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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:* **04/02/2026**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

_____

CHANCERY DIVISION

_____

FIONA MARY McKEE

Plaintiff

and

[1] SAMUEL FORBES CARSON
[2] SAMUEL JAMES McKEE

Defendants

_____

Mel Power KC with Lisa Moran (instructed by Hunt Solicitors) for the Plaintiff
The First Defendant represented himself
The Second Defendant took no part

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SIMPSON J

Introduction

[1] This case comes before the court arising from the following background.

[2] The plaintiff instituted proceedings in the Chancery Court in 2016 seeking to set aside a transfer to the first defendant (the defendant") of some 19 acres of land at Ballee Road, Ballymena, Co. Antrim. The transfer took place in 2015. Following a trial which lasted 5 days before McBride J, judgment was delivered on 10 June 2022, reported at [2022] NICh 9. The detailed facts of the case are to be found in the judgment. The court found that the defendant had falsely represented to the plaintiff that the transaction was a loan, all the time knowing that the documentation which the plaintiff was signing amounted to a sale of the property; that the defendant took advantage of the plaintiff s vulnerable state; and that the property was sold at a significant undervalue.

[3] After a detailed rehearsal of the evidence and her findings, McBride J said the following:

> [68] I therefore find that Mr Carson represented to Mrs McKee that the monies were advanced by way of a loan. When the transfer documents were presented to her they recorded something different, namely a sale. She had no legal advice and limited time to read the documentation and to comprehend exactly what she was signing. Mrs McKee was not an educated woman, and she lacked financial or legal expertise, she was in ill-health and under significant financial pressure at the time she signed the documents. I further find that Mr Carson knew the McKees were under financial pressure. He accepted he knew about her past history and her vulnerability, and I find that rather than trying to assist the McKees he was seeking to wipe their eyes" by promising a loan and then in reality having the lands transferred to him absolutely."

[4] At paragraph [81] she said:

> I am satisfied that there should be equitable rescission in this case and that the parties should be placed back in their pre-contractual positions."

[5] The court granted the relief of rescission, effectively restoring the parties to the position ante. The court then invited submissions, including submissions as to whether either party was due monetary redress. The court also gave judgment in favour of Mr McKee against Mrs McKee, but made no order as to costs. Hence, Mr McKee takes no part in this matter.

[6] While the first instance decision was handed down in June 2022, for a number of reasons the final determination on redress was not made until 6 February 2025 and the final Order was not issued until 23 May 2025. In relation to remedies, the Order of the court stated:

> 6. That, pursuant to the remedies hearing, neither the plaintiff nor the second defendant are required to make any payment to the first defendant in respect of the said rescission.
>
> 7. That the first defendant pay all the plaintiff s costs of this action and remedies hearing …"

[7] The defendant appealed.

[8] The events on appeal, together with an explanation of the time lapse between June 2022 and February 2025, can be found in the judgment of the Court of Appeal [2025] NICA 53. The defendant mounted his appeal on three grounds. The Court of

Appeal dismissed two of those grounds but allowed the appeal on the third ground and, in paragraph [62] of the judgment said: "Our ruling means that we will allow one aspect of the judge s order to be reheard, namely paragraph [6] which relates to monetary relief." The case was remitted to the High Court to deal with that matter, and that matter alone.

Legal principles

[9] In *Cheese v Thomas* [1994] 1 WLR 129 Sir Donald Nicholls V-C said, 137B-F:

