

Neutral Citation No. [2011] NICH 26  
*Ex tempore Judgment: approved by the Court for  
Handing down.*

*Ref:* DEEH6110.T

*Delivered:* 28/09/11

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND  
CHANCERY DIVISION

BETWEEN:

ANNE BONES

Plaintiff;

and

STEPHEN ROBINSON

Defendant.

*Ex tempore judgment*

**DEENY I**

[1] This is an action brought by Anne Bones against Stephen Robinson by Writ of Summons in this Chancery Division of the High Court. It commenced by Writ of Summons of 23 October 2008 which was followed by a Statement of Claim of 24 March 2009. Mr Jonathon Park of counsel appeared for Mrs Bones and Mr Stephen Robinson appeared in his own defence. He did so throughout these proceedings and the court has striven to make allowance for that fact at times in the pre-trial hearings and at the trial.

[2] On the plaintiff's case this is quite a straightforward matter. She contends that as a result of a sale carried out by public auction on 5 October 2007 at her home at 70 Templepatrick Road, Ballyclare, County Antrim, the defendant agreed to buy and the plaintiff agreed to sell that property in the sum of £1,030,000. The public auction was conducted by a Mr Raymond Hill who practises in that field. Mr Ian Hardstaff, a solicitor at Messrs Harrison Hardstaff, was present at the auction

and subsequent signing of the Deed. It is apparent on the evidence and ultimately, I think, not disputed that the property was knocked down after two adjournments at the auction to Mr Stephen Robinson. I find that was in the sum of £1,030,000 rather than £1,000,030 as erroneously stated in the Memorandum of Sale.

[3] After the property was knocked down to him, he retired into the dwelling-house with his daughter, Sarah, Mr Hardstaff, Mr Hill, Mrs Bones and at some stage her husband, Richard Bones, and he there signed a Memorandum of Sale. Mrs Bones signed also and their signatures were witnessed by Mr Hill, the auctioneer, who gave evidence and Mr Ian Hardstaff who also gave evidence. The date appears therein. Mr Robinson gave his full address to Mr Hardstaff who wrote it down. There was some discussion as to the completion date, but the date ultimately settled on 11 January 2008. The title of the property is briefly described on the Memorandum of Sale.

[4] The Memorandum of Sale records that a deposit of £100,000 was payable and it is clear on the evidence and the court accepts that the almost invariable rule would be that such a deposit would be paid there and then or else the vendor, at his election, could ask the auctioneer to restart the sale. In this instance Mr Robinson, the defendant, said that he did not have his cheque book. In fact he appears to have made, and I accept his evidence in this regard, some comment to the effect that he had come there for breakfast not to buy a house and he said he could not write the deposit cheque because he did not have his cheque book with him. It was agreed with, I find, the agreement of Mr Richard Bones, who was certainly present by this stage, that it was acceptable that he would not sign the deposit there and then because he would arrange to do so shortly afterwards, and so I find in the light of the evidence of all the witnesses that he was agreeing to do that and in all probability later that same day. In fact he went to another auction, it seems, as a spectator being conducted by the same auctioneer, Mr Hill, and Mr Hill's understanding was that he was going to get the cheque later that day. I accept the evidence of Mr Raymond Hill that he later went looking for the cheque from Mr Robinson.

[5] The original completion date was, as I said, 11 January 2008; however, on 20 November 2007 JW McNinch & Son, Solicitors, wrote to Mr Ian Hardstaff and they wrote as follows:

“We understand that you act for the vendor of the above-mentioned property and confirm we act for the purchaser. We should be grateful to receive contract papers together with supporting documents of title at your earliest convenience.”

