the plaintiff and the defendant, in circumstances where the plaintiff has been expressly advised to satisfy himself as to the correctness of the information provided by the defendant.

In support of his contention Mr. Sanfey SC also relied upon a number of English and Irish Authorities including *Smith v. Eric. S. Bush* [1990] 1. A.C. 831, *Bank of Ireland v. Smith* [1966] I.R. 646, *McAnarney v. Hanrahan* [1994] 1 I.L.R.M. 210 and *McCullagh v. Lane Fox & Partners Limited* [1996] P.M.L.R. 205 C.A.

He argued that, in cases such as this a "third element" in addition to "reasonable foreseeability" and "proximity" must be considered by the courts. He contended that in *Caparo Industries Plc v. Dickman* [1990] 2 A.C. 605 the House of Lords has held that liability for economic loss due to negligent misstatement is confined to cases where the statement or advice had been given to a known recipient for a specific purpose of which the maker was aware and upon which the recipient had relied and acted to his detriment. In that case the Court (Lord Bridge) observed *inter alia* at pp 617/618) that:

"What emerges is that in addition to the foreseeability of damage, necessary ingredients in any situation giving rise to a duty of care are that there should exist between the party owing the duty and the party to whom it is owed a relationship characterised by the law as one of "proximity" or "neighbourhood" and that the situation should be one in which the court considers it fair, just and reasonable that the law should impose a duty of a given scope upon the one party for the benefit of the other."

In the recent case of *Wildgust and Another v. Bank of Ireland and Another* [2006] 2 I.L.R.M. 28, the Supreme Court (Geoghegan.J), considered the "...sharp distinction between negligence in act on the one hand and negligence in a statement on the other hand.". Noting that this "third element", (described as "reasonableness in the imposition of a duty of care"), had been endorsed obiter by the Supreme Court (Keane C.J.) in *Glencar Exploration Plc v. Mayo County Council (No. 2)* [2002] 1 I.R. 84, and without conceding that "the law of negligent misstatement is a separate code from the law of negligent acts" the court reviewed the history of the tort of negligent misstatement and referred to "other special relationships" identified by Lord Reid in *Hedley Byrne*.

Geoghegan, J. continued "in *Hedley Byrne* the only relationship alleged was the relationship between the enquirer and the person giving the information. Hence the emphasis on reliance by the enquirer. It is, however, a small extension of this and justified in my view by later case law, that where a person who is not the enquirer is damaged as a consequence of the wrong answer and where the existence of such a person and the reasonable foreseeability of such damage ought to have been present in the mind of the person giving the information, there was a special relationship with that person also which gave rise to a duty of care."

In the same case the Supreme Court (Kearns J.) indicated that "... I favour an interpretation or adaptation if needs be, of the *Hedley Byrne* principles which would include more than just the person to whom the negligent misstatement is addressed. The "proximity" test in respect of a negligent misstatement in my view must go further than that and include persons in a limited and identifiable class when the maker of the statement can reasonably expect, in the context of a particular inquiry, that reliance will be placed thereon by such person or persons to act or not act in a particular manner in relation to that transaction."

In the instant case the information contained within the brochure prepared and published by the defendant was directed towards a very specific and identifiable category of person.

The defendant is a large firm which has been in existence for a considerable period of time It has justifiably acquired an excellent reputation for competence probity and integrity in its business dealings. It holds itself out as a company with particular skills and expertise in the commercial property markets in Ireland and other countries. It relies upon its reputation for excellence in order to encourage prospective customers to avail of its services.

The brochure was expressly designed to attract the attention of potential purchasers to a centre city commercial property in order to

encourage them to bid or "tender" against one another for the property. It was an integral part of a tendering process designed to maximise the price which potential purchasers would pay for the property. It was designed also to maximise the fee which the defendant would obtain upon the sale of the property.

It was to be expected that the potential purchasers would rely upon the information contained within the brochure when deciding whether or not to offer to purchase.

Prima facie therefore, the relationship between the plaintiff and the defendant was sufficiently proximate to give rise to a "special relationship" of the kind identified by the Supreme Court (Geoghegan and Kearns. J J.) in *Wildgust*.

It was contended on behalf of the defendant that the "disclaimer" published at foot of the defendants' sales brochure precludes the existence of the "special relationship" contended for on behalf of the plaintiff. It was argued that the existence of the "disclaimer" introduced into this case the "third element" referred to earlier and makes it unfair, unjust and unreasonable for this court to impose upon the defendant a duty of the kind contended for. I do not accept that this is so.

The information within the brochure was published by the defendant for the express purpose of influencing a limited number of identifiable persons. The publication of the "disclaimer" was immaterial to that fact. The plaintiff was a person to whom the brochure was expressly directed and he was influenced by the information published within the brochure. I am satisfied on the evidence, that he relied upon the measurements within the brochure when calculating his precise bid or "tender" for the purchase of the property.

It seems to me that the question for determination in relation to the "waiver" is whether its presence within the brochure and its precise terms are together sufficient to exclude the defendant from liability to the plaintiff in respect of negligence by the defendant in the measurement of the floor area of the property and negligent misstatement on the part of the defendant in publishing the incorrect measurements of the floor area. On the evidence I do not believe that they are sufficient.

