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

*Delivered:* **07/10/11**

**2006 No.26866**

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

**CHANCERY DIVISION**

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**BETWEEN:**

**ROBERTA ANN YOUNG**

**Plaintiff:**

**and**

**(1) ANDREW SYDNEY HAMILTON**
**(2) JAMES SAMUEL HAMILTON**
**(3) MARGARET JOAN HAMILTON**
**(4) DAVID RUSSELL**
**(5) THOMASINA PHYLLIS ALEXANDRA RUSSELL**
**(6) DAVID BOYD**
**(7) LORRAINE THOMPSON (formerly practising as Thompsons Solicitors)**

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**Defendants:**

**TREACY J**

**Background**

[1] In September 2000 the Plaintiff and her husband entered an agreement to purchase a building site with outline planning permission for a single storey dwelling from the first, second and third named defendants (hereinafter called "the Hamiltons"). This agreement included a right of way along the lower portion of a laneway which provided access to the site. At the upper end of this laneway, beyond the site entrance, lies the property of the fourth and fifth named defendants (hereinafter called "the Russells"), who, it transpired, made various claims in relation to the use and ownership of the laneway. Mr David Boyd, the sixth named defendant, is a nephew of the Russells who, it is alleged, took some part in asserting the claims of his family over the laneway. Lorraine Thompson, the seventh named

defendant, is a solicitor, now retired, who at the time of the agreement, was a senior partner in the firm of Thompsons Solicitors in Newtownards. It should be added that at the time of this agreement the plaintiff, Mrs Young, also worked in Thompsons Solicitors where she was employed as a secretary.

[2] As noted above, in September 2000, the present plaintiff purchased this property as a joint tenant with her husband Mr William James Young. Eventually Mr and Mrs Young initiated the present proceedings together. However, Mr Young was later dismissed from the present action on the grounds, *inter alia,* that the proceedings were issued by him at a time when he was a bankrupt and had no power to initiate legal proceedings in his own name. It is however agreed by all the parties that the remaining plaintiff Roberta Ann Young is entitled to continue the present action.

[3] The plaintiff alleges she bought the site in September 2000 with no knowledge of a dispute affecting the lower laneway. She alleges that she and her husband visited the site one Sunday in November 2000 shortly after they had bought it. She alleges that they then met Mrs Russell who told them she hoped they were not buying the site because she, Mrs Russell, owned the entire laneway. The plaintiff alleges that this encounter in November 2000 was the first time she became aware of any dispute affecting the lower laneway or the right of way to her site.

[4] Having learnt of the dispute the plaintiff and her husband did not immediately pursue rescission of the contract to buy the site. In December 2000 they applied for full planning permission for a house on the site. The plaintiff alleges that from the outset she and her husband were subjected to negative and hostile conduct by the Russells and their nephew Mr Boyd which, they allege, was designed to discourage them from using the laneway and/or developing their site. She alleges that this conduct became so upsetting that they decided to sell the site in the spring of 2001.

[5] There is no doubt that the site was put up for sale and that a number of persons expressed an interest in buying it. There is also no doubt that none of these offers was followed up by a binding contract to buy. The plaintiff alleges that this occurred because of the interference of the Russells and Mr Boyd in her attempt to sell the site. This allegation is supported by evidence from one prospective purchaser who said he was put off buying the site after he was informed about the dispute affecting the right of way. In September 2001 the Hamiltons issued a Civil Bill against the Russells in order to have the ownership of the lane clarified, and to enable them to deliver good title to the Plaintiff as required under the contract of sale.

[6] While their site was on the market for sale and while the Hamiltons' County Court proceedings against the Russells were under way, the plaintiff and her husband were also actively pursuing planning permission for a house on their site.

Full planning permission was granted in March 2002 but the plaintiff did not commence building immediately she received this permission.

[7] The County Court proceedings between the Hamiltons and the Russells concluded in February 2003 with a decree that the Hamiltons did in fact own the lower laneway. This decision was appealed later in the same month. The appeal was determined in November 2004 by issue of a Tomlin Order confirming that the Hamiltons did indeed have good title to the disputed section of the laneway.