There was then a telephone conversation between the solicitors and on 28 November 2007 JW McNinch & Son wrote again. Their letter, incidentally, as the previous one does, records that Mr Hardstaff's client was Bones and that their client

was Robinson and that the property was 'lands at Templepatrick'. On the 28<sup>th</sup> they wrote:

"Further to our telephone conversation of 27 November 2007 we would confirm that we are in relation [sic] of deposit funds in the sum of £100,000. Our client merely wishes to confirm that prior to release of the sum your client notes that the intended purchaser is Miss Sarah Robinson of 61 Knockagh Road, Carrickfergus, and that completion will be scheduled for 1 May 2008.

I look forward to hearing from you."

What was clear, therefore, is that JW McNinch & Son, who were acting through a Ms Nicola Thomas whose name, it is fair to say, does not appear on the paper but whom Mr Hardstaff understood to be a solicitor and he said if she was not she was certainly a very experienced conveyancing clerk as she appeared to be alert to the proper issues that a solicitor should be addressing at that time. What is clear from her letter is that though she inadvertently uses the word "relation" that she was in receipt of deposit funds in the sum of £100,000 as specified in the Memorandum of Sale of 5 October 2007 and as she said herself what she merely wished to confirm, i.e. it was not controversial, was that Mr Bones or Mrs Bones should note that the intended purchaser was Miss Robinson and that completion was delayed.

[6] It will be recalled that pursuant to the General Conditions of Sale of the Law Society of Northern Ireland (3<sup>rd</sup> Edition, 2<sup>nd</sup> Revision) a purchaser in these circumstances is entitled to nominate somebody else to be the purchaser in their place on foot of a Memorandum of Sale and it does not seem to matter whether that is following an auction or private treaty sale. Although Mr Robinson took issue over the last three days with the use of the word "nominated" versus "intended" I find that that is of no substance and that it was clear what was intended. It is also clear that, no doubt on foot of some earlier conversation, the completion date was being put back to 1 May 2008.

[7] In the events there was certain other correspondence between the parties which I may or may not refer to further, but the deposit cheque was sent in the substantial sum of £100,000. An easement was prepared by Mr Hardstaff for Mrs Bones indicating that she had allowed a measure of access to a neighbouring farmer to his lands. The whole matter, therefore, was proceeding as normal save that the parties did not complete in May. Mr Hardstaff, as one would expect, drew this to the attention of the solicitors for Mr Robinson and it is accepted they were also the solicitors for Miss Robinson, but when nothing satisfactory was forthcoming he served a Notice to Complete on 22 May 2008 making time of the essence and requiring the purchaser to pay.

[8] Subsequently, it would appear that, there were without prejudice negotiations which the court did not wish to hear of, but ultimately proceedings were issued. It is a point significantly relied on by the plaintiff and it is an important point which they are entitled to rely on that, at that time, McNinch were not instructed to write and did not write making a case that there had never been a contract here nor, the plaintiff would say, was that case ever made to her or to those acting on her behalf.

[9] From the plaintiff's point of view it appears to be a pretty straightforward matter and they seek the remedies that one would normally seek in such circumstances, namely that the defendant, Stephen Robinson, be required to specifically perform the contract or, in the alternative, that the contract be rescinded and he pay damages for breach of contract. I will return to that in due course.

[10] The case put forward on behalf of the defendant is an unusual one. It has been put forward in different ways over the period from his original Defence of 28 April 2009 and one has to say that though the core of it may be reasonably consistent there has been quite a lot of variation in it in other regards. The defendant's defence of 28 April 2009 began by saying that he disagreed that the land was sold and disputed that the plaintiff had agreed to sell. He disputed the amount. He disputed the validity of the contract and he went on at paragraph 3 to say:

"The defendant does not dispute the loan of £100,000 to the plaintiff. This loan was agreed between the defendant and Mr Richard Bones, the plaintiff's husband. It was also agreed between these parties that this money would be returned immediately upon Mr Bones finding a buyer for the property. These monies were and still are expected to be returned to the defendant."

This defence would appear to have been put in to respond to an application under Order 86 of the Rules of the Court of Judicature (NI) for summary judgment.

