

Neutral Citation No: [2014] NIQB 77

Ref: **WEA9301**

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

Delivered: **29/05/2014**

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

**QUEEN'S BENCH DIVISION (COMMERCIAL)**

**HEATHER BAIRD**

**Plaintiff**

**v**

**STEPHEN W R HASTINGS t/as HASTINGS & Co, SOLICITORS**

**Defendant**

**Judgment on damages**

**WEATHERUP ]**

[1] I gave judgment on liability under neutral citation [2013] NIQB 143 and the matter has returned for the assessment of damages. Mr McNulty QC appeared for the plaintiff and Mr Good QC for the defendant.

[2] The background is set out in the liability judgment but in essence I found the defendant solicitor liable to the plaintiff purchaser in respect of a transaction that was planned in 2007 whereby the plaintiff and her husband wished to sell their property in Ballymoney and buy two other properties, one in Castlerock for their son and one in Ballymoney for themselves. The Ballymoney property did not sell and the plaintiff remains in residence. The Castlerock property was purchased for the plaintiff's son. The findings against the defendant solicitor appear at paragraphs 33 and 34 of the judgment where it was stated that there were certain risks arising out of the proposed transaction. One such risk was the Ballymoney property not selling within the period of the bridging loan or at all. Another risk was the death of the plaintiff's husband who was the income provider and who serviced the bridging finance. The conclusion was that the defendant was in breach of duty in failing to

provide appropriate advice in a timely manner about the consequences of a failure to sell the Ballymoney property.

[3] The plaintiff has itemised the claim in the following manner -

- Item 1 is the advance of £540,000 made by Ulster Bank Ltd to the plaintiff in order to discharge the mortgage of £155,000 with the Nationwide Building Society on the Ballymoney property and to purchase the Castlerock property for £385,000.
- Item 2 is the interest charged in respect of that advance by Ulster Bank which at 13 April 2013 amounted to £169,848 so that the total debt had accumulated to £709,848 at that date. Ulster Bank stopped charging interest so that sum remains the total liability.
- Item 3 is the expenses of £15,063 incurred in the purchase of the Castlerock property, being Stamp Duty of £11,500 and legal fees of £3,563.

According to the plaintiff the total outlay is therefore £724,942. There are then a number of items for which the plaintiff accepts that credit must be given.

- Item 4 is the amount required to discharge the mortgage on the Ballymoney property, namely £155,000.
- Item 5 is the increased interest paid by the plaintiff to the Ulster Bank over the interest payments that would have been made to the Nationwide Building Society on the Ballymoney mortgage. That mortgage was for 3 years at 5.09% and at the expiry of the 3 years the interest rate would have been fixed at a sum above bank rate in the range of 0.84% to 2%. It was not possible to say what rate would have been fixed by the Nationwide at the expiry of the 3 years. The range of value of the increased sum has been calculated at £25,900 to £38,300. I adopt a medium point which would assume an interest rate of around 1.4% above base rate. The increased interest payment would be approximately £32,000 which is the figure I propose to adopt in relation to Item 5.
- Item 6 is the value of the Castlerock property which at 2014 values was agreed at £170,000.
- Item 7 is the rental value of the Castlerock property which is described as the value of the use of the property acquired. The rental value has been calculated in accordance with figures produced by a local estate agent at £43,600 to date.

If one deducts items 4 to 7 from Items 1 to 3 the plaintiffs' claim amounts to some £330,000.

[4] The defendant disputes some of the plaintiff's figures.

- Item 3 is disputed in that it is said by the defendant that the expenses of the purchase of the Castlerock property by the payment of Stamp Duty and legal fees were expenses incurred in the acquisition of the asset, of which the plaintiff continues to enjoy ownership and use, and are the necessary expenses of the acquisition of that asset.
- Item 6 is disputed in that it is said by the defendant that the cost of acquiring the Castlerock property, namely £385,000, is the figure to be deducted, rather than its current value of £170,000 which value reflects the vagaries of the market.
- Item 7 is disputed in that the defendant says that the value of the use of the Castlerock property should not be the rental value at £43,000 but rather the interest payable by the plaintiff in respect of the expenditure on the property, the interest being a sum of £124,000. If one makes the deductions for which the defendant contends the plaintiff's claim effectively has only nominal value.

[5] In Banque Bruxelles Lambert v Eagle Star [1997] AC 191, a claim for negligent valuation, Lord Hoffman dealt with the approach to the measure of damages for breach of duty. I summarise a number of points -

(i) Before one can consider the principle on which one should calculate damages to which a plaintiff is entitled as compensation for loss it is necessary to decide for what kind of loss he is entitled to compensation. The correct description of the loss for which the defendant is liable must precede any consideration of the measure of damages. For this purpose it would be better to begin at the beginning and consider the cause of action.

