

THE HIGH COURT

[2004/320S]

BETWEEN

ALBERT CROWLEY, HELGA CROWLEY AND FOUNTAINS AND DECOR LTD

PLAINTIFFS

AND

WILSONS AUCTIONS LTD

DEFENDANT

JUDGMENT of Ms. Justice Baker delivered on the 4th day of June, 2014.**Background**

1. The first and second plaintiffs are husband and wife and they, through their company, the third defendant, for many years ran a garden centre and garden design service from their premises at Naas Road in the County of Dublin. In or around the middle of 2003 they took a decision, based primarily on the health concerns of each of them, that they would downsize their business and sell their substantial premises and lands at Kingswood Cross, comprising their family home, commercial units and garden centre display areas and working areas all situate at Kingswood Cross in the County of Dublin.

2. The sale of the real property proceeded in an orderly fashion and a contract for sale was entered into dated the 2nd December, 2003 with Wilsons Auctions Ltd ("Wilsons"), a limited company incorporated in Northern Ireland, for the sale to it of the real property for the total purchase price of €4.75 million. This agreement was negotiated at a meeting at which Albert Crowley and his wife Helga attended as did Ian Wilson and his son Ricky Wilson, the directors of the defendant company.

3. The defendant company is a firm of auctioneers which carries on primarily the business of the auction of chattels, frequently chattels being sold in the context of liquidations, chattels seized for the purposes of execution, or large bulky items sold in the context of the winding up of a business. It is common case that after the parties agreed the purchase price for the lands that an informal discussion took place between them at which the sale of the garden centre contents and chattels and the contents of the dwelling house was discussed.

4. Again it is common case that Wilsons, and in this regard Mr. Ian Wilson was primarily the person involved in negotiations, suggested that it would be prepared to conduct an auction of the chattels and furniture and a very general discussion was had between the parties as to how this might happen. Mr. and Mrs. Crowley gave evidence to the Court that they had no experience of auctions nor did they know the mechanism by which chattels might be sold at auction, and whether this would result in achieving a satisfactory sale price for their goods. It is not contended that an agreement to engage the services of Wilsons was made on that day, and Wilsons was formally engaged on or around 18th December 2003, some two weeks later.

5. This case was commenced by the plaintiffs by summary summons in which they sought a payment to them of the sum of €225,098.50 part of the proceeds of the auction, and ultimately after the exchange of affidavits the matter was remitted to plenary hearing and comes on now for hearing before me as a claim by the plaintiffs for the balance of the auction proceeds, and for damages for breach of contract and negligence with regard to the conduct of the auction. The defendant has counterclaimed.

The plaintiffs' case

6. The plaintiffs claim may briefly be formulated as follows. The plaintiffs claim the balance of the notified sale proceeds but also plead and stated in evidence that there was at all times an agreement with Wilsons that the sale of the chattels would be conducted with an agreed reserve of 50% of the retail price. It is the plaintiffs' case that in breach of this express agreement the auction was conducted without a reserve, that the price achieved was considerably less than that which would have been achieved had the defendant performed the contract, and furthermore that the auction was conducted in a shambolic and chaotic way such that the plaintiffs suffered loss. The case crystallised in the course of hearing and while it is the plaintiffs' evidence that there was considerable chaos in the conduct of the auction, they claim damages to represent the agreed sale price of the goods sold at auction on the basis that there was an express term that the auction be had with an agreed reserve. No evidence was adduced to substantiate the measure of the damages for breach of contract and/or negligence arising from the alleged negligent conduct of the auction itself.

The defendant's case

7. The defendant says that the sale was an auction without reserve, and that no loss was suffered by the plaintiffs as a result of the conduct of the auction which it says was conducted in a professional manner. The defendant also counterclaims for the loss of the value of certain goods which it is said were purchased by Ian Wilson or Ricky Wilson at auction, and for certain alleged breaches arising out of the sale of the real property.

The central question: Was there an express term that there be a reserve price?

