

**Neutral Citation: [2004] NICH 7**

Ref: **MCCF5058**

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)*

Delivered: **06/09/2004**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

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**CHANCERY DIVISION**

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**BETWEEN:**

**JOHN HIGGINS**

**Plaintiff;**

**-and-**

**MICHAEL GRIBBEN AND BREDEEN GRIBBEN**

**Defendants.**

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**McCOLLUM LJ**

[1] The plaintiff is a builder who for some four years has resided in a newly built bungalow at Luney Road, Desertmartin, Magherafelt.

[2] The defendants reside at Draperstown Road, Magherafelt. Their surname may more properly be spelt Gribbin but both forms of the name appear at different parts of the documentation relating to the case. The plaintiff claims rectification of a contract made between the plaintiff and the first-named defendant by the alteration of the red line delineating the land to be transferred by the contract.

[3] The second-named defendant who is the wife of the first-named defendant became a party to the transfer of part of the lands with which the contract is alleged to be concerned, the first-named defendant had transferred part ownership to her between the date of the contract and the transfer but she took no active part in the events giving rise to the claim.

[4] The first-named defendant was owner of a field consisting of approximately 13 acres which adjoined the land on which the plaintiff's bungalow is situated. While on the ground the field is undivided it consists of land in three separate folios and on the ordinance survey maps a number of lines have been drawn apparently dividing the field into several sections.

[5] The plaintiff also owned some land adjacent to Luney Road a little further from his own residence and divided from the field by some property owned by Mr Ramsey who is not connected with the proceedings.

[6] At all material times Mr Higgins had planning permission for a dwelling house on that land, while it is not absolutely clear what the nature of his direct access to the site for the house is there is no doubt that a spike of land in the field was in an important strategic position for the development of the dwelling house and the plaintiff would have been anxious to obtain possession of that particular small piece of land.

#### *History of events*

[7] The first-named defendant obtained planning permission for the construction of a dwelling house on part of the field adjacent to the plaintiff's home. The approved position for the house was some distance back from the road and the site approved for the house consisted of three acres, the entire length of the site adjoining Mr Higgins' boundary.

[8] In February 2001 the plaintiff expressed interest in purchasing the field apparently after planning permission had been sought by the defendants and there was a meeting at the office of Mr Burns an estate agent. The parties agreed that the defendant indicated that his minimum price for the field was £200,000 and that Mr Higgins showed no further interest on the basis of that price.

[9] About a year later having obtained planning permission the defendant instructed Mr Donal Mullan, an estate agent who carried on practice under the name of Mid-Ulster Properties, to sell the three-acre site and a single page brochure was produced illustrating the site for sale.

[10] Following discussion between them it was agreed that the whole or part of the remainder of the field might be added to the sale.

[11] The defendant added that if the price was right then the entire field could be sold.

[12] On 20 February Mr P J Connery offered £60,000 for the site. On 22<sup>nd</sup> Dorothy Bradley offered £70,000 and on 4 March the plaintiff offered £80,000.

[13] On the same day Mrs Bradley amended her offer to offer £150,000 for what was described in his note by Mr Mullan "(plus land)". On 5<sup>th</sup> the plaintiff offered £160,000 on the same basis and on 6<sup>th</sup> Mr Mullan noted "Bradley's out" and made the further entry "John Higgins (to include point of land) £165,000". He also noted below "sale agreed 10% deposit paid".

[14] The controversy in the case arises from what occurred on 6 March 2002. Mr Mullan's evidence was that when Mrs Bradley indicated that she was no longer interested in purchasing the property it was on the basis that the plaintiff might well have been the counter bidder, that she was friendly with his brother and did not want to proceed further.

[15] Mr Mullan conscious of the fact that at the price only the plaintiff was interested in the property was concerned to conclude the sale with him.

[16] He therefore contacted the defendant for a meeting and explained the situation to him. The defendant "wondered if he could squeeze some more money out of the plaintiff" and they discussed a little spike of land which would have been important to the plaintiff and agreed that a further £5,000 over and above the bid of £160,000 should be asked for the assurance that that would be sold with the rest of the field.

[17] Still concerned about the fact that there was only one interested purchaser, Mr Mullan suggested to Mr Gribben that in order to secure the sale it would be best to have a written memorandum to be signed by both parties.

[18] He did not elaborate on precisely why he wanted his own client to sign but one reason could be that the plaintiff would then be presented with an enforceable memorandum which would make it easier to persuade him to sign.