[11] The plaintiff was given leave to amend her Statement of Claim and this was served on 4 June 2009 and that was to deal with the point that the Memorandum of Sale had erroneously referred to the sale price as £1,000,030 rather than £1,030,000. Mr Robinson was then given leave to amend his defence and he put in a document which is labelled the "Statement of Claim" and was served it says on 7 August 2009 but received in the High Court on 7 September 2009. I directed that it should properly be treated as an amended Defence and a Counterclaim.

[12] Similarly, the case is made that the defendant had only loaned the £100,000 and that he did not make a deposit statement because he did not have to. There was no agreement to buy. It goes on at rather greater length than that and as I say in

somewhat different terms. It went on and though I do not think the word “counterclaim” appears there is then particulars of loss and damage and as Mr Robinson was a litigant in person I ruled that I would treat this as a counterclaim on his part. It will be noted that in that counterclaim there made for the first time he sought as he put it “the defendant costs £100,000 loaned on trust” which viewed charitably might be a claim for the £100,000.

[13] Mr Park of counsel furnished what was in effect a skeleton argument. He described it as propositions of law with authority and Mr Robinson adopted that term in his response received on 26 September 2011 and for the first time he used the word “fraud” and, indeed, in the text of that he then is accusing Richard Bones of dishonestly making a false representation with regard to the purchase of this property. In paragraph 2 he said:

“I believe the property to be falsely represented by the auctioneer both in the sales brochure and verbally on the day of the public auction.”

This seemed to be a complaint because the brochure said that the substantial sheds on the four acres around this dwelling-house in County Antrim were “suitable for many uses (subject to planning)”.

[14] I make two findings in regard to this. First of all, I consider that was a legitimate phrase to use. The sheds had been used for the mechanical repair of diggers. They had been briefly but unlawfully used for an auction house so one ignores that, but they had been and could lawfully be used for storage. They could also of course be used for farm purposes so it was legitimate to say they were suitable for many uses. In fact when Mr Hill came to give evidence Mr Robinson shied away from accusing him of fraud and in particular, and this is of significance, shied away from saying what Mr Robinson later said in the course of the case, namely that he did not believe there were any other genuine bidders there at all. This is a remarkable allegation to make because the bidding had been stopped twice and restarted while Mr Hill took instructions as to whether his clients were satisfied with the then bidding. On at least the second opportunity Mr Richard Bones would say Mr Robinson was not the highest bidder and if Mr Robinson’s case is now right, as I think I will have to return to briefly, Mr Hill, the auctioneer, had not merely conjured one early bid out of the air which in itself would be wrong but invented a whole series of bidders because Mr Robinson believes there were no other bidders there. That is a most serious allegation. It was not put to the witness and having heard the witness myself and seen his demeanour in the witness box and heard the evidence in its totality, including that of Mr Hardstaff who was nearby, I am satisfied I should reject that allegation, leaving aside the belated nature on which it was made. It may be, and Mr Hardstaff was frank about this, that it was not easy to see or it was not apparent who the other bidders were, but as the evidence shows that is, indeed, including the evidence of Mr Robinson, that is not uncommon at a

country auction where people would indicate their bids in a very discreet fashion or, indeed, on occasions through third parties.

[15] The matters were heard before me over the last three days. The Order 86 Application had not been pursued so this was the trial of the Writ action in substance. The claim by the defendant is attacked by Mr Park as really in effect an extraordinary coincidence that they should choose to lend £100,000 to Mr Bones after the auction when the deposit happened to be £100,000. In the course of their evidence the matter was put in several different and conflicting ways. It was put fairly consistently by Mr Robinson as being on the basis that Mr Bones wanted to go back to buyers whom he had hoped would bid for the property but had not in fact turned up on the day and show them evidence that he really did have a buyer at £1m and that, therefore, that would encourage them to buy more.