> The basic objective of the court is to restore the parties to their original positions, as nearly as may be, consequent upon cancelling a transaction which the law will not permit to stand. That is the basic objective. Achieving a practically just outcome in that regard requires the court to look at all the circumstances, while keeping the basic objective firmly in mind. In carrying out this exercise the court is, of necessity, exercising a measure of discretion in the sense that it is determining what are the requirements of practical justice in the particular case. It is important not to lose sight of the very foundation of the jurisdiction being invoked. As Lord Scarman observed in the *Morgan* case [1985] A.C. 686, a court in the exercise of this jurisdiction is a court of conscience. He noted, at p. 709:
>
> > There is no precisely defined law setting limits to the equitable jurisdiction of a court to relieve against undue influence … Definition is a poor instrument when used to determine whether a transaction is or is not unconscionable: this is a question which depends upon the particular facts of the case.
>
> As with the jurisdiction to grant relief, so with the precise form of the relief to be granted, equity as a court of conscience will look at all the circumstances and do what fairness requires. Lord Wright adverted to this in *Spence v Crawford* [1939] 3 All E.R. 271, which was a misrepresentation case. He said regarding rescission and restitution, at p. 288:
>
> > The remedy is equitable. Its application is discretionary, and, where the remedy is applied, it must be moulded in accordance with the exigencies of the particular case.

[10] Thus the particular factual circumstances of each case will dictate the approach of the court to this discretionary and equitable remedy.

What was paid to the plaintiff?

[11] As to the money paid by the defendant to the plaintiff, in paragraph [13] of her judgment McBride J said:

> After the execution of the documentation various payments were made by Mr Carson; he paid a cheque to HM Revenue and Customs (HMRC") on 16 April in the sum of £43,645.30 and in addition gave two cheques to the McKees, one for £1,000 and one for £2,000. Subsequently, he paid £10,000 by cheque dated 12 June 2015 and paid £5,000 by cheque dated 18 July 2015."

[12] She recorded in her judgment (paragraph [33]):

> When challenged that these payments did not total £80,000 he said that the balance was paid by payment in kind namely permitting the McKees to have rent free use of the lands for grazing."

Later, in paragraph [65] McBride J said:

> In many instances I observed that he simply made up the evidence as he went along. For example, when pressed in cross-examination that the documentation showed that he had not paid the full consideration of £80,000 for the disputed lands to the McKees he changed his evidence and then stated that the balance was paid in cash. When it was put to him that the inclusion of the cash payments did not amount to £80,000 he then said the balance was paid by way of rent free use of the disputed lands for grazing. Mr Carson then described himself as a foolish man as he did not keep an accurate record of payments. I am satisfied that Mr Carson is a very astute businessman who owns a substantial farm business, who has several rental properties and is knowledgeable about tax matters including CGT rollover relief. I therefore do not accept that the lack of records arose because he is a foolish man as he averred. I am satisfied that there is a discrepancy between what he said was the agreed consideration for sale of the disputed lands and the actual amount of consideration paid by Mr Carson."

[13] In the circumstances I am satisfied that the amount paid by the defendant to the plaintiff was £61,645.30.

The witnesses

[14] The plaintiff has put forward a claim against the defendant for £58,159.20. That figure comes from a report from a firm called JCP, and authored by Colin Murray (Building Surveyor) and PJ O Kane (Quantity Surveyor). If that report is intended to be received by the court as a report from experts, the expert s declaration does not appear with the report in the plaintiff s trial bundle. The report is in breach of the relevant Practice Direction. One of the matters, therefore, which is not included in the report is a declaration by the authors of the report that their duty is to help the court, and that this duty overrides any obligation to the party on whose behalf they are instructed. Further, all the sources of information used have not been identified and there is no statement of truth. In the circumstances I have to consider what weight can be attached to the content of the report.

[15] The report was prepared following a site inspection on 19 July 2023. In evidence both Mr Murray and Mr O Kane said that they did not walk all the lands to carry out their inspection. In addition, while some measurements were taken, others were not and it seems that a significant amount of the costings were prepared by way of estimate. Further, at page 54 of the trial bundle submitted by the plaintiff the authors of the report record the plaintiff s observations about parts of the lands. The report is accompanied by a Cost estimate for reinstatement works", itself prepared by Mr O Kane, based on the remarks made by Mr Murray as to the works which are said to be required. The works are set out as 10 items with accompanying description.

[16] The plaintiff did not give evidence, so I have no direct evidence of her intentions or why she says some of the works should be carried out and to the extent claimed.

