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

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| *Ref:* | WEAC3540 |
| *Delivered: 23/01/02* | |


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

**CHANCERY DIVISION**

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**BETWEEN:**

**GORDON SAMUEL DUFF**

**Plaintiff;**

**-and-**

**WILFRED EGERTON**

**Defendant.**

**BETWEEN:**

**GORDON SAMUEL DUFF**

**Plaintiff;**

**-and-**

**MAUREEN EGERTON**

**Defendant.**

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**WEATHERUP J**

1. The plaintiff claims against the defendants in separate proceedings in relation to two contracts in writing entered into in 1989, first, between the plaintiff and the first defendant for the purchase by the plaintiff of premises described as 53-63 Ravenhill Road, Belfast ("the site") and secondly, between the plaintiff and the second defendant for the purchase by the plaintiff of premises at 51 Ravenhill Road, Belfast ("the house"). The plaintiff's claims include specific performance of the contracts and damages for breach of contract or rescission of the agreements and repayment of monies paid by the

plaintiff. The defendants' counterclaims include forfeiture of the plaintiff's deposit and damages for loss sustained on the resale of the house.

2. By contract in writing incorporating the conditions known as the Law Society of Northern Ireland Conditions, and signed by the plaintiff on 25 March 1989 and by Maureen Egerton, the second defendant, on 4 April 1989, the second defendant agreed to sell the house to the plaintiff for the sum of £20,000 with a completion date stated to be 30 April 1989. Special conditions of contract provided that the plaintiff would pay a deposit of £2,000 and the balance purchase price would be discharged at £200 per week with the second defendant retaining the conveyance until discharge of the balance of the purchase price. Further it was provided that the sale of the house was conditional upon the plaintiff entering into a contract with William Egerton, the first defendant, for the sale of the site "so that both agreements shall be interdependent upon each other".

3. The plaintiff and the first defendant entered into a contract in writing also incorporating the Law Society Conditions whereby the plaintiff agreed to buy the site for the sum of £60,000 and this contract was signed by the plaintiff and dated 25 May 1989 and signed by the first defendant on 20 June 1989 with a completion date stated to be 23 June 1989. It was provided by Rider B that the purchase money would be paid to the first defendant on or before 23 June 1990 and that the conveyance to the plaintiff would be retained by the first defendant until payment of the purchase money. Further, it was provided that vacant possession of the site would pass to the plaintiff upon

completion. This contract also provided that it be interdependent on the contract with the second defendant for the sale of the house.

4. At the same time as the site contract was being finalised the plaintiff agreed with the second defendant to vary the conditions of contract for the sale of the house and this was evidenced in writing by the plaintiff' solicitors letter of 15 June 1989 and the defendants' solicitors reply of 26 June 1989. The purchase price for the house was increased to £30,000 payable by deposit of £2,000 on or before 23 June 1989 and fifty-two weekly instalments of £200 from 23 June 1989, with the balance £17,600 payable on 23 June 1990. The completion date was agreed as 23 June 1989, being the same date as applied to the sale of the site. Accordingly the final purchase price for the house and the site was to be paid on 23 June 1990. The site contract provided for vacant possession on "completion" and it was the intention of the parties that the plaintiff should have possession of the site and the house prior to payment of the full purchase price. It was provided in both contracts that the conveyances be stamped and registered and held by the defendants and this may have constituted "completion" but the legal estates would not have passed to the plaintiff until final payment. There were changes made to the contract of sale for the site after it had been signed by the plaintiff, which I find were intended to reflect the late negotiations. These changes included, in Rider B paragraph 3, reference to a licence fee of £30 per week payable by the plaintiff, which I find was a mistake as this sum was not agreed as being payable by the plaintiff. These were unusual contracts for the sale of land.

5. The plaintiff obtained possession of the house in April 1989 and possession of the site on 23 June 1989 when he paid the deposit of £2000 and from which date he commenced the payments of £200 per week to the defendants. While the contracts contemplated the completion of conveyances to the plaintiff which would be retained by the defendants until the discharge of the balance of the purchase monies, this did not occur. The plaintiff undertook renovations to the house and completed two apartments for letting. The plaintiff carried out some repairs on the site and arranged the letting of workshop units. He applied for planning permission for a petrol station on the site but such a development was put in jeopardy by the proposals in the Belfast Urban Area Plan published in December 1989.