[8] Despite the existence of a live appeal the Youngs commenced building work on the site around May 2003 i.e. shortly after the initial County Court decree in favour of the Hamiltons. The plaintiff alleges that throughout the building operations and thereafter the Russells and Mr Boyd continued a hostile course of unlawful behaviour in relation to the laneway, allegations which these parties deny.

[9] Shortly after the Youngs began building work the Planning Service issued an "At Risk" letter to them drawing attention to breaches of the conditions of their planning permission. The Youngs continued building despite this warning. The building was completed in December 2003. In January 2004 the Planning Service issued an enforcement notice against them. In December 2004 the plaintiff and her husband lodged a retrospective application for retention of the building which failed to comply with their planning permission in a range of ways. Since that time the plaintiff and her husband have been engaged in litigation involving the Planning Service and its enforcement notice. This litigation is separate from the present case.

**The plaintiff's claims in the present litigation**

[10] In summary the plaintiff contends:

(i) That the Hamiltons, via their solicitor, made a range of incomplete and negligent replies to pre-contract enquiries which amount to actionable misrepresentations in the circumstances of this case;

(ii) That her own solicitor, Lorraine Thompson, failed to make or pursue adequate enquiries about the property offered for sale by the Hamiltons, and failed to warn/ advise the plaintiff adequately in relation to the potential risks of purchasing this site;

(iii) In relation to the fourth, fifth and sixth defendants the plaintiff alleges that after the purchase of the property she was subjected by them to a course of conduct which amounted to improper interference with her use and enjoyment of the land and/or to harassment, and /or to nuisance.

**DISCUSSION**

**The claim against the Hamiltons: background to the laneway dispute.**

[11] The facts about the laneway were as follows – it was common case that there were two parts to the laneway – the lower part and the upper part. Ownership of the upper lane was disputed, with the Hamiltons alleging that they shared ownership of it 50/50 with the Russells while the Russells asserted that they owned it outright and that the Hamiltons had no right to use it. By 2000 this dispute had been on-going for some time and the Russells had on occasion obstructed the upper laneway and interfered with the Hamilton's use of it.

[12] In relation to the lower laneway the Hamiltons asserted title along with the fields on either side of it. However, when they applied for planning permission to develop the site which is the subject of the present action, their application provoked two letters from the Russells asserting that they, the Russells, owned the **entire** laneway. The Hamiltons and their solicitor were made aware of these claims by the planning service before outline planning was granted to them in August 2000.

**The dispute about the lower laneway- what the Hamiltons knew:**

[13] The first intimation the Hamiltons had about the Russell's claims to own the lower laneway were the two letters they were informed about by the Planning Office. They were told their planning application was being objected to on the ground that they did not own the lower laneway. They were not given copies of the objection letters, but they knew the letters existed and the gist of what they claimed. The first of these letters was in 1999 and the second in 2000. Then, on 15th May 2000 Mr Haddick, the Hamiltons' solicitor, received a phone call from Mr Bradley, a solicitor in Messrs Stewart of Newtownards informing him that he, Mr Bradley, now acted for the Russells in relation to the laneway dispute. Mr Haddick's note of this conversation records four salient points:

(i) Mr Bradley reported the Russells' allegation that they had acquired possessory title to the entire lane by use of it;

(ii) Mr Bradley told Mr Haddick the Russells had found two potential witnesses who would say the Hamiltons had not used the laneway;

(iii) Mr Bradley's view that the Russells would be legally aided; and

(iv) Mr Bradley's proposal of a solution to the laneway dispute whereby the Russells would give up their claim to the lower laneway if the Hamiltons did likewise in respect of the upper part.

So by 15th May 2000 at the very latest, the Hamiltons' knowledge of an adverse claim over the lower laneway had crystallised.

[14] Mr Haddick discussed his conversation with Mr Bradley with his client. Mr Hamilton said he could work with the terms that had been suggested. On foot of their conversation Mr Haddick sent a 'Without Prejudice' letter to Mr Bradley on 19 May 2000- the 'Heads of Agreement" letter. The proposed Agreement was that the Hamiltons would abandon their claim to the upper laneway if, in return the Russells did likewise in respect of the lower laneway. The Russells would also refrain from objecting to the Hamilton's planning application. This proposed agreement was never finalised. Outline planning was granted in August 2000.