[17] The defendant called two witnesses. John Byrne, a digger driver, gave evidence that he had carried out work for the defendant for about a year from about Christmas 2014. He gave straightforward evidence as to the types of work he had carried out to the lands after the defendant accessed them. He made the point that while carrying out the works he was never challenged by the McKees as to why he was on the lands. He admitted that he was not aware of any dispute between the plaintiff and the defendant.

[18] The defendant then called Sean McKeown. He is the co-author of a report submitted under the auspices of the Agri-Green Consultancy." The other author is a Eugene McBride. An expert s declaration was included and signed by both authors of the report. Frankly, I was wholly unimpressed by the evidence relating to the expertise of each. Mr McKeown has no qualifications, but claimed to have considerable experience in the construction business, restoration being his specialty. He has worked on projects from Scotland to the south of England. That, of itself, does

not make him an expert. Although he bridled when asked about his lack of qualifications, I conclude that he does not qualify as an expert for the purposes which the court requires.

[19] His co-author of the report, Mr Eugene McBride did not give evidence. The report describes his qualifications as MSc (Environmental Management)." Beyond that, I know absolutely nothing of his expertise or experience.

[20] Neither author of the report submitted or included any CV or other documentation setting out their relevant expertise. In all the circumstances, I decline to accept the report authored by Messrs McKeown and McBride as an expert report. In my view there is no cogent evidence of any betterment of the lands.

[21] The defendant gave evidence on his own behalf. I have derived assistance in reaching the figures which I have reached from the cross examination by the defendant and from his evidence.

Consideration of the plaintiff s claim

[22] As I noted above, the claim for the works is divided into 10 items. It will be convenient to deal with each in turn.

Item 1 – Removal of lane and reinstatement of land

[23] There is, in the report, a rudimentary sketch map of the relevant parts of the lands. It is set within a rectangle with the two vertical sides of the rectangle being the shorter. The plaintiff s lands are shown to be in the north west part of the rectangle, and the defendant s lands are off the sketch to the south east. From a laneway close to the plaintiff s lands, and running north west/south east, is the lane of which the plaintiff seeks the removal. It is common case that it was newly constructed by the defendant and that it provides a link between his lands and the transferred lands.

[24] As noted above the plaintiff has not given evidence as to why this would need to be removed. She is reported by JCP as saying:

> [She] has no need for the right of way that has been put in place and seeks not to have this and in fact she would state that this hardcore right of way has been placed right through the middle of one of her friends (sic) and is of sole use to Mr Carson who was giving himself an alternate entrance to his lands."

[25] The total cost for the removal of this lane and reinstatement of the land is stated to be £19,342. This is made up of £2,768 for excavation of hardcore laneway" of 692 square metres, assuming half a meter depth of hardcore to be removed. In cross examination Mr Murray stated that he did not measure the depth of hardcore. In his

own evidence the defendant says that only half of that depth was put down. Mr Power KC objected that the defendant had not put that figure to Mr Murray. However, since by his own admission Mr Murray did not measure the depth, such an omission by an unrepresented litigant hardly matters as Mr Murray could not have been in a position to gainsay the depth suggested by the defendant. Further, Mr Power did not seek to recall Mr Murray. In the circumstances I consider it appropriate to reduce the claimed figure by 50% — to £1,384.

[26] The second component part of Item 1 is a claim (£12,456) for disposal of the excavated material from the site. Again, this is based on the calculation of half a meter depth of hardcore. Therefore, I make an initial reduction of this by 50% — £6,228. Mr Murray was asked in cross examination if he considered whether the excavated material (stone) could be re-used and whether, therefore, it had some re-sale value. He appears not to have considered this. No evidence was placed before me as to the potential re-sale value of the excavated hardcore, but it seems to me that an allowance of 25% is not unreasonable. Therefore, I reduce the amount of £6,228 claimed by 25%, leaving £4,671.