[16] When Ms Sarah Robinson came to give evidence she put it rather differently and I find inconsistently by saying that it was because Anne Bones, the plaintiff, was worried that there was not a sale and that it would fall through and that Richard Bones wanted the £100,000 cheque to show his wife. I find both those contentions unconvincing. I heard the evidence of Richard Bones. I have to say it may be that there is rather more passed between him and Stephen Robinson than he admits to, though in fairness he does admit to quite a lot of the matters put forward by Mr Robinson, but I prefer the evidence of Richard Bones that he was merely looking for the deposit that had been paid on the house and the inconsistency is an example of the lack of soundness of the defendant's case. I do note that on the second or third time of reference to this Miss Robinson did refer to the cheque being used to reassure Anne and to get other clients – that was rather an afterthought.

[17] The plaintiff's advisers had very sensibly issued a Notice for Particulars against the defendant and some of the replies to that seem, without going through them in detail, internally inconsistent, but also an Affidavit sworn by Mr Robinson that could have been used to deal with the specific performance point i.e. consistent with my decision in Titanic Quarter v Rowe. He could have made the case that he was impecunious and could not comply with an Order for Specific Performance. In fact really it was a recasting of his case in again a somewhat different form. At page 66 of the trial bundle in an unpaginated page of the Affidavit but part of paragraph 7 he swore as follows:

“I spoke to Mr Richard Bones on completion of the auction and signing of the contract. I advised Mr Bones at this stage that there was no worries and I would get a few pounds for my hassle.”

That is the case that was made there. It was not put in that language to Mr Bones. A different version was put to Mr Bones.

[18] In his evidence just given, Mr Robinson put a third version of that contention before the court. It had become a mere indication by then so there is an inconsistent description of what happened. In fact, though somewhat out of place in this *ex tempore* judgment, the evidence of Mr Robinson really did not come up to justifying his own case as pleaded nor any other successful defence so I did not require to hear Mr Park cross-examine him. When I asked him what the agreement was he began with dealing with weeks and months before and he actually used the words :“It was not an agreement”. He had earlier been talking about he and Mr Bones knowing one another for many years which I accept. For more than 20 years they had bought and sold vehicles between them. They had dealings. They frequently saw one another. But there is an enormous difference between some wink or nod and an agreement of the kind that Mr Robinson must now rely on ie that his signature on a legal document was to be of no effect. The “agreement” of course could not explain why he would go ahead and pay the £100,000 subsequently if in truth that was the nature of it. But Mr Robinson’s own evidence when he came to give evidence on Oath was, as the record will show, extraordinarily weak in that regard. Again, when I pressed Mr Robinson to say what words were used, if any, he said words to the effect that it was along the lines that “if it was too dear in his eyes [*that is Mr Bones’ eyes*] be there [and] watch me”, but that and his subsequent statements all fall far short of what he is now contending for i.e. some binding legal agreement.

[19] There is one respect in which I reject the submissions of the plaintiff’s counsel at the beginning, although perhaps a little tentatively put, in fairness to him and where I favour the case put forward by Mr Robinson. Mrs Bones’ evidence was not satisfactory. She was extraordinarily slow to answer a lot of questions, some of which were not remotely difficult. She was very vague. One might have thought that despite the fact she is only 64 years of age that there might have been a physical or degenerative cause for that difficulty, but at other times she was quite sharp in her replies to Mr Robinson and at least once intervened when I was addressing him. I have to say that I am satisfied that she was anxious not to cut across anything that her husband might say and taking all her evidence together I put to plaintiff’s counsel that really I have to be satisfied [and am] that if Mr Richard Bones made representations to Mr Stephen Robinson that I would have to conclude that they were made on behalf of the plaintiff as the legal owner of the property and Mr Park wisely accepted that in the light of the evidence.