I accept the evidence of the plaintiff and Mr. Barry Smyth that it is not and has not in the past been the practice for prospective purchasers of commercial property in the Dublin area to measure the floor areas of properties before offering to purchase. I accept also the evidence of Mr. Rooney on that issue.

I accept also the evidence of the plaintiff and of Mr. Barry Smyth that the "waiver" and other similar "waivers" published by reputable auctioneers are and have in the past been regarded by potential purchasers as relating to relatively minor measurement errors.

Whilst I accept also the evidence of Mr. Peter Rowan and Mr. Healy that prudent purchasers should, where possible, measure floor areas and carry out detailed inspections before purchasing properties, I am satisfied on the evidence that, where detailed and precise measurements of commercial properties are provided within the brochures of experienced and reputable auctioneers, it is the practice for prospective purchasers to rely upon the accuracy of those measurements, subject to potential minor miscalculations.

The precision which attached to the measurements of the floor areas is of considerable significance. The brochure provided that the first floor area measured precisely 10,463 square feet. The correct measurement of the first floor area was 8,573.5 square feet.

The "waiver" comprised a sentence in the following terms.

"Whilst every care has been taken in the preparation of these particulars, and they are believed to be correct, they are not warranted and intending purchasers/lessees should satisfy themselves as to the correctness of the information given."

The plaintiff, in evidence, agreed that he "would have been aware of the waiver...(and)... noted that every care had been taken. I knew that Jones Lang was a firm of utmost probity."

It is difficult to accept that "every care has been taken in the preparation of these particulars" because the floor area, (perhaps the most important particular found within the brochure), was overstated to a degree which was seriously misleading to prospective purchasers. The area of the first floor, (which had a rental value in the region of IR £20.00 per square foot), was overstated by more than 1800 square feet.

Undeniably the defendant published grossly inaccurate measurements of the floor area of the property within its sales brochure. It knew or ought to have known that the plaintiff and the other prospective purchasers, to whom the brochure was directed, would rely upon and be influenced by measurements of such apparent precision.

The defendant, nonetheless, argued that it is not liable for any absence of care on its part because the "waiver" provided that the particulars "... are not warranted and intending purchasers/lessees should satisfy themselves as to the correctness of the information given." I do not accept that this provision is sufficient to relieve the defendant of liability in the circumstances of this case.

The duty of care for which the plaintiff contends was to ensure that the calculation of the floor area of the property which the defendant published in its sales brochure was correct. It is the existence of that duty which is in the dispute in these proceedings. If the duty existed then it was a duty to have reasonable care for the interests of the plaintiff in the circumstances. It is not suggested that there was a duty upon the defendant to protect the interests of the plaintiff. It is not suggested that the defendant was not entitled to prefer its own interests or the interests of another party to the interests of the plaintiff. What is contended is that, in the circumstances of this case, there was a duty upon the defendant to ensure that the information which it provided for the alleged benefit of a limited category of persons, (including the plaintiff), was reasonably accurate in the circumstances.

If the defendant wished to reserve to itself the right, (a) to publish within its sales brochure, precise measurements which were in fact grossly inaccurate and, (b) to relieve itself of liability to the category of persons to whom the brochure and its contents were directed, then there was an obligation upon the defendant to draw to the attention of the plaintiff and other prospective purchasers the fact that the seemingly precise measurements published were likely to be wholly unreliable and should not be relied upon in any circumstances.

By including within its brochure an enigmatic sentence in small print claiming to have taken particular care in the preparation of all of the particulars within the brochure but advising prospective purchasers to "satisfy themselves as to the correctness of the information given" the defendant failed to discharge that obligation.

On the evidence of the practice adopted by buyers and sellers of commercial property in Dublin at the relevant time the defendant's

"disclaimer" was a quite inadequate means of notifying prospective purchasers that the seemingly precise measurements of the floor areas so prominently published within the sales brochure were wholly unreliable.

It follows that the "waiver" published at the bottom of the front page of the defendants' brochure was not effective to relieve the defendant of liability in respect of negligence and negligent misstatement of the type contended for on behalf of the plaintiff.

I am satisfied on the facts of this case that the loss and damage claimed on behalf of the plaintiff was a loss which was reasonably foreseeable by the defendant. The defendant is a reputable and experienced firm of auctioneers and estate agents. Its members are familiar with the need for accuracy in the measurement of floor areas of commercial buildings.

They were and are aware that the total rental income recoverable from a commercial property will often be the principal factor in the calculation of its value. The floor area of the premises is an important factor in establishing the total rental income recoverable from the property.

It was to accommodate such calculations by prospective purchasers that the defendant arranged to have the property surveyed and measured and the results published in its brochure. However the floor areas were measured by the defendant negligently and the defendant did not take appropriate steps to ensure that the information which it published in its brochure was accurate.