[27] The third component of Item 1 relates to the removal of barbed wire to both sides of lane and disposal." No measurement is given of the length of the barbed wire or how many strands it is comprised of. The figure claimed is £1,350. No explanation is provided as to how the figure is made up. I am not at all satisfied that such a figure is appropriate and I reduce that to £1,000.

[28] The fourth component of Item 1 is a claim for £2,768 for the importation of topsoil (to be placed where the hardcore now is) and for seeding it out. Mr Murray was asked whether there was overgrown topsoil at the side of the newly constructed laneway, which was placed there when the laneway was laid, which could be used. He did not know. In his own evidence the defendant pointed out where the topsoil was placed and said it could be scraped back into its original position. I accept the defendant s evidence on this point, as there is a photograph to show where the topsoil is. There will be some inconvenience in putting the topsoil back into position and some will be unusable.

[29] Doing the best I can I allow £1,500.

[30] The total, therefore, for Item 1 is £8,555.00.

Item 2 — Removal [of] covered laneway to rear of buildings and reinstate field

[31] The sum claimed is £3,840, made up of three component parts. First, the excavation of the laneway, the assumed depth being, again, half a meter, costing £1,200. Secondly, the disposal of the material off site. Thirdly, the importation of topsoil and re-seeding. I consider that I should take the same approach to these claims as to the similar claims in Item 1. Thus, I reduce the £1,200 to £600. I reduce the £2,160

first, to £1,080 and then by a further 25% to allow for re-use of the stone, leaving a figure of £810.

[32] There was no evidence before me of the existence of topsoil adjacent to this area of the lane, so I had no basis to reduce the £480 claimed.

[33] The total sum allowed is £1,890.

Item 3 — Provide physical boundary

[34] The JCP report says that a physical boundary is required between the two sites for demarcation and prevention of unauthorised access. A secure timber fence should be erected." There was no challenge to this. The figure claimed is £1,000, and I allow this.

Item 4 — Remove tree adjacent to barn

[35] The amount claimed is £300. No evidence was given as to why this was necessary or even reasonable. The report merely says A large tree was planted adjacent to the barn area. The tree should be removed."

[36] No evidence was given as to when, if it was planted, that was done. Mr Murray was not able to give any evidence as to the age of the tree. There is in the report a Google Earth photograph from 2010, which may or may not show a tree at this location — it may be that the tree was (in 2010) too small to be seen. Further, he was unable to say whether the tree might have been planted (or started to grow) between 2010 and 2015, ie before the defendant came onto the lands. There is equally no evidence that it was not a tree which had simply grown from a seed blown on the wind.

[37] In the circumstances I am not satisfied by the plaintiff s evidence that this is an allowable claim. I allow nothing under Item 4.

Item 5 — Remove all trees and bushes and reinstate field

[38] The total claim of £9,140 is comprised of two parts: £7,140 for Site clearance, clear site of all vegetation and other growth and dispose off site", £7,140; and Extra over clearance of larger trees", £2,000. Referring back to the sketch, the field is located to the north of the new laneway.

[39] The narrative in the report is as follows:

> The field is overgrown with trees, bushes, shrubs etc. and is currently not in a useable condition for grazing. The field should be cleared to remove existing vegetation,

including all fencing, bushes, trees etc. and should be reinstated to a condition where it can be maintained."

[40] Two photographs are included which show a field in a condition broadly as described. This is compared with the Google Earth image in 2010. The defendant says that just to the north of this field is a large moss area, and seedlings could have come from there. Trees could have grown naturally. This is correct, but if a farmer wanted to use lands for grazing, he or she would remove burgeoning plants, such as bushes or saplings, before they grew significantly. Accordingly, I consider that there is credible evidence that this work would need to be done to restore the field to a condition where it could be used for grazing animals.

[41] No basis was provided to me to suggest that the claimed figure was other than appropriate. In the circumstances I allow the sum of £9,140.

Item 6 – Reinstate well

[42] The sum claimed is £3,000.