8. The first and central question I must determine is whether there was an express agreement made between the parties that the sale of the chattels would be subject to a reserve price fixed at fifty percent of the retail price as identified on the stickers or pricing labels on the individual items. I had substantial evidence from Julian Caplin, a forensic accountant whose evidence, he fairly accepted, was based on an assumption that the auction was with a reserve and his calculation of the plaintiffs' claimed losses was done on this basis. He did give evidence of what he identified as poor record keeping and I note that while Mr. Caplin was not satisfied that he could verify that all items identified in the sales list were fully invoiced, he accepted that the sales list and the invoices were more or less consistent and that, subject only to the question of whether the sale was with a reserve which was not achieved in almost any of the sales, the figure the defendant identifies as being the proceeds of the auction namely the sum of €225,098.50 is more or less correct.

9. Albert Crowley gave evidence of the negotiations with the defendant, primarily had with Ian Wilson and one Jim Burke, an employee

of Wilsons, when the possibility of holding an auction was discussed. He said he and his wife had decided to have what he described as a "massive clearance sale" and having discussed the prospect of conducting this sale by way of a public auction, he and his wife took the view that this was an attractive proposition and they were much encouraged by what they saw as the skill and experience of Wilsons.

10. Albert Crowley was adamant that he agreed with Wilsons that the chattels would not be sold by anything less than 50% of the retail price, and he was clear in his evidence to the court that this was expressly discussed and agreed with Ian Wilson, and furthermore that he would never have sold the chattels at anything less than this. He indicated to the court that the company could have held a private sale at the garden centre premises and would have in that context have achieved between 20% or 30% of the retail price but that the prospect of a public auction had come to seem attractive to him. He explained that each individual item had a sticker, that it was agreed that these would be left on the items and that this would have two functions: customers would see that they were getting a bargain at a price of 50% of this, and the auctioneer conducting the sale would have a baseline figure from which to calculate the reserve.

11. He said that the company's mark-up in normal retail conditions was 100% and that any sale at less than 50% of the retail price would result in a loss to the company. He also said that alternative premises had been found by himself and his wife from where it was intended to conduct a smaller garden centre and garden design business but that they had rented a building in Naas which would have allowed them to store the bulk of the items then in the garden centre had they not been sold.

12. Mr. Crowley was adamant that he did not see the auction advertisements or the catalogue prepared by Wilsons until the morning of the auction nor was there on the fence of the premises a sign that suggested that the sale was without reserve. He said that while he initially had discussions with Ian Wilson, Ricky Wilson was identified as the person who was conducting the auction and that Ian Wilson had identified the auction as "Ricky's baby", by which it was understood by all parties that the conduct of the auction would be done by Ricky Wilson.

13. Ian Wilson and Ricky Wilson gave contrary evidence on nearly all of these matters. They said the auction was to be without reserve, that this fact was by the express direction of Albert Crowley inserted in two places in an advertisement, the draft of which was discussed and agreed with Albert Crowley, and that the notice on the fence mentioned that the sale was without reserve.

The evidence of the contract

14. The contract was made orally and more than ten years have passed since the date of this auction. There is relatively little documentary evidence of the terms and conditions of the contract employing Wilsons as auctioneers. Wilsons prepared an advertisement but there is no consensus between the parties as to whether this advertisement, whether in draft form or in the form in which it was ultimately published in various newspapers, was ever shown to either Albert Crowley or his wife, Helga. Wilsons says that Albert Crowley actively engaged with the preparation of the advert which described the auction as without reserve, and Ricky Wilson says Albert Crowley insisted that the fact of no reserve be stated twice in the advert. Albert Crowley says he did not see the draft or the advert.

15. It is unusual that witnesses in a case such as this are so far apart on such an essential contract term as to whether the auction was with or without a reserve. Because of the almost total difference in the history of the transaction given by the witnesses to both sides of this dispute, I get great assistance from the documentary evidence, from which some objective facts that can be discerned, the overall probabilities and in particular the reasons given for various assertions of facts by the witnesses. I turn now to examine these.