6. The plaintiff gave evidence that in January 1990 he agreed with the first defendant, acting on his own behalf and on behalf of the second defendant, that he would increase the weekly payments to £250 per week from 23 June 1990 and that those payments would be treated as interest on the outstanding purchase price, payment of which would be postponed to June 1995. The plaintiff said that he had gone to his solicitor, David Carson of Cleaver Fulton & Rankin, in January 1990 to tell him about his agreement with the first defendant so that Mr Carson would complete a formal agreement to that effect with the defendants' solicitor, Alan Nurse of Nurse & Jones. Further the plaintiff said that when he returned to Mr Carson in February 1990 he was told by Mr Carson that agreement had been completed with Mr Nurse. The plaintiff claimed that he undertook certain works on the site on the basis of

Mr Carson's confirmation of a formal extension of the date for final payment to 23 June 1995.

7. The defendants' counsel challenged the plaintiff's evidence on these matters. In particular it was denied that there had been an agreement between the plaintiff and the second defendant to extend payment of the balance purchase price for five years to June 1995, and further, it was denied that the plaintiff could have been told by Mr Carson that an agreement had been completed between Mr Carson and Mr Nurse embracing the terms of the alleged January 1990 agreement between the plaintiff and the first defendant. Reference was made to a number of documents.

Mr Carson had completed an undated attendance note of discussions with the plaintiff which had referred to extension "for another year", (although Mr Carson stated in evidence that this was not the note made in January 1990, but must have been made some months later).

On 2 July 1990 the plaintiff wrote to the first defendant referring to a verbal agreement of January 1990 and stating that "we neglected to discuss many of the finer details in relation to this agreement and thus we have not managed to reach a firm agreement yet." The plaintiff then referred to the major hurdle being the term of the agreement and his offer of a five-year period proving unacceptable to the defendant. From the terms of this letter it would appear that the plaintiff did not believe that he had an agreement to pay the balance purchase price after five years.

The plaintiff produced correspondence with his solicitor and waived any privilege relating thereto. On 1 February 1991 the plaintiff wrote to his solicitor referring to an agreement with the first defendant of December 1989 (sic) and to the balance of the purchase price being "postponed for a minimum of a further year". There was further correspondence from the plaintiff in February 1991 and Mr Carson replied on 9 July 1991 referring to the January 1990 agreement for the extension to January 1991 (sic).

In a Case for Counsel dated 23 July 1991 Mr Carson referred again to the January 1990 agreement as involving an extension of the contractual completion date until January 1991. The letter of 9 July 1991 and the Case for Counsel indicate that Mr Carson was treating the further year as commencing with the alleged agreement date of January 1990 rather than the existing completion date of 23 June 1990. Further, the Case for Counsel records that in March 1990 Mr Carson spoke to Mr Nurse and it was accepted that there was an agreement for an extended completion date but no such date is stated to have been agreed. It later appeared from the evidence of Mr Carson and Mr Nurse that the first defendant had agreed in principle to an extended completion date but there had been no agreement as to the period of such extension.

On 25 July 1991 Mr Carson wrote to the plaintiff referring to the agreement with the first defendant in January 1990 and referring to instructions concerning extended completion for a further year. In addition the letter referred to a telephone call with Mr Nurse in March 1991 (this

should read March 1990) where Mr Carson had noted that Mr Nurse had stated that the first defendant had no objection to the extension (the note was not available).

8. When these documents were put to the plaintiff in cross-examination on the second day of his evidence he persisted in his contention that there had been an agreement with the first defendant in January 1990 for a five year extension on the completion date and that Mr Carson had informed the plaintiff that he had such a formal agreement with Mr Nurse. However when the defendant's counsel returned to these matters on the third day the plaintiff conceded that there was no January 1990 agreement for a five year extension and that he may have told Mr Carson that there was to be a one year extension to June 1991 and that he was broadly in agreement with Mr Carson's outline of events as set out in the documents. However the plaintiff insisted that at some date prior to June 1990 he had reached a five year extension agreement with the first defendant and had reported this to Mr Carson.

9. Mr Carson's evidence was that in January 1990 the plaintiff did refer to an extension of a final payment of the purchase price for a further year and that in March 1990 Mr Nurse agreed on behalf of the defendants to an extension in principle. Further Mr Carson's evidence was that he told the plaintiff that the first defendant would agree to an extension but not that any particular extension had been agreed. Mr Nurse's evidence was that he had no note or memory of contacts with Mr Carson in January or March 1990,

although he accepted that Mr Carson may have referred to an extension of the date of payment of the balance purchase price, but that he could only have said that the defendants would agree in principle to such an extension.