[20] However, despite the reservations I had expressed about there possibly being some more communication between Mr Richard Bones and Mr Robinson I am satisfied that it fell very far short of what Mr Robinson would need to defeat this claim. Maybe he was encouraged to start the bidding or something of that kind but that is a long way from signing a legally binding agreement and even further from then afterwards securing and obtaining from his daughter £100,000 to be paid to solicitors as a deposit to complete the same transaction. The daughter when she came to give evidence confirmed that that was indeed the case. She was anxious to emphasise it would be a new contract rather than her as a nominated purchaser, but the new contract was to be in the same terms of £1,030,000 apparently and it was she

who chose the completion date, as she told me “to give her time to sort out a mortgage for the property. Whilst she knew it was a greenbelt and did not think it had development opportunities she herself had some 42 properties in various jurisdictions and she believed she could use the sheds as storage for herself and rent out the house.”

The version given seemed to me a different version from what had been put forward on several previous occasions by Mr Robinson. It is hard to see how that gels with the case now being made. It must imply that she believed in November 2007 that this was a reasonable price for the property and that, therefore, it was in all probability a bona fide sale at the time. The only other explanation is that she believed her father was legally committed and she was choosing to take on the burden herself. Whether if Mr Richard Bones had come back to them and said “Ho ho, a meat plant owner from nearby has now offered me £1.2m” what they would have done in those circumstances I do not know, but what is clear to me is that Richard Bones wanted the original contract of 5 October 2007 honoured.

[21] Mr Hill’s evidence I will briefly refer to. I accept as I say his evidence that he called for the cheque several times. Mr Robinson cross-examined him at extensive length. He was critical of him for not keeping a log book of the sale to which Mr Hill said that he sometimes conducted sales with a thousand items and it would be impracticable to do that. He did have an assistant with him to help him. He answered Mr Robinson’s questions politely and in my view as helpfully as he reasonably could, but as I have said it was not put to him that he was part of some fraud by which there were no other buyers there and he, Mr Hill, was engaging with Mr Bones in tricking Mr Robinson into buying the property. Nor was it put to him that when he, Mr Hill, came looking for the cheque that Mr Robinson said to him “Sure this is only a joke between me and Richard Bones. I was only helping him get the price up. Did he not tell you that?” Neither of those defences were put to him.

[22] I have dealt with the evidence of Mrs Anne Bones and I think I need not say more about that. Mr Ian Hardstaff was called and has given evidence which I have briefly referred to in several regards. I should add that he also gave evidence that in the kitchen after the auction had concluded he offered to explain and show the Title Deeds to Mr Robinson who said words to the effect “Not a bother. Send everything to my solicitors, JW McNinch”. I find that a most surprising reply to the solicitor if, indeed, this was some kind of sham between Mr Bones and Mr Robinson. It seems much more likely that Mr Bones had perhaps encouraged Mr Robinson to attend the sale which he might well have attended in any event out of interest and that Mr Robinson got a little carried away and ended up as the successful buyer of the property. It will be recalled that the market turned at about this time but only about this time and I am satisfied from the very many cases I have had to deal with that it was not apparent to all but the shrewdest I think in October 2007, or the most fortunate, that the market had turned and it may be that the mood of the moment carried Mr Robinson away. I have referred to the correspondence and Mr Hardstaff bears that out saying that he only released the fund to his client, that is the £100,000,



after she had given authority to do so and her only conditions were those in the letter referred to.

[23] There was considerable cross-examination about other purchases and dealings of the Bones'. I accept Mr Robinson's (inaudible) that Mrs Bones was a very unsatisfactory witness on that part, but I find Mr Richard Bones' answers convincing and honest and explaining the otherwise perhaps odd sequence of events. He has a brother, Robert. He had dealings with him. He himself, Richard Bones, was declared bankrupt on 5 September 2001 but was discharged from that on 6 September 2004 and it is, therefore, not really surprising that when he wanted to buy out his brother from the ownership of the house and sheds in 2005 that they would seek a mortgage in the name of Mrs Bones even though, as Mr Robinson elicited from her, she was not in employment at that time, but the purchase would allow an income from the sheds in question which Mr Bones said was of the order of £1,000 to £1,200 per month.