The schedule of advertisements

16. A number of faxes were exchanged between the parties in December, 2003 and early 2004 with regard to the marketing programme and costings for the auction. A document faxed on the 18th December, 2003 from Wilsons was amended by Albert Crowley and he made one typographical correction where he replaced the word "furniture" with "fountains" in the third plaintiff company's name and where he also added a description of the auction as being a "clearance auction". The parties did agree an advertising budget following this exchange of correspondence which also described the items to be sold as "the surplus stock" of the business. There was some discussion between the parties as to the precise commission to be paid to Wilsons and/or to be paid by purchasers at the auction and a schedule of marketing dates was agreed. This particular schedule was reduced to writing and the evidence unequivocally points to the fact that Mr. Crowley had the documents. He produced the schedule on discovery and it contained his own notes indicating that signs were to be put on the fence, which in evidence was explained as the fence of the garden centre premises itself, and that the fee was agreed at 7.5% and not 10%, explained in evidence as being the commissions.

17. Albert Crowley said in evidence that this advertising schedule was merely a proposal and that it was generated on or around the 18th December, 2003. I do not accept Albert Crowley's characterisation or dating of the document, in particular as it is common case that the auction date of the 7th February, 2004, was not agreed until the middle of January 2004. The dates on the schedule are consistent with the last advertisement being placed on the day before the auction and the evidence unequivocally points to the conclusion that this advertising and details of precisely where the advertisements were to be placed was agreed with Mr. Crowley sometime in the middle of January, 2004. I do not accept that it is a coincidence that the last such advertisement was to be placed on the 6th February, 2007, the day before the date of the auction, when it is common case that it was not until January 2004 that the date of the 7th February was finally agreed for the auction. Accordingly I accept the evidence of the defendant that this documentation was generated in January 2004.

The reasons offered why there would be a reserve

18. In the course of her evidence to the court Helga Crowley, the wife of Albert Crowley, gave a number of reasons why she and her husband would not have agreed to a sale without reserve. She offered these reasons in examination in chief and was not under pressure when she gave her evidence. The primary reason she gave for this assertion was that the plaintiffs were under no pressure to dispose of the goods as they were not closing down their garden centre business. She said they could have had a sale themselves and they had "plenty of time" to sell the surplus stock. I find this assertion on the part of Mrs. Crowley, which was supported by her husband's evidence, to be unconvincing.

19. The agreement for the sale of the real property was executed on the 2nd December, 2003 and that it was not until the 18th December, 2003 or thereabouts that an agreement was reached that Wilsons would carry out the auction. The closing date was expressly agreed in special condition 9 of the contract for sale of the land as being the 27th February, 2004 or such earlier date as might be nominated by the vendor, such nomination to be given in writing 10 days prior to such proposed earlier date and in any event not earlier than the 20th January, 2004. This means that on the date when it was agreed to employ Wilsons to conduct this auction the plaintiffs could have sought to close this sale within a period of one month, that month running through the Christmas period. At the very latest the sale was to close on the 21st February, 2004, some nine weeks after Wilsons were employed. The garden

centre had a substantial amount of stock, and some 3,000 items were offered for sale at the auction. The plaintiffs were under pressure of time and this pressure arose as a result of a binding agreement for the sale of their land and premises executed on the 2nd December, 2003 and the window for the delivery by them of vacant possession was identified on that date. It is not doubted that the agreement for sale did provide for vacant possession.

20. Mr. and Mrs. Crowley both gave evidence that at the time they negotiated the sale of their premises they wanted to downsize both their business and their personal living arrangements. They were both suffering from ill health, and indeed the ill health was of a form which made both of them actively consider quality of life issues. While they did have new premises from which to conduct their garden centre business there was limited storage in that premises. Their lifestyle choice and compromised health meant that they, more likely than not, wanted move quickly and dispose of their stock.

21. Furthermore, because of the quantity of items identified by them as surplus stock it would have been difficult to sell these in the normal course of retail trade, even in the course of a closing down sale to be held by them at the garden centre. The plaintiffs gave evidence that they did have a sale in the weeks after Christmas and leading up to the auction but no evidence was heard by me as to how much of the stock was sold in that sale. I reject this explanation offered in support of the proposition that the sale was agreed at a reserve.