[19] The memorandum was in a simple form in the following terms:

"By agreement dated 6 day of March 2002 John Higgins of ■ Luney Road, Desertmartin, hereby agrees to buy and Michael Gribbin of ■ Draperstown Road, Desertmartin agrees to sell all those lands at Luney Road, Desertmartin as delineated in red on the attached map."

[20] The consideration in respect of the same sale is hereby agreed at the amount of £165,000 only.

[21] Receipt of a non-refundable deposit of £16,500 is hereby acknowledged subject only to clear title for the lands in question being obtained. The

document is signed by the defendant, the plaintiff and Mr Mullan and dated 6 March 2002.

[22] Mr Mullan then set about preparing a map to accompany the agreement and produced a large ordinance survey map which included the field in question and Mr Mullan intended to draw a red line around the whole field. He had the defendant identify the area and a small outline of a house was drawn where Mr Mullan believed that the plaintiff's house was situated.

[23] Adjoining it was the outline of another house which Mr Mullan believed to be the site of the dwelling for which the defendant had obtained planning permission.

[24] The line therefore of the red boundary mark ran along the line on the map which appeared to be a division between the two sites on which the outlines were located.

[25] The line in question however does not represent any feature on the ground and in fact the outline drawn by the defendant as that of the plaintiff's house was in fact on the location of the proposed dwelling for which planning permission had been obtained.

[26] The red line therefore on the side of the property nearest the plaintiff's property excluded the three-acre site and delineated only approximately ten acres, the remainder of the field.

[27] Mr Mullan brought the agreement and map to the plaintiff who signed it. He looked at the map but according to the plaintiff he believed that it represented the entire field.

[28] Subsequently on 18 April 2002 a memorandum of sale was drawn up and completed. It had been observed that in the part of the lands which had been enclosed by the red line there were actually two folios and folio number 1469 was inserted in pen into the typed description of the property and sale which took the following form "part of the lands in folios 14693 and 14692 County Londonderry containing 13 acres approximately edged red on the map attached hereto".

[29] I comment that both parties were aware that the area of the entire field was approximately 13 acres and that the area of the site was approximately three acres.

[30] When the formalities of sale were completed the plaintiff went into possession of the lands.

[31] He created an entrance on the boundary between his existing land and the site and made a gate there and placed the barbed wire fence across the entrance from the road into the site which had previously had an access at that point.

[32] He also built a fence across the field for its entire length roughly parallel to the road dividing the entire field into two and the site itself into two different portions.

[33] None of these activities attracted any comment from the defendant, much less any protest in relation to the land comprised in the site.

[34] On 16 May 2003 the plaintiff's solicitors wrote to the defendant in the following terms:

"Dear Mr & Mrs Gribben

Re: Our Client: John Higgins

In May 2002 our client purchased a field from you at Luney Road Magherafelt. He went into occupation thereafter and remains in occupation.

It has recently come to our attention that the written contract of sale for the above field does not reflect the agreement made between our client and you through your agent Mr Mullan. The map and description of the property omit the part of the field contained in Land Registry Folio No. 14728. The attached Map shows the lands which should have been conveyed edged in Red.

As this appears to be a simple error, we should be grateful if you would confirm that you agree to a further contract being drawn up to correct this error in the original contract.

Please note that should you not agree to a correction of the original contract, within 14 days it is our intention to apply to the High Court for an order rectifying that contract and compelling your compliance thereto. This letter shall be used to fix you with the costs of any such proceedings."

[35] No reply was sent to this letter, although a note of 19 June 2003 suggested there was a telephone call in which the solicitors acting for the defendant made a note in connection with the case that there had been a telephone call and the following comment was noted "we did not consent".

[36] Proceedings were commenced by a writ of summons issued on 11 June 2003.

[37] The plaintiff's case is that he had a natural interest in the entire field as one adjoining his property, but also that he had a particular interest in purchasing the site itself because he did not wish to have another dwelling adjacent to his own. It would have been of no interest to him to purchase that part of the field which consisted of about ten acres and not to purchase the site itself.

[38] When he saw the map with the red line upon it he did not look particularly closely at it and assumed that the red line enclosed the entire field of 13 acres.

[39] The plaintiff has the valuable support of Mr Donald Mullan who was acting as estate agent for the defendant and who described the circumstances in which the map was drawn up. It would be impossible to come to any conclusion other than that the plaintiff believed that he was buying the entire field and the subsequent conduct after completion is entirely consistent with that in that he essentially acted as owner of the field.