[43] The well features twice in the narrative in the report. First, recording what the plaintiff says: she has advised that there was a natural spring well which would have fed the barn for the use of the animals which Mr Carson has covered in dung and other rubbish and has broken up the well to the extent that the connection is no longer of any use for the barn and this will have to be replaced"; and later, under Item 6, the narrative in the report says: we are advised that there was a natural spring well which supplied the barn for the use of the animals. The well have been (sic) broken up and covered with rubbish and is not fit (sic) for purpose. The well should be reinstated."

[44] Mr Murray was asked if he had found or seen the well. He said he had not. Mr O Kane said he had not seen the well. Quite why neither appeared to have asked the plaintiff to point out the location of the well is wholly unclear. The sum of £3,000 is claimed, without any explanation whatsoever of how this is made up other than that, according to Mr O Kane, it is an estimate of costs based on an assumption. There has been no professional examination of the condition of the well, precisely what work needs to be done and how that work is broken down eg how much in the way of materials or how much in the way of labour.

[45] There is neither cogent evidence before me of the existence of a well, of the location of a well or of the amount or extent of work necessary. In the circumstances I disallow this claim.

Item 7 – Replace water and electricity connection to barn

[46] The barn has had internal works done to it, which feature in Item 8. Accommodation has been created within the barn, and the photographs show an open

plan kitchen/living area, a bathroom, and what appears to be a sleeping area on a mezzanine floor, with a ladder to the sleeping area. In the photographs it appears fairly basic. The defendant describes it as bijou accommodation."

[47] In order for the various kitchen items and lighting etc., to work, and in order for the bath, sink and toilet to work, there must be both electricity and water connections. The narrative in the report says:

> We are advised that the original water and electricity supplies to the barn were disconnected. The supplies should be investigated by a qualified mechanical and electrical engineer and the supplies reinstated to current standards."

[48] Other than that hearsay statement, there is no evidence of this. No inspection was carried out. What is meant by current standards" (presumably for animals) as opposed to what is there now is not explained. On the basis of the evidence before me I see no basis for this claim, and I disallow it.

Item 8 — Reinstate alterations to barn

[49] It is common case that in relation to the alterations to the barn to create living accommodation there was neither planning permission nor building control approval.

[50] The total claim for this Item is £5,000 to [re]instate alterations to barn, make good mortar repairs, all weeds should be removed [from the yard] and cracks repaired. Removal of debris in stables. Allowance for stripping out first floor of dwelling." That is priced as being one item at the rate of £5,000.

[51] Again, and glaringly, there is no breakdown of this figure. In an expert s report supporting a litigant s claims in relation to works such as these, a court is entitled to expect an explanation of the number of workers who might be required, the approximate number of hours claimed for the work, a precise description of the nature and extent of the works, materials or machinery needed etc. All of this is absent from the report. In the witness box neither Mr Murray nor Mr O Kane gave any evidence of any of the matters I have just outlined. Apparently I am simply expected to sanction the claim of £5,000 without further explanation of how that figure was arrived at. No court should be asked to do so, and I am not prepared to do so. I will allow only £2,000 for this work.

Item 9 — Reinstate surface of enclosed area for horse riding school

[52] The claim for these works amounts to £8,250. The first component of the claim is for Site clearance, clear site of all vegetation and other growth and dispose off site", £1,375; for the second, "New layer of sand", £6,875.

[53] There is an area shown on the sketch to which I referred earlier in this judgment and described as Sand arena." The explanation for its existence appears in the judgment of the Court of Appeal, thus:

> In and around 2013 Mrs McKee decided to set up a riding school … She applied for a licence on 15 December 2013, which was granted on 27 April 2015. Around this time Mr McKee carried out various works to the property to facilitate the running of a riding school including building stables, a walking area and an arena. The riding school was called Hillview Riding School, and it operated from in and around 2014."

[54] In the JCP report, and accompanying photographs, it is stated that this area has been neglected and is in poor condition with wholesale evidence of grass and weeds etc." and that the entire surface should be cleared of all vegetation and treated prior to laying a new layer of sand." The claim includes a new depth of sand of 100mm, approximately four inches. No evidence was given by either Mr Murray or Mr O Kane of the depth of the existing layer of sand.