The involvement of Albert Crowley in pre auction arrangements

22. Albert Crowley was very involved with the arrangement for the advertising budget and schedule. Because of the degree of involvement that Mr. Crowley had with the fax documentation in December and January 2004, and the fact that he himself added in his own handwriting to that document I find it unlikely that neither Mr. nor Mrs. Crowley did not, as they said in evidence, look at the advertisements that were placed in the newspapers. These newspaper advertisements identified the sale as being a sale without reserve, and indeed the fact that there was no reserve appears twice in the advertisement. Mr. Crowley impressed as a man who was extremely careful to identify the name of his company, to identify the commission which was agreed to be paid to the auctioneers, to identify a requirement that advertisements would be placed on the fence of the premises and to add the reference to the sale being a clearance sale and a sale of surplus stock. In those circumstances the only documentary evidence I have suggests that he engaged fully with the details of the auction at a relatively early stage.

Other evidence

23. Albert Crowley when pressed on the question of a reserve and why he had not engaged more fully with this question in the course of negotiations leading up to the auction gave various explanations, including his own ill health, but more especially that he placed total confidence in Wilsons whom he knew to be auctioneers of long standing and considerable experience. He said he relied on them and felt confident that he was dealing with experts. When pressed further he complained that Ricky Wilson in particular did not seem to have the necessary competence to carry on the auction, and he said that he did not make complaints about Ricky Wilson because he believed that he was a young man and that he would in those circumstances make "allowances" for him. I found Albert Crowley's evidence in this regard unconvincing.

The day of the auction itself

24. The plaintiffs well knew on the morning of the auction that the auctioneers proposed selling without a reserve and while it is clear that there were some unhappy exchanges between Ricky Wilson and Albert Crowley in the course of the day I heard no evidence that suggested that Albert Crowley asked that the auction be stopped, or that if he did that he was told that to stop the auction at that stage would be impossible. He may have asked that certain goods not be sold but I do not accept he attempted to stop the auction.

25. A witness who gave evidence for the plaintiff who was a long standing and trusted member of staff, Bernadette Slater, gave clear evidence of what the retail prices were, that the auction was to be at a reserve of 50% of these retail prices, and that she believed the auction was undoubtedly agreed to be held with such a reserve. She, however, in the course of the auction bought two separate items at a price well below the reserve as identified by her, and it is undoubtedly her evidence that she was well aware of what the retail price was of each of these individual items. In the course of her evidence when she identified the items she bought she did not explain that her purchase at a price well below the reserve had occurred by accident, or had occurred in particular because she had made her bid with a view to increasing the price but had been inexorably drawn into a purchase at this price. She expressed herself pleased with her purchases, one item of which she had bought for her mother. I do not accept that Ms. Slater, a long standing employee of the company for twenty years, would have bought items at this auction below the reserve price if she genuinely believed that in doing so she was acting against the agreed contractual arrangement entered into between her employer and the auctioneer.

The correspondence and affidavits

26. Of more assistance is the fact that in the correspondence that occurred between the solicitors for the parties almost immediately after the auction no reference was made to an express term that the auction was to be with a reserve, nor was any complaint made of breach of contract arising from a breach of this alleged term on the conduct of the auction. The early correspondence which started in the first days of March 2004 dealt the claim by the plaintiffs through their solicitors for payment of the auction proceeds and the proceedings by way of special summons commenced on the 11th March, 2004 for a liquidated sum. The grounding affidavit of Albert Crowley identifies his claim as one for monies being the sale price of the items sold at the auction and this affidavit was sworn on the 1st April, 2004.