[15] Also in August 2000 the Hamiltons knew they had a willing purchaser for the site, namely the Youngs. A letter dated 10th August from Mr Haddick to Mr Hamilton reads:

> ***"With regard to the sale of the site, we suggest that we proceed on the basis that there is no problem with Mr and Mrs Russell. As explained during our telephone conversation Lorraine Thompson, acting on behalf of Bill young, will invariably ask questions about the laneway, etc and matters will come to the surface at that time. There is always the possibility that Mr and Mrs Russell might co-operate in accordance with the proposed terms we had previously sent forward. On the other hand that might be just wishful thinking."*** **[Emphasis added].**

[16] This letter indicates several things:

First these parties understood that there was a problem with Mr and Mrs Russell;

they did not expect the Russells to co-operate in the sale of the site;

they *hoped* the Russells *might* accept the Heads of Agreement terms as a way of resolving the problem; but

they recognised that this was a remote possibility.

Finally, in relation to the sale of the site Mr Haddick was suggesting that they proceed as if the recognised and unresolved problem with the Russells did not exist.

On 22 August 2000 Mr Haddick sent copy title documents for the site together with outline planning permission and a site map to Mrs Thompson. He also sent the standard form contract document and he enclosed Replies to Pre-Contract Enquiries ("the PCE replies"), again on the standard form.

The relevant parts of the PCE replies are sections 6 and 18.
Section 6 is entitled "**Adverse Rights, Restrictions etc**".

Section 6.(a) asks "Does the vendor know of any person **claiming** or having adverse rights over the property?".

Mr Haddock, on behalf of the Hamiltons, answered this enquiry "No".

[17] Section 18 of the form is entitled "Litigation".

Section 18(a) asks "Please confirm there is no litigation threatened or pending or **anticipated** affecting the property?"

Mr Haddick inserted the answer "Confirmed".

Section 18(b) "Please furnish full details of any **disputes with neighbours** or others relating to this property or its enjoyment".

Mr Haddick's answer was "**None**".

[18] Mr Haddick also enclosed a covering letter with this bundle of documents. The relevant parts of this letter read as follows:

> ***"We have raised with you in a recent telephone conversation problems our clients have encountered with Mr and Mrs David Russell and the upper part of the laneway leading to their house. Stephen Scott initially acted for the Russells then Mr Bradley of Stewarts, Solicitors.***
>
> ***Heads of Agreement were drawn up but Mr Bradley's instructions appear to have been withdrawn and the matter remains unresolved.***
>
> ***The difficulty related to our client's use of the laneway beyond the part so coloured blue on the map hereto. The Russells claimed that the Hamiltons had no right to use this. This was refuted by our clients, the Russells proceeded to lock the gate onto this stretch of laneway.***

> ***In an endeavour to avoid further argument our clients constructed a pathway inside their own field running parallel to the disputed strip of lane. This appears to have resolved matters.***
>
> ***The Russells were attempting to lay claim to the ownership of the laneway over which the right of way will be granted. This has been strenuously refuted by our clients. The Russells have, however, taken no steps to pursue their claim."***

Mr Haddick did not include a copy of the Heads of Agreement.

**Was there a misrepresentation by the Hamiltons?**

[19] An actionable misrepresentation is an unambiguous false statement of existing fact made by or on behalf of the representor, in this case the Hamiltons, to the representee, in this case the plaintiff and her husband, which induces the representee to enter into a contract with the representor. We must therefore consider whether the Hamiltons made any such false statement in relation to the dispute in the lower laneway.

[20] The Hamiltons certainly did not tell the Plaintiff that they had a problem with the Russells affecting the lower laneway. The basic principle of conveyancing contracts is 'caveat emptor', which imposes upon the Purchaser the burden of finding out whatever she needs to know about the land. There is therefore no general liability for non-disclosure of information. However, it is trite law that if a Vendor chooses to answer a question about the property, he does have a duty to answer truthfully *[(1)- see Atiyah, Introduction to the Law of Contract, (5th Edition*)].