10. I am satisfied that between January and June 1990 there were discussions between the plaintiff and the first defendant whereby the plaintiff sought to secure an arrangement whereby he could postpone the final payment due under the contracts on 23 June 1990 but that no final agreement was reached on the terms of such an arrangement and there was no agreement for an extension for any specific period beyond 23 June 1990. Further I am satisfied that the plaintiff told Mr Carson that he had had these discussions and that he also told him that there had been an agreed extension for a further year. However I do not accept that there had been such an agreement for a one years extension. Nor do I accept that at any time the plaintiff agreed with the first defendant, or reported to Mr Carson, that there had been an agreement for a five-year extension. Further I am satisfied that Mr Carson told Mr Nurse of the discussions reported to him by the plaintiff and that in response Mr Nurse confirmed agreement in principle to an extension, but that no term of any such extension was confirmed. Further I am satisfied that Mr Carson told the plaintiff of the terms of his discussions with Mr Nurse.

I did not find the plaintiff's evidence on these discussions, and on other matters referred to below, to be reliable. He felt obliged to retreat from his initial evidence about the discussions when faced with the contents of the

documents referred to above. He overstated the effect of his discussions with the first defendant and was over-optimistic in relation to the prospects of securing an agreement on all aspects of an extension, as indeed was the case on other matters referred to below. He knew that the defendants were not averse to an extension of the period for final payment beyond 23 June 1990 and he proceeded with various undertakings on the site in the expectation that he would secure a firm extension, but there was no actual agreement for any extension.

11. In June 1990 the plaintiff attended Mr Carson and reported to him the terms which he, the plaintiff, claimed had been agreed with the first defendant. As Mr Carson put it, this was the first time the plaintiff put meat on the bones. Mr Carson forwarded to Mr Nurse a document embracing the terms reported by the plaintiff and described this document as a collateral agreement. This included provisions for weekly payments of £250 from 23 June 1990 by way of interest on the balance purchase price, with a statement of the balance purchase price due on 23 June 1991, and with the plaintiff having the option to postpone payment of the outstanding balance until 23 June 1995. Mr Nurse replied on 20 June 1990 indicating that the terms of the collateral agreement had not even been discussed with the first defendant and requiring payment of the purchase price on 23 June 1990. This presented the plaintiff with considerable difficulty as he did not have finances in place to complete the transactions. The plaintiff was unable to complete on 23 June 1990.

12. The plaintiff had further discussions with the first defendant and at the end of June or the beginning of July 1990 it was agreed that the plaintiff would remain in possession and would continue to pay the £200 per week to the defendants. However the defendants required final payment and served Notices to Complete dated 16 July 1990. The plaintiff's evidence was that he agreed with the first defendant certain additional matters which became the subject matter of discussions between the respective solicitors at a meeting on 18 July 1990. While I am satisfied that discussion of these matters took place between the plaintiff and the first defendant, once again I am not satisfied that they resulted in agreement.

13. At the meeting between solicitors on 18 July 1990 there was agreement on certain terms, which agreement was subject to authority being obtained by the solicitors from their respective clients. The terms were that a purchase price of £80,000 should be paid on 24 June 1991 with the plaintiff paying £250 per week by way of interest until payment of the purchase price. Once more the plaintiff claims that at the conclusion of this meeting there was in existence a formal agreement embracing the new terms because he claims that he was told by Mr Carson that there was a sufficient memorandum of the agreement in the form of Mr Carson's note of the meeting. I am satisfied that the plaintiff was not told this by Mr Carson and in any event there was no enforceable agreement.

14. By letter dated 19 July 1990 Mr Carson wrote to Mr Nurse setting out the terms agreed between solicitors on 18 July 1990 and enclosing new

contracts in writing, signed by the plaintiff, incorporating the Law Society conditions and including the new terms. Obviously the plaintiff had approved the new terms agreed at the solicitors meeting. The plaintiff made the first weekly payment of £250 on 20 July 1990. The defendants' solicitors replied by letter dated 3 August 1990 marked "subject to contract" and confirmed agreement that the price for the house and site was £80,000 to be paid on 24 June 1991with, in the interim, the plaintiff paying £250 per week by way of interest until 24 June 1991 or date of final payment. However the letter also raised six additional matters to be addressed. There was not to be any resolution of all those additional matters and the new written contracts which it was proposed would be entered into between the plaintiff and the defendants were never signed by the defendants.