27. A replying affidavit of Ricky Wilson avers to various matters which were identified by him as giving rise to a set off or counterclaim and a further supplemental affidavit of Albert Crowley sworn on the 27th July, 2004 dealt with these assertions, and sought judgment of the sum then owing being €55,098.50, €170,000 having been paid in the interim by the defendant in purported full satisfaction of the claim. Following an order that the matter be remitted to plenary hearing the statement of claim delivered on the 6th October, 2004 pleaded negligence on the part of the defendant and identified one particular of negligence as being the sale of items below what was described as an agreed reserve price of 50% of the retail price. This is the first time the question of a reserve is identified in any of the documents before the court and the most reliable contemporary documentation, being the early affidavits and the correspondence between the solicitors, does not identify this complaint at all. When Albert Crowley was pressed in the course of the case as to why there was no mention of a term with regard to a reserve in the letters or affidavits in 2004 Mr. Crowley's explanation was that he did not have the paperwork to make such an assertion, but it is common case, and has never been doubted in the course of the trial, that there was no document by which the contract was reduced to writing and the only documentary evidence is that relating to the advertising schedule and proposals. Helga Crowley in her evidence says that the proceedings were started by herself and her husband in the company because they were not paid their money and "because we were not given enough documentation".

Conclusion on the facts

28. I am of the view, having heard the evidence from both parties and from their respective witnesses that there was no agreement between the parties that the chattels and garden centre contents would be sold with a reserve, whether this be a reserve of 50% of an identified retail price or any reserve. This has the inevitable conclusion that the claim of the plaintiff for damages for breach of an

express term that the sale be at a reserve, which is quantified in the sum of €650,000, must fail. I accept entirely that Mr. and Mrs. Crowley were very dissatisfied with the figure that was ultimately achieved at auction, and they believed that the garden centre contents were more valuable. However the passage of time has made the memories of all of the players in this case less than perfect. Mr. Crowley was on many occasions "adamant" and described himself as "totally sure" of certain matters and I do not accept that this is so. The relationship between these parties soured, and soured considerably in the months following the institution of proceedings, and it seems to me that the souring of the relationship arose because Wilsons delayed inexplicably in paying over the proceeds of sale, and the assertion of a term that the sale be with an agreed reserve came late and in the context of the evolving poor relationship.

Counterclaim

29. Following the institution of these proceedings, the defendant paid to the plaintiff the sum of €170,000, withholding the balance of the proceeds of the auction on a claim that it was entitled to set off certain losses and other claims made now in the counterclaim.

30. The defendant claims to be entitled to set off the sum of €47,474.60 together with interest on that sum under the Courts Act 1981, as amended, and this sum is made up of several items of special damages arising as a result of breach of contract and/or negligence of the plaintiffs. The amount sought to be set off is very close to the difference between the net proceeds of the auction and the sum of €170,000 already paid to the plaintiffs. The counterclaim is made in respect of the following:-

- (a) A claim that the plaintiffs wrongly removed certain security equipment on the premises at Kingswood Cross prior to the closing of the contract for sale.
- (b) The costs and expenses of clearing the site following the closing of the sale.
- (c) The cost of goods sold at auction and alleged to have been wrongfully retained by the plaintiffs.
- (d) The potential profits of the sale onwards of certain goods alleged to have been so wrongfully retained by the plaintiffs.

I will deal with these in turn.

The security equipment

31. Special Condition 12 of the agreement for sale provided that the contract price included all security equipment. The evidence was that the plaintiffs removed certain security equipment in the form of CCTV cameras and associated equipment. The plaintiffs admit that the security equipment was removed, although they say that this was done in error and that the equipment was not working when it was removed. This equipment was included in the sale and ought not to have been removed whether it was working or not. There was considerable difference between the parties as to their recollection, and indeed interpretation, of these events and again the most reliable source that I have is the contemporaneous correspondence.

32. The solicitors for the purchaser wrote on 2nd March, 2004, after the sale closed, the rights of the purchaser under the contract in relation to this equipment having been reserved, and asked that the equipment be returned and refitted. In a reply of 5th April, 2004, the solicitors for the vendors indicated that they were not prepared to install the security equipment as Mr. Crowley did not "*want to take responsibility for the installation of same*", and that he was concerned that his responsibility could not extend to giving any warranty with regard to the reliability of the equipment. This letter suggested that the equipment was excluded in the contract for sale, but this is not correct and the suggestion in the letter that the security equipment would be returned by Mr. Crowley as a gesture of goodwill did not meet the failure of the vendors to comply with the special condition. Mr. Crowley did attempt to hand back the security equipment but this offer was rejected, Wilsons insisting that the equipment be reinstalled.