[55] The defendant challenged Mr Murray as to why this could not be restored simply by harrowing the existing sand to bring up the vegetation and then raking the sand. No credible explanation was given as to why this would not be appropriate. I consider that a common sense, and perfectly reasonable solution, would be to do precisely that. What is being claimed, in my view, is a Rolls Royce solution and is wholly unreasonable. Mr O Kane, during his evidence about another aspect of the claim, said that a reasonable daily rate would be £300. I consider that the solution of harrowing/raking could be achieved in three days work. Rounding that up slightly, I allow £1,000 for this claim.

Item 10 — Removal of large containers and caravan off site

[56] The claim for this is £1,000 although, once again, there is no explanation for how this figure is arrived at. In his evidence the defendant said, without challenge, that some items had already been removed. I will allow £250.

[57] JCP s costings also include a claim for 'main contractor s preliminaries', at the usual figure of 10% of the overall cost of the works. The total figure which I have arrived at for the claim is £23,835. I am less than confident that there will be significant preliminaries, but with some reluctance I will allow 10% of the claim ie £2,383.50. The total figure allowed is, therefore, £26,218.50. It is claimed that a further 10% should be added to take into account the rise in the cost of materials and labour since the JCP report of August 2023. This is a purely arbitrary figure, and no evidence was provided to me as to its accuracy.

[58] Nevertheless, in all the circumstances, I will round up the sum to £27,500 to allow for some rise in costs. Since the plaintiff has not yet expended this figure on works — if in fact the works are ever carried out — there is no question of interest on the sum.

[59] It may well be clear from what I have said above that I have found the report from JCP to be very unhelpful. The role of an expert witness is to assist the court, and it is to the court that the expert witness s duty is owed. Expert evidence is not, of itself, determinative of any issue — such evidence is one tool available to the court in arriving at a just decision. Where the expert evidence is lacking in suitable explanation, so that the court is not clear how, in this case costings, are arrived at, it is open to the court to reject all or part of the evidence. In this case, I find myself in the position of not having been provided with the necessary evidence to justify the experts costings of the claim. Accordingly, I have not been satisfied that all the costings which have been put forward are credible.

Discussion

[60] Since the moneys paid over by the defendant to the plaintiff were a loan, the first step will involve the repayment by the plaintiff to the defendant of the sum of £61,645.30. The defendant seeks interest, saying that he has been unable to put the money to other use. The award of interest is a matter for the discretion of the court. One of the matters which the court is entitled to take into consideration is the motivation of the defendant when he paid over the money to the plaintiff. McBride J has made a finding on the evidence that the money was paid for a wholly dishonest motive. It seems to me that the court should have little sympathy for a party who set out deliberately to dupe a vulnerable woman and dishonestly obtain ownership of the lands at a very considerable undervalue. It would offend the conscience of the court, in my view, to allow the defendant to have interest paid on his loan. To do so would permit him to derive a benefit from this dishonest action. If he wanted his money to work for him by earning interest, he should not have embarked on what was a dishonest enterprise.

[61] In the circumstances, I decline to make any award of interest on the sum loaned by the defendant to the plaintiff.

[62] Equally, the plaintiff has had the use of the money since around 2015, and this is a matter which is also relevant to my ultimate consideration of the remedy.

[63] From the figure of £61,645.30, the plaintiff has to pay back to the defendant, should be deducted the sum of £27,500. Accordingly, the order of the court is that the plaintiff pay to the defendant the sum of £34,145.30.

[64] This remedies hearing arises directly from the previous findings on liability made by McBride J. The plaintiff is entitled to her costs of the hearing, to be taxed in default of agreement. As the ppl is an assisted person I also order that her costs be

taxed in accordance with the second schedule to the Legal Aid, Advice and Assistance(Northern Ireland) Order 1981.