15. The 1989 contracts remained extant and the plaintiff remained in possession of the house and site and continued to pay £250 weekly after 20 July 1990. While no agreement was reached on all the matters raised by the defendants in the letter of 3 August 1990 and the proposed new written contracts were never signed by the defendants it is apparent that an arrangement took effect from 20 July 1990 when the plaintiff commenced payment, and the defendants accepted payment, of the sum of £250 per week.

16. At the date of the defendants' solicitor's reply of 3 August 1990 I would summarise the position as follows –

(a) The 1989 contracts for the sale of the house and the site to the plaintiff remained in place.

(b) The plaintiff was in possession of the house and the site as a licensee. The defendants submitted that the plaintiff was in possession as a tenant at will and that is the general common law position referred to in Wylie's Irish Conveyancing Law 2nd Edition paragraph 12.33. However the general common law position did not apply where the payments were made in discharge of the purchase price as in Dunthorne & Shore v Wiggins [1943] 2 All ER 678. In the present case the payments to the 23 June 1990 were made to reduce the outstanding purchase price and I hold that the plaintiff was in possession under a licence.

(c) When the plaintiff increased the payments to £250 per week on 20 July 1990 he continued in possession and I find that the parties did not intend, nor did there arise, any change in the plaintiff's status as a licensee. While there are references to "rent" in the correspondence I find these to be mistaken, and not establishing the existence of a tenancy. On 21 September 1990 the defendants accepted a payment of £200 which backdated the weekly payment of £250 to the 23 June 1990.

(d) The £250 was paid and received by way of interest on the outstanding purchase price. I am satisfied that the continued possession of the plaintiff from 20 July 1990, with the payment by the plaintiff and acceptance by the defendant of the weekly sum of £250, render it more likely than not that those acts were performed in reliance on a contract with the defendants, which was consistent with

the contract alleged by the plaintiff, namely that he should continue in possession in furtherance of the 1989 contracts for the purchase of the site and the house paying £250 per week by way of interest to reduce the outstanding purchase price. Accordingly there were sufficient acts of part performance for this variation to the 1989 contracts.

(e) The notices to complete dated 16 July 1990 making time of the essence of the contracts were waived by the defendants' acceptance of the variation from 20 July 1990. Wylie, paragraph 13.25.

(f) The other matters raised in the defendants' solicitor's letter of 3 August 1990 which were not put into effect, including the extension to 24 June 1991, were stated to be subject to contract and such contracts were never achieved. As a result there existed the 1989 contracts, as varied from 20 July 1990, and the proposed new 1990 contracts did not come into existence.

17. The plaintiff was in a position where, in the very near future, he had to secure an agreed extension of the time for final payment or else raise the money to make the final payment. In August 1990 the plaintiff entered discussions with L Stanley Limited which traded as a bookmaker from premises within the same block as that occupied by the house and site and with an address at 2/2A McMullans Lane, Belfast. It was proposed that L Stanley Limited would act as mortgagee in the plaintiff's purchase of the house and site and that the bookmakers office would move to the ground floor of the house where it would have the advantage of a frontage on the

main road. There were a number of difficulties with this proposed transaction which were never resolved. For example the inclusion of a yard at 2/2A McMullans Lane; restrictions on use of the premises which would have required the defendants' consent; whether the transfer to L Stanley Limited was limited to the ground floor of the house or the entirety of the house; the requirement that L Stanley Limited would obtain the fee simple to the house when the second defendant did not have a fee simple interest.

18. Meanwhile the plaintiff's solicitor was seeking to reassure the defendants' solicitor that the plaintiff had good prospects of finalising the matter in the near future. On 24 October 1990 the defendants' solicitors gave notice that the transaction was not to proceed and required the return of the documents of title. The plaintiff failed to make the payments of £250 per week for the last two weeks of October 1990. On 2 November 1990 the defendants took possession of the house and site and changed the locks and the plaintiff never regained possession. On 30 November 1990 the defendants' solicitor gave notice of rescission of both 1989 contracts on the basis that the plaintiff had failed to complete the transactions further to the notices to complete dated 16 July 1990.

19. At 30 November 1990 I would summarise the position between the parties was as follows –

(a) The 1989 contracts as varied from 20 July 1990 remained extant as there had been a waiver of the effect of the notices to complete dated

16 July 1990 as outlined above, so that the defendants were not entitled to rescind the contracts for the reason given on 30 November 1990.