33. Mr. Ian Wilson in evidence confirmed that he was unaware of whether the equipment ever worked but he sought to hold the vendors to the special condition. Ricky Wilson in his evidence confirmed this position and his evidence was that he was not prepared to accept the equipment and reinstall it himself and that he wanted to be shown that it was "*again working*". There was no evidence before the court as to the state of the equipment, other than that of Albert Crowley that it was not working. The evidence I have is of the cost of new security equipment of a type similar to that which was removed. I have heard no evidence from Wilsons that the equipment was examined prior to closing and in this regard, I am of the view that the purchaser, not having inserted a condition that the security equipment be operational and/or of a particular quality and standard, is fixed with the doctrine of *caveat emptor* with regard to this equipment.

34. Wilsons refused to accept the return of the items and they did not mitigate their losses and I have no evidence as to the actual loss, or how I might approach the question of valuation having regard to the fact that the only estimate I have is for new items. I find that the defendant has made out a claim for breach of contract but I am not satisfied that the replacement and fitting of the system claimed in the amount of €7,661.25, including VAT, is recoverable. Accordingly, I award the defendant the sum of €2,500 in respect of this head of damages.

Vacant possession

35. It is not doubted that the sale of the real premises was subject to general condition 21 of the Law Society General Conditions of Sale that the vendor would deliver vacant possession, and the defendant counterclaims for the cost of removing what is described as large amounts of debris left on the premises when the sale closed. The defendant claims that it incurred expense of €20,235.91 (including VAT) in clearing the site, levelling areas of the site where display gardens and fountains had been removed, and in removing general debris. What is said is that the defendant expected that when it closed the sale it would have a site that it could immediately use.

36. I have heard evidence from Albert Crowley that on the day before the sale closed, he walked the site with Ian Wilson and no complaint was made by him as to the condition of the site on that day, or as to items of rubbish or debris still on site. Ian Wilson accepts that he did not discuss the condition of the site at this meeting, although he does say he observed the state of the place and was concerned. He said that he was irate with Albert Crowley because when he attended at the agreed time at the site on that day he found him instructing an official of the water authority to disconnect the water service. He said he was "*not well pleased*" with how this matter had evolved.

37. I accept as a matter of fact that the site was left in an untidy condition, and that an amount of debris was left on the site when the sale closed. Some of the matters complained of however relate more to the condition of the site, and the uneven nature of the ground left after display gardens and large embedded items were removed. General condition 16 of the Law Society conditions deemed the purchaser to buy with full notice of the actual state of the premises and no damages can be claimed for poor condition in the

absence of an express special condition. However, again there is a significant conflict of evidence between the parties and I take guidance from the contemporaneous correspondence. An inspection was agreed to take place on Friday 27th February, in accordance with general condition 47 of the contract, and the sale was to, and did, close thereafter. The sale closed expressly reserving the rights of the purchaser in relation to the security equipment, but nothing was said at closing or in the correspondence with regard to the state of the premises and I am satisfied that no agreement was had at the closing by which any claim that the purchaser might have had arising from a perceived breach of the obligation to deliver the premises with vacant possession was expressly reserved. In the circumstances, I am of the view that the purchaser has waived any entitlement on its part to damages for a perceived breach of the condition that vacant possession be delivered. Accordingly, I dismiss this part of the counterclaim.

Costs of goods retained

38. This was a particularly contentious part of the evidence on the counterclaim. It is not doubted that Ian Wilson, and separately Ricky Wilson, bid for items at the auction and were successful in their bids. It is also not doubted that the goods were not handed over to them nor that payment was not made. What is asserted by Ian Wilson is that these items were not paid for as they had been removed by Albert Crowley well knowing that they had been bought by either Ian or Ricky Wilson. The general conditions that governed the auction did allow the auctioneer to bid and I accept that this is the case.