[40] Of course his belief is not sufficient to warrant rescission unless he can also establish that it was the defendant's belief and intention that he was transferring the entire field to the plaintiff.

[41] The defendant's case is that when Mrs Bradley, the first bidder, altered the form of her bid she was abandoning the bid for the site for which planning permission had been granted and was instead bidding for the remainder of the field and that that was his belief.

[42] He said that he had already decided in his own mind that he would not sell the site itself for less than £100,000 and that he had so instructed Mr Mullan, although the defendant gave evidence to this effect the suggestion had not been put to Mr Mullan when he was giving evidence.

[43] The fact that the offer for what he believed to be the remainder was more than enough money for his requirements at the time he decided to retain the site and sell the rest of the field.

[44] He regarded the plaintiff's business on the same basis and so far as he was concerned the plaintiff's offer was £165,000 for the rest of the field excluding the site.

[45] The defendant suggested that so far as he was concerned that portion of the field might well have had that value since he had got permission for the three acres it was quite likely that someone else would be able to get planning permission for the remainder.

[46] In support of his case that he only intended to sell the ten acres he pointed out that he had decided to transfer half the interest in the property to be sold to his wife but that it was only the two folios which consisted of the remainder of the field that he had proposed to transfer.

[47] Some further documents that have come to light since the hearing would seem to suggest that the lands had actually been in joint names at an earlier stage.

[48] However so far as my decision is concerned this is irrelevant. I accept that the defendant considered transferring the property to be sold at that time and that it was his belief and that of his solicitor that the land that they proposed to transfer to the plaintiff was comprised in those two folios.

[49] However I am absolutely satisfied that what the defendant intended to sell to the plaintiff was precisely what the plaintiff intended to purchase from the defendant and that that was the entire field.

[50] I am satisfied that the defendant made an innocent error in wrongly delineating the lands, an understandable error in view of the fact that the single field was comprised of three different folios. The fact that the position of the house for which planning permission had been granted confused the issue somewhat and Mr Mullan believed that the line was being drawn along the boundary of the plaintiff's property and the defendant's property.

[51] I entirely reject the evidence of the defendant that so far as he was concerned he was selling the ten acres of the field for the following reasons.

(i) Planning permission for the erection of a dwelling house gave the three-acre site a special value.

The plaintiff would have appreciated that any prospective buyer would be primarily interested in that part of the field for which planning permission had been granted.

(ii) The defendant could not have failed to appreciate that the plaintiff was interested as a neighbour and that his main interest was

to prevent building beside his new bungalow and to obtain a piece of land contiguous to his own.

(iii) The fact that in the documents the lands are described as comprising 13 acres is to me a clear indication that the defendant believed that he was selling 13 acres. No one would have known better than him the area of land and if it was being divided and only part of it being sold he would have been well aware of that fact and the description of the area of land would have been an important matter.

(iv) The conduct and demeanour of the defendant after completion were quite inconsistent with his claim that he believed that only the balance of the field had been conveyed. Land owners are extremely conscious of the importance of keeping control of their lands and had a purchaser of one part of his field occupied another part of it the defendant would have been very quick to realise that and very quick to take action.

[52] Moreover the failure to reply immediately to the letter from the plaintiff's solicitor indicates to me that the defendant knew perfectly well that a mistake had been made.

[53] It appears to me that failure to reply indicates that the defendant was considering what advantage he might draw from the situation. It is clear that his greed became predominate and that he decided to turn the error to his advantage.

[54] Greed was soon followed by dishonesty and I am satisfied that he committed blatant perjury in the witness box.

[55] It is sad that an apparently respectable person should have been driven to such lengths, I am sure that in a close-knit community his reputation will suffer gravely but it must also be said that such calculated and avaricious mendacity should not go unrecognised.

[56] I am satisfied therefore that the defendant intended to and believed that he was conveying the entire field including the build site to the plaintiff and that the plaintiff intended to and believed that he was purchasing the entire field.

[57] A clearer case for rectification could not be imagined and I therefore grant that remedy.

[58] It appears to me that the costs of the conveyance steps required to bring about rectification should be born by the plaintiff and no doubt his



solicitors may consider whether in view of the considerable error that was made they may wish to ensure that he is at no loss.

[59] The costs of the action must be born by the defendant, it has been a completely unnecessary and unedifying piece of litigation brought about solely by his greed and intransigence.