[21] **Were the Hamiltons' PCE Replies truthful?**

> Enquiry 6(a) asked if the Hamiltons knew of any person '**claiming** or having **adverse rights** over the property'. The answer supplied was 'No'. This answer was given at a time when the Vendors knew the Russells had been asserting a claim to own the lower laneway since 1999 when they first made that claim to the Planning Office. They also knew that in May 2000, only 3 months earlier, the Russells had instructed a solicitor to advance this claim on their behalf. The reply to this enquiry was therefore false.
>
> Enquiry 18 asked the Hamiltons to confirm that no litigation was 'threatened or pending or anticipated' in relation to the property and they confirmed this. This was at a time when Mr Bradley had told them the Russells were claiming adverse possession of the whole lane, that they had found 2 witnesses who would support their claim, that they had appointed him to act as their solicitor in the matter and that, in his view, they would be entitled to legal aid. In such circumstances no reasonable party could NOT have 'anticipated'

litigation. The truth was they did anticipate it; indeed they anticipated it so strongly that they had already offered terms to try to avoid it, and had very recently been enquiring whether these terms would be acceptable. In these circumstances their reply to PCE 18 was also untruthful.

Finally, the assertion in response to question 18(b), that there was no known dispute with neighbours affecting the property or its enjoyment, was not an accurate reflection of their state of knowledge at the time.

**Did anything in the covering letter change the meaning of the replies?**

[22] The first 4 paragraphs of this letter compound the misleading impact of the PCE replies because they all expressly relate to the dispute about the **upper** laneway and so **imply** that the whole dispute is restricted to that area alone. The third paragraph is in past tense, implying that the dispute is historical and this impression is further promoted by the final sentence of paragraph 4. This misapprehension was being pedalled at a time when Mr Haddick had been actively and recently pursuing a reply to his 'heads of agreement' letter. These various implications did not therefore reflect his understanding of the situation at the time when he committed them to paper.

[23] The final paragraph of the letter is not restricted to the upper lane and is the only intimation that there could be an issue affecting the lower laneway. However, the final sentence expressly says the Russells have 'taken no steps to pursue' this aspect of the claim. This message was sent out despite everything the Hamiltons knew about the Russells' dealings with Mr Bradley and their implications. Overall, therefore, this paragraph reinforces the inaccurate response to PCE 18.

[24] For all the above reasons I find that the Hamiltons did make material misrepresentations to the Plaintiff in the circumstances of this case.

**Did Mrs Thompson take sufficient steps to protect her clients' interests?**

[25] It is well understood that it is part of a solicitor's duty to a client purchasing property to make the necessary enquiries of the Vendor to be satisfied that the property the client wants to buy is free from any undisclosed charges, encumbrances, or adverse claims against it. The solicitor must also check that the Purchaser will have the benefit of whatever easements are necessary for the enjoyment of the property. Generally, she should put herself in a position to advise clients fully about all the material terms of the contract that they are about to enter. The solicitor should also check there is no risk of litigation affecting the property, because it is well recognised that 'no one wants to buy a law suit'. Mrs Thompson did not dispute that she owed all these duties to the plaintiff in this case.

[26] There was some conflict between the evidence of the plaintiff and that of Mrs Thompson in relation to what advice was given in the present transaction. For the purposes of this discussion, where there is conflict, I have accepted the evidence of

Mrs Thompson. According to this evidence, when she received the title documents and covering letter from Mr Haddick the letter "did ring a warning bell" in her mind. On foot of this she telephoned Mr Haddick and asked him the following series of questions:

(i) Whether or not the Hamiltons had been using the laneway;
(ii) Whether or not Mr Haddock had "seen any document" that would lead him to believe there was any adverse possession claim to the laneway;
(iii) Whether or not the laneway had ever been obstructed.

On foot of these enquiries and of the replies she received Mrs Thompson appears to have been satisfied that any claim to adverse possession of the lower laneway **was unlikely to succeed**.