[24] It is also right to address the factor that it may be that Mr Robinson having got carried away thought when he said he had no cheque book to write it that the auction would be re-opened. But as Mr Hardstaff answered the Bones' chose not to take that course. It may be that Mr Robinson at that time should have said "Well look, I got a bit carried away. I don't want to buy this property at all" and it could have been re-sold then without loss and without legal liability on his part but he did not say so and he had his daughter with him who ultimately agreed to buy the property for that amount.

[25] Much of the cross-examination by Mr Robinson over the last three days including quite a lot of the cross-examination of Mr Bones it seemed to me pointed to him regretting the price that he had agreed to pay. A lot of the cross-examination was directed to, for example, querying how the property had risen in value from 2005 to 2007 ie from £136,000 in 2005 to £1,030,000 but that is all more consistent with a buyer who regrets his bargain than with some kind of false representation on the part of the vendors. That is particularly so when one bears in mind the circumstances of the case.

[26] I noted carefully and listened carefully to Mr Robinson's cross-examination of Mr Bones and it seemed to me that what he was putting to Mr Bones man to man fell far short of the case that he would need to mount a successful defence of the action. He was relaxed in doing so. The court allowed him to sit down because he had a little difficulty with his legs. He was addressing Mr Bones as Richard and yet it was striking to me that he did not put his case in starker terms if, indeed, his case had warranted being put in starker terms. Indeed, when talking about matters after the hammer fell he asked Mr Bones what happened after the hammer fell and he said "You came in and you signed". Mr Robinson put to him that they had chatted on the way in which Mr Bones denied and Mr Robinson said and I quote "I think I hinted what happens now?" and Mr Bones said "That was not right" and Mr Robinson went on "You said not to worry about it. Come on on in" and

Mr Bones said “No” to that and I thought a smile was justified at that time because it had not been put in that way before in writing or orally and it was in any event extraordinarily weak. It is not put like that in the replies.

[27] What I put to Mr Robinson at one point was the question as to why would Mr Bones waive the need to take a deposit after he says the signing of the Memorandum of Sale if he knew Mr Robinson was not really bidding for the property? If he knew Mr Robinson was a sham you would think he would rush out and get the under-bidder at £1,020,000 or whatever was the best bid that Mr Hill could then get. Mr Robinson’s answer to that was there were no other true bidders. As I have previously indicated that was not put to Mr Hill. It would mean that he and, indeed, his associate were engaged in some kind of elaborate fraud. It was not put and I find that was not the case.

[28] Mrs Sarah Robinson was certainly careful to say that she had not heard the crucial part of the conversation with her father and Mr Richard Bones. She later amended that in cross-examination, but in a way that I did not find wholly persuasive and, again, she was in a difficulty explaining why she handed over an earlier cheque for £100,000 via her father to Mr Richard Bones when he came looking for the deposit in their yard. At one point she said “Richard was going to phone his solicitor and have a contract for me and I was lending my father the money”. At a later point she said she was “lending a friend of my father the money”. In any event, both of those are inconsistent with the main thrust of her evidence which was that she was going to take on the contract to purchase the property as, indeed, she later instructed her solicitor, Ms Thomas, of JW McNinch. I do not think it is necessary for me to go through her evidence in further detail or her cross-examination. She was in a somewhat difficult situation and I think in the circumstances I will say no more than that it does not shake the conclusion which I have come to that the plaintiff is entitled to succeed.

[29] The authorities are clear and I do not think I need open them in the circumstances, but they include my own decision on specific performance in Titanic Quarter v Rowe that there is an onus on the defendant to show that specific performance is not justified. While there is something in an unsworn reply of Mr Robinson it suggests he does not, indeed, have the means to deal with this. He falls short of that position of being able to show on the balance of probabilities that he is unable.

[The Judge then heard from the parties on the issue of remedy.]