The defendant knew, or ought to have known, that the plaintiff, (and the other prospective purchasers of a property), would estimate the value of the property (and accordingly of the amount which they were prepared to bid for the property) with particular reference to the rental income recoverable from the property. The rental income, in turn was dependent upon a precise measurement of the floor area available for letting. It was that precise measurement which the defendant purported to provide within its brochure.

It was clearly foreseeable by the defendant that an overstatement of the floor area of the property would give rise to an inflated estimate of the rental income recoverable from the property and a corresponding inflation in the estimated value of the property. It was similarly foreseeable by the defendant that if the property was purchased based upon an over-estimate of its value and of its potential rental income, then losses would be sustained by the successful purchaser.

It follows that loss and damage to the plaintiff in this case was reasonably foreseeable by the defendant. Having found, as I have, that, (a) the relationship between the plaintiff and the defendant was sufficiently proximate to give rise to a "special relationship" of the kind identified in *Wildgust* and, (b) that the loss allegedly sustained by the plaintiff was reasonably foreseeable in the circumstances and, (c) that the imposition upon the defendant of such a duty is, in the circumstances not unfair, unjust or unreasonable. It follows that I am satisfied on the facts of this case that the defendant owed a duty of care to the plaintiff to ensure that the calculation of the floor area of the property in which the defendant published in its sales brochure was accurate.

Since it has been conclusively established by way of unchallenged evidence that the area of the first floor of the property was overstated by more than 1800 square feet it follows that the defendant was in breach of its duty to the plaintiff.

2. & 3. – Breach of Duty and Contributory negligence

It has been pleaded on behalf of the defendant that any loss or damage sustained by the plaintiff has been "caused solely or alternatively contributed to by reason of his own negligence and/or contributory negligence in failing to carry out a survey of the premises prior to his entry in (to)... the contract and completion of the purchase of the premises... when it would have been prudent to do so..."

As I have indicated earlier, I accept the evidence of the plaintiff and of Mr. Barry Smyth that it is not and has not in the past been the practice of prospective purchasers of commercial property in Dublin to measure the floor areas of property before offering to purchase. I also accept the evidence of Mr. Rooney on that issue.

Accordingly I do not find that the plaintiff was guilty of negligence in failing to carry out a survey of the premises prior to his entry into the contract before the purchase of the property.

No evidence was adduced in these proceedings suggesting that it is, or was, or has been a practice for prospective purchasers to measure the floor areas of properties after entering into the contract for purchase and before the completion of the contract.

Mr. Peter Rowan and Mr. Healy stated that in their opinions that prudent prospective purchasers should measure floor areas and carry out detailed inspections before offering to purchase commercial property in Dublin however, I did not understand any expert witness to suggest that, where, as in this case, a prospective purchaser relied upon the precise measurements contained within the selling agents sales brochure when offering to purchase, it would be desirable for those measurements to be confirmed by way of a detailed inspection and survey between the date when the contract for sale is executed and the date when the purchase is completed.

It might well be that if such an inspection and survey had been carried out on behalf of the plaintiff then the miscalculation would have been discovered. However, no evidence has been adduced in these proceedings to support the contention that such an inspection or survey should have been carried out in order to confirm the precise measurements contained within the brochure.

In the circumstances then I am not satisfied that any contributing negligence on the part of the plaintiff has been established by way of evidence in these proceedings.

4. Damages

Evidence has been adduced by Mr. Barry Smyth on behalf of the plaintiff and by Mr. Rowan on behalf of the defendant relating to the loss sustained by the plaintiff as a result of the overstatement of the area of the first floor of the property.

I am satisfied on the evidence and on the balance of probabilities that, if the defendant's sales brochure had contained accurate measurements of the floor area of the property then the plaintiff and the other prospective purchasers would have submitted bids or "tenders" smaller than those which were submitted. It is probable that the plaintiff would still have been successful in purchasing the property based upon a "back of an envelope" calculation of the kind which gave rise to his successful bid or "tender".

Mr. Smyth, on behalf of the plaintiff, estimates the losses claimed by the plaintiff at €590,000.00. That calculation is based upon the fact that, historically, a "blue chip" tenant was acquired, (The Office of Public Works), which was prepared to rent all of the available space from the plaintiff at an agreed rental of €25.39 per square foot.

Mr. Smyth has calculated the plaintiff's loss as the capital value of the reduction in the plaintiff's income from the property, (based

upon a projected yield of 7.5% and allowing for acquisition costs including stamp duty at 6%).

Mr. Rowan who testified on behalf of the defendant estimated the potential loss to the plaintiff at €368,244.00. His calculation was based upon a diminution in the value of the premises at an overall rate or value to be applied to the property of €153.57 per square foot. He calculated the diminution in the value of the property at €368,224.00 on the basis that the floor area was overstated by 1889 square feet. The overstatement was, in fact, 1817 square feet or thereabouts.

I am satisfied that Mr. Rowan's calculation best represents the approximate loss which the plaintiff has sustained as a result of the negligence and negligent misstatement of the defendant. He paid considerably more for the property than it was worth when advertised. The diminution in the value of the property purchased is probably the most appropriate measure of his loss. He is, therefore, entitled to recover the sum of €350,000 by way of damages to compensate him for that loss.