[27] Mrs Thompson also drove past the laneway to check that there was no gate or other obstruction at the bottom of it. Finding that there were none, she was satisfied that there was no possibility of a **successful** claim for adverse possession over the lower laneway. On the basis of Mrs Thompson's evidence these were the steps she took to equip herself to advise her clients about the contract they proposed to enter.

[28] Having made these enquiries Mrs Thompson sent a letter to her clients on 4th September 2000 enclosing a copy of Mr Haddick's letter of 22 August with a covering letter directing them to "please read carefully". Her letter also invited the plaintiff and her husband to make an appointment to call and discuss the matter with her. Her records show that she had a meeting with the plaintiff on 7 September 2000 at which the laneway and the Russells were specifically discussed. Her attendance note of this meeting reads:

> **"Russells – Mrs okay – looks after lambs only claiming top part of laneway which does not affect site".**

Mrs Thompson indicated that this was information she had received from the plaintiff.

[29] Mrs Thompson also gave evidence about a meeting on 14 September between herself, the plaintiff and the plaintiff's husband. At this meeting she asked them if they had read all the documents she sent them, (which included the copy of Mr Haddick's letter), and they confirmed that they had. She recalled Mr Young asking about the right of way. She recalled showing them the Folios and Mr Young asking if the Hamiltons could give the access to the site via the laneway. She recalled confirming that he could. She remembered saying that Mrs Young had already mentioned the upper laneway to her and commenting that the dispute there did not affect the access to the site. She remembered that the plaintiff and her husband then signed the contract.

[30] This is the gist of Mrs Thompson's evidence about the advice she gave to the plaintiff before Mrs Young entered the contract to buy the site. Had Mrs Thompson done enough to discharge her duties to her clients?

[31] The following matters are clear from the evidence. First, by the 7th September the plaintiff held an independent view that there was a dispute affecting the laneway. Her view, which she shared with Mrs Thompson at their meeting that day, was that this dispute related only to the upper laneway, that it did not extend to the lower laneway and that it did not affect access to the site she proposed to buy. This was the plaintiff's state of belief on 7 September 2000, as recounted by Mrs Thompson and recorded in her file.

[32] We now know that what Mrs Young believed on 7 September 2000 was not correct. It accorded precisely with the representations the Hamiltons were making, but it was not right. In reality a neighbour dispute did exist which affected the entire laneway and had implications for the use and enjoyment of the right of way to the site. Mrs Thompson's records provide no evidence that she told the plaintiff she had misunderstood the position. Mrs Thompson did not warn the plaintiff about this because her enquiries on behalf of her client had not uncovered the true position.

[33] The first and third questions Mrs Thompson asked after receiving Mr Haddick's covering letter were directed to ascertaining the *strength* of any claim to adverse possession, as opposed to ascertaining whether any such claim *existed*. Her second question did investigate the possible existence of a claim to adverse possession of the lower laneway, but it was limited to claims notified via "a document" and it did not elicit the information she needed. None of her enquiries of Mr Haddick were sufficient to uncover the possibility of litigation affecting the site. Furthermore, Mrs Thompson limited her enquiries to Mr Haddick himself. She did not approach either of the two solicitors who had been on record for the Russells and who might have told her much more about the nature and extent of the dispute on the lane. Her final action, driving past the bottom of the lane, was also insufficient to inform her whether or not an adverse claim *existed* on the lower laneway or whether it was being pursued, possibly with litigation. For all these reasons I find that the enquiries made by Mrs Thompson were not sufficient to discharge her duties to fully advise the plaintiff and to warn her of the risks involved in buying this site.

[34] I have found that material misrepresentations were made by the Hamiltons to the plaintiff. These misrepresentations were:

> that the Vendors didn't know of any person claiming adverse rights over the property;
>
> that no litigation was threatened or anticipated in relation to the property;
>
> that no neighbour disputes affected the property or its enjoyment.