39. The solicitors for the plaintiffs asserted in correspondence that items sold remained the property of the third named plaintiff until such time as payment had been received and that certain items were removed as they had not been collected by unidentified purchasers. The correspondence was initially had between the solicitors for the vendors and directly with Ricky Wilson in regard to these items and solicitors did not come to deal with the matter until the middle of March 2004.

40. I am satisfied that Ricky Wilson and separately Ian Wilson did and were entitled to bid at the auction, and that they are properly characterised as purchasers having a contract for these items. Neither Ian Wilson nor Ricky Wilson is a party to these proceedings. Ian Wilson was clear in his evidence that he had bought these items for his cottage which he was in the process of renovating for his personal use. Ricky Wilson wanted the items he bought for his personal house. Wilsons in addition claim loss of profits for some of the items alleged to have been wrongfully removed by the plaintiffs. Having heard the evidence, I am satisfied that there was no intention on the part of either Ian Wilson or Ricky Wilson to sell the items and in their loss, such as it was, was a personal loss and there is no arguable case that the defendant company suffered a loss of profits. Neither Ian nor Ricky Wilson is a party to these proceedings and the company may not make this claim on their behalf.

The claim for loss of profits

41. Some of the items removed from the premises which were not available for the ultimate purchaser were items bid for by a Scottish company. This company is not a party to these proceedings and insofar as this company has lost the benefit of these items, or any profit for sale thereon, such a claim may not be maintained by the defendant in these proceedings. Any loss would have been a loss by that Scottish company which made no claim in these proceedings, nor was any claim made by that company against Wilson itself. This part of counterclaim must fail for lack of *locus standi*.

Conclusion

42. The plaintiffs' claim in this case is for damages for breach of what they say was an express contract that the auction, conducted on behalf of the third named plaintiff at the Garden Centre premises, was wrongly held in breach of contract without a reserve. I find as a matter of fact that the contract by which Wilsons was employed did not contain any agreement that the sale was to be conducted with a reserve, whether in regard to some or all of the items. The plaintiffs' claim in this regard is dismissed. The plaintiffs also claim that the auction was conducted in a chaotic and shambolic manner and I have heard evidence from the plaintiffs that the auction was conducted too quickly, that the lots were written down too fast and that auctioneer wrongfully and in breach of contract held three simultaneous auctions but none of these it seems to me are in any way a reflection on the conduct of the auction. Indeed, one witness for the plaintiff described the auction as being exciting, and neither Albert Crowley nor his wife, Helga Crowley had any experience of an auction which would have informed this perception and they and their staff members were somewhat surprised at the speed and intensity of the day.

43. I was impressed with the evidence of Ricky Wilson who was on occasion quite tentative in giving his oral evidence and this is understandable having regard to the fact that the 10 years have passed since the events. He of all of the witnesses on occasion admitted to being unclear in his recollection. I do not accept the plaintiffs' evidence of chaos which was given with great vigour and certainty can be based on certain memories of events which occurred ten years ago. I do not accept there was a breach of contract or negligence in the conduct of the auction.

44. However, it seems to me that the defendant had no legal basis on which certain of the items in respect of which a counterclaim is made. I find that apart from the sum of €2,500 that the counterclaim fails.

45. I award the third named plaintiff the sum of €55,098.50, less the amount of €2,500 in respect of the costs of the security equipment. Interest is payable under the Courts Acts in the amount of €47,000, due regard being given for the deduction of the amount allowed on the counterclaim. The calculation includes interest on the amount of €225,098.50 up to 15th June 2004, when €170,000 was paid, and interest on the balance to 8th July 2014, the date on which argument was had with regard to this aspect of the claim. I refuse to allow a deduction to take account of the costs of advertising or agent commission as no plea was made in the counterclaim for these, nor was there any averment in the replying affidavit of Ricky Wilson with regard to these amounts or to a claim for payment.

46. I award judgment therefore in the sum of £99,598.50 in favour of the third plaintiff