(b) The licence granted to the plaintiff was a contractual licence which would have been revocable as contemplated by the terms of the agreement. The licence would have continued until final payment or rescission and the non payment of the weekly payments was a breach of the terms of the licence by the plaintiff by reason of which the defendants were entitled to recover the payments. After repossession the plaintiff offered the overdue payments to the first defendant but he refused to accept those payments. As with any contract it is not every breach of the terms of the licence that would entitle the innocent party to terminate the licence. On the right to terminate the licence in the present case I adopt the analysis in Cheshire Fifoot Furmston's Law of Contract 13th Edition at pages 549-555. The right of the defendants to terminate the licence would have arisen in two types of cases –

(1) Where the party in default has repudiated the contract before performance is due or before it has been fully performed.

(2) Where the party in default has committed what in modern judicial parlance is called a fundamental breach. Breaches of this nature arise, if, having regard to the contract as a whole, the promise that has been violated is of major as distinct from minor importance.

As to repudiation at (1) above, I am satisfied that the failure of the plaintiff to make the payments for two weeks did not arise from an intention no longer to perform his side of the bargain.

As to fundamental breach at (2) above, I am satisfied, having regard to the contract as a whole, including the importance of the term requiring weekly payment and the seriousness of the consequences arising from a failure to make the payments for that period, that default for two weeks does not constitute such a fundamental breach.

Accordingly the plaintiff's failure to make two weekly payments did not entitle the defendant to terminate the plaintiff's licence and to repossess the house and site.

20. After 30 November 1990 the plaintiff remained unable to complete the transaction. On 24 January 1991 the defendants' solicitor served two further notices to complete in respect of the 1989 contracts. There were further contacts between the parties and their solicitors but final payment was never made. The plaintiff claimed that he was unable to make the final payment because the documents of title had been returned to the defendants' solicitor and further because, with the plaintiff out of possession, he was unable to receive the income from the lettings which would have funded the repayments to L Stanley Limited under the proposed mortgage. I am not satisfied that in the circumstances the plaintiff could have secured a mortgage on the premises from L Stanley Limited or could have obtained finance from

any other quarter which would have enabled him to complete the purchase of the house and the site.

21. The plaintiff was in difficulties in June 1990 when he was pressed to make the final payment. He claimed in evidence that he could have made the final payment at that time if he had had adequate notice. He referred to his holdings of other properties and to his father's interest in an industrial estate and to the potential for borrowing the necessary funds. In the event he took the step of advertising for a business partner and while he had discussions with a potential partner he ended those contacts in July 1990 after the renewed discussions with the first defendant. When those renewed discussions faltered the plaintiff turned his attention to L Stanley Limited and he referred in evidence to his firm belief that he had a deal with L Stanley Limited. However this, like so many of the plaintiff's dealings, was incomplete and was never concluded. Mr Carson agreed that there were a number of problems in the discussions with L Stanley Limited and that they were never sorted out and he was never aware that the plaintiff at any time had the money to make final payments to the defendants. Mr Moorhead, an accountant engaged by the plaintiff in 1993, gave evidence about the plaintiff's financial position over the years, and whatever may have been the position on paper from time to time it was not such as enabled the plaintiff to raise the necessary finance when it was needed. What did emerge was that when Mr Moorhead was engaged the plaintiff was under investigation by the Inland Revenue and was seven or eight years in arrears with his accounts. I

am satisfied that the plaintiff's loss of possession of the house and site was not the cause for the plaintiff's failure to reach agreement with L Stanley Limited. In a letter from Mr Carson on behalf of the plaintiff to Mr Nurse on 11 December 1990 it was stated that the plaintiff had been ready to complete the payments on 30 November 1990, but the plaintiff agreed in evidence that he could not have been ready to complete at that time. Indeed there was ongoing contact between the respective solicitors about the prospects of making final payment into 1991, but this never proved possible. The plaintiff by then had over six months to arrange finance but had been unable to do so. He blamed his solicitor for putting him in the position where he needed the final payments in June 1990 because he claimed Mr Carson had not given formal effect to his agreement with the first defendant about an extension of the term for final payment beyond 23 June 1990. He blamed his solicitor for his failure to complete the mortgage arrangements with L Stanley Limited. I am satisfied that Mr Carson was not to blame in either regard.