(ii) There is no recovery for items, which though in general terms are foreseeable, do not appear to have sufficient causal connection with the subject matter of the duty. There seems no reason of policy which requires that negligence should require the transfer to the negligent party of all the foreseeable risks of the enterprise.

(iii) The principle distinguishes between a duty to provide information for the purposes of someone else making a decision on a course of action and a duty to advise someone as to what course of action he should take. In the latter case the negligent adviser is liable for the foreseeable consequences of the course of action and in the former case the negligent adviser is liable for the foreseeable consequences of the information being wrong.

[6] In the present case the defendant advised the plaintiff by providing information so that the plaintiff could decide how to proceed. The solicitor was not

deciding whether the client should buy or sell the houses. The solicitor's duty was to supply information and to take reasonable care to ensure that the information was correct and if he is negligent he will be responsible for the foreseeable consequences of the information being wrong. In this case it is more an instance of failure to provide information as I have found the appropriate advices were not furnished. It was for the plaintiff and her husband to decide what to do having been advised of the risks by the defendant. The defendant is not liable for all the foreseeable consequences of what occurred but for those within the scope of the duty owed.

[7] The defendant failed to provide the necessary advice on the financial consequences of a failure to sell the Ballymoney property. Had such advice been given the plaintiff would probably not have proceeded with an unconditional purchase contract and in those circumstances the finance would probably not have been drawn down. The defendant's duty to advise on the risks was concerned with the financial consequences of the actions to be taken. The assessment of the plaintiff's losses must be based on the limited scope of the duty, the reasonably foreseeable consequences of a breach of that duty and sufficient causal connection between each item of loss and the subject matter of the duty.

[8] The recoverable losses should be calculated in the circumstances in which the plaintiff now finds herself, namely having become liable to the Ulster Bank for the bridging loan and acquired the ownership and use of the two properties. Capital and revenue costs and benefits have arisen from those circumstances. Recoverable losses have to satisfy the approach outlined above. What is clear is that the scope of the duty does not render the defendant responsible for the fall in the value of property nor for the effects of the death of the plaintiff's husband.

[9] The first disputed item is Item 3 the expenses of the purchase of the Castlerock property which are claimed by the plaintiff in the total sum of £15,063. Those expenses were a necessary outlay in the acquisition of the property by the plaintiff. They are not items recoverable from the defendant. Thus the calculation of total expenditure by the plaintiff should not include Item 3 and is represented by Items 1 and 2 which total £709,848.

[10] The plaintiff's deductions are items 4 to 7. Item 4 is agreed between the parties and the amount required to discharge the Nationwide mortgage on the Ballymoney property at £155,000 should be deducted. Item 5 is agreed in principle between the parties and the additional interest on the Ulster Bank loan has been determined at £32,000 as appears above and that amount should be deducted.

[11] Item 6 is the next disputed item being, according to the plaintiff the value of the Castlerock property at the 2014 value of £170,000 or according to the defendant the cost of the Castlerock property at £385,000. The plaintiff faced the prospect of a rise or a fall in the value of the properties, in the event, unfortunately, it was a fall in values. The defendant is not responsible for the fall in the value of the property. The rise or fall in value is a matter for the market. The value of the property may fall

further or it may rise again but the fluctuations in the value are not a matter within the scope of the defendant's duty to the plaintiff. The deduction under Item 6 should not be the sum of £170,000 but the sum of £385,000, the cost of the acquisition of the property.

[12] Item 7 is disputed. According to the plaintiff the value of the use of the Castlerock property is the rental value, calculated to date at £43,600, based on the valuer's estimate of rental value which for the year 2014 is the sum of £575 per calendar month being a total of £6,900 per annum. According to the defendant the value of the use of the property is the amount paid as interest on the purchase price of £385,000, which to April 2013, being the date on which interest payments to the Ulster Bank ceased, is £124,488. The figure to be deducted in respect of the value of the use of the Castlerock property is best represented by its rental value. The interest paid by the plaintiff represents the value to the Bank of the loan. As far as the defendant is concerned such benefit as accrues to the plaintiff from the use of the property may helpfully be valued by reference to the rental value. The deduction in Item 7 should be £43,600.

[13] Finally, it is necessary to consider whether the future position of any of the items needs to be taken into account. The only item that falls to be considered in this regard is the Item 7 rental value at £6,900 per annum for the notional value of the use of the Castlerock property. The future use of this property is entirely speculative. It is not known whether the Bank will call in the loan, whether the property will have to be sold in the short term or whether the Bank will allow retention of the property for a period, or indefinitely if an agreement can be reached on the servicing of the loan. I do not propose to make any adjustment to the figures in respect of the future value of the use to the plaintiff of the Castlerock property.

[14] If the figures are adjusted as set out above the amount recoverable by the plaintiff is in the order of £100,000. The parties should agree the calculation in accordance with the matters referred to above and judgment will be entered for the plaintiff for that amount.