22. The plaintiff claims specific performance of the 1989 contracts as varied. After discussions with the plaintiff had broken down completely the second defendant appears to have sold the house to a third party. The plaintiff seeks specific performance of the site contract and not the house contract. The defendants objected on the ground that this would involve a severance of the contracts which were stated to be inter-dependent. I would not seek to rewrite the contracts by making an order for specific performance in relation to the site only. Further, the plaintiff claims specific performance

of the contract in a form in which he claims it was varied and as I have held that it was not so varied the contract is not enforceable in the form claimed by the plaintiff.

In any event I am satisfied that the plaintiff was, and would have been at all times, unable to make the final payment. Had this been a case where specific performance might have been ordered I would, for the above reason and in all the circumstances, have exercised my discretion to refuse an order for specific performance.

23. The defendants were in default in retaking possession on 2 November 1990 but that did not entitle the plaintiff to rescind the contracts, nor did the plaintiff purport to do so. The plaintiff claims the return of the deposit and I find that the plaintiff is entitled to repayment of the deposit of £2,000 with interest from 23 June 1989. In ordering the repayment of the deposit I take account of the discussion in Wylie, paragraphs 13.34-13.36.

From 23 June 1989 to 23 June 1990 the plaintiff paid £10,400 at £200 per week. This was agreed between the plaintiff and the defendants as a payment on account of the purchase price, during which time the plaintiff received such rents as were obtained from the property. That was the agreement between the parties on the basis that ultimately the final payment would be made to the defendants. I consider that it must necessarily be implied into the arrangements that in the event of the plaintiff not acquiring the house and site there would be a repayment of the payments made on account of the purchase price less a charge to the plaintiff for use and occupation. Mr

Crothers, on behalf of the defendants, considered the actual payment of £200 per week to be a reasonable sum for the rent of the premises and while Mr Wylie on behalf of the plaintiff stated that the sum was "not entirely reasonable" I accept the sum of £200 per week as a reasonable figure for use and occupation during this period. The plaintiff would be entitled to repayment of the £10,400 and I measure the payment for use and occupation at £200 per week, which would cancel out the sum of £10,400.

From the 23 June 1990 to 2 November 1990 the plaintiff made payments of £250 per week by way of interest on the outstanding capital payment. I make no order in respect of payments made during that period for the same reasons as set out above in relation to the previous year as it does not alter that position that the payments were converted from payments on account of the purchase price to payments by way of interest.

The plaintiff incurred expenses in the management of the premises during the period he was in possession but as these expenses were incurred in anticipation of making final payment to the defendants and as I find that the plaintiff was, and would have been, unable to make the final payment, he is not entitled to repayment of those expenses.

The plaintiff claims loss profits by way of loss of income from the house and site for the period from 2 November 1990 to 23 June 1995. I have rejected the plaintiff's case that he was entitled to extend the period of final payment to 23 June 1995. Had the plaintiff remained in possession after 2 November 1990 he would have received the value of the lettings and

discharged the outgoings, including the interest payment to the defendants at £250 per week. It was accepted by Mr Kinney, on behalf of the plaintiff, that even up to 23 June 1991 there would have been no loss occasioned to the plaintiff by reason of the loss of possession. I find that the plaintiff sustained no loss of profits as the anticipated income would not have exceeded expenditure during the period up to any date when the plaintiff might reasonably have been expected to make the final payment.

The plaintiff claims damages for loss of opportunity to develop the premises. On the basis that the final payment would not have become due until 23 June 1995 the plaintiff valued that loss at £210,000 based on a valuation of the house and site at that time, less the payments that would have been made by the plaintiff. This item is not recoverable as I have found that there was no agreement to extend the date of final payment to 23 June 1995. Alternatively, the plaintiff provided a valuation of loss on 23 June 1991 at £75,000, calculated on the same basis. Again, as I have found that the plaintiff would have been unable to make the final payment in any event, I find that the plaintiff has suffered no such loss.

The defendants' counterclaim for the sum of £20,000, being the alleged loss sustained by the second defendant on the resale of the house for the sum of £10,000. The defendants did not give evidence and I am not satisfied as to the circumstances of any purported resale of the house and dismiss this item in the counterclaim.

The plaintiff is entitled to recover the sum of £2,000 from the defendants, with interest from 23 June 1989.

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

**CHANCERY DIVISION**

**---------**

**BETWEEN:**

**GORDON SAMUEL DUFF**

**Plaintiff;**

**-and-**

**WILFRED EGERTON**

**Defendant.**

**BETWEEN:**

**GORDON SAMUEL DUFF**

**Plaintiff;**

**-and-**

**MAUREEN EGERTON**

**Defendant.**

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**J U D G M E N T**

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**WEATHERUP J**

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