I have also found that Mrs Thompson failed in her duty to investigate the possible existence of undisclosed adverse claims over the property, or that potential litigation affecting the property was anticipated. Her enquires also failed to discover the existence of a neighbour dispute. None of the advice she gave therefore dispelled the effects of the Hamiltons' misrepresentations.

**Was the plaintiff induced to enter this contract by the misrepresentations?**

[35] In order to be actionable, a misrepresentation must have induced the representee to enter the contract with the representor. On this issue Counsel for the Hamiltons submits that the plaintiff and her husband were keen to purchase this site. They assert that they were "risk takers" and that, on the balance of probabilities, they would have bought this site even if they had known there was a neighbour dispute affecting the proposed right of way. The bases for these assertions are as follows:

(i) The plaintiff and her husband were borrowing 100% of the purchase price of the site. This caused concern to Mrs Thompson who advised her clients not to proceed with the purchase. This advice was given **not** because of any legal issue potentially affecting the site, but simply because Mrs Thompson believed the plaintiff and her husband could not afford to buy it. Mrs Thompson's evidence was that when this advice was given the plaintiff's husband stated that financing would not be a problem. Then, having sought and received reassurance about the security of the right of way, he and the plaintiff proceeded to sign the contract.

(ii) The second ground advanced for Counsel's assertion that the plaintiff and her husband were risk takers related to their subsequent action in building a house which did not comply with their planning permission. I do not consider that evidence of subsequent behaviour should outweigh the evidence in relation to conduct and motivation of the parties at the time when the misrepresentations were active.

[36] Counsel's 'risk-taker' submissions sit ill with the record of the Hamiltons' conduct and motivation at the time the sale was made. We have already considered Mr Haddick's letter of 10th August to his clients. In my view that letter was only conceived because at the time the sale was being negotiated there was serious concern in the Hamilton camp that, if the Youngs knew the truth about the Russells and the state of affairs on the lane, they were unlikely to proceed with the transaction. This fear was the reason they decided to proceed as if there was 'no problem with Mr and Mrs Russell'. It was also the source of their anxiety that certain 'matters' should not 'come to the surface'. The truth is that the Hamiltons were afraid that full knowledge of the facts would put the Youngs off buying their site and this was the motivation for the misrepresentations they made. It would be quite unconscionable to hear them say now that even if the Youngs had known the truth

they would have bought the site anyway, because they were 'risk-takers'. Such a conclusion would be both unconscionable and at odds with the evidence. The evidence from Mrs Thompson and from the Plaintiff shows that the security of the right of way was a matter of serious concern for the Youngs. It was an issue about which they were careful to seek clarity and reassurance.

[37] For all these reasons I find that the Hamiltons' misrepresentations did induce the Plaintiff to enter this contract.

**Did the plaintiff suffer any loss as a result of the misrepresentations?**

[38] In August 2000 the plaintiff bargained for a site on which she wanted to build a house. Her negotiations with the Vendors led her to believe that upon completion of the transaction she would **immediately** receive good and undisputed title to that property. She had also been led to believe that the property was free from any known adverse claims and that buying it would not embroil her in any neighbour dispute known to the Hamiltons at the time of sale. The plaintiff paid the purchase price, so fulfilling her side of the bargain. She then received a site which **was** subject to a known adverse claim and which **did** embroil her in a pre-existing neighbour dispute.

[39] The difference between what she bargained for and what she got relates to the quality of the title she received, and to her exposure to this particular neighbour dispute. Losses flowing from these causes are the losses for which the Hamiltons may be responsible. Lorraine Thompson may share that responsibility because she failed in her duty to protect the plaintiff from these potential losses by discovering them and warning her client about them.

[40] The period of influence of the misrepresentations extended from the time they were made until the time the plaintiff learned the true position. On the plaintiff's evidence this happened in November 2000 when she met Mrs Russell and learned about her claim to the laneway. From that point onwards the plaintiff understood what she had really bought.

[41] Unsurprisingly when the plaintiff and her husband understood their position they went back to Mrs Thompson to complain. The evidence was that the plaintiff's husband wanted to issue proceedings at that stage. The Youngs discussed the position with Mrs Thompson who correctly advised them that it was for the Hamiltons to show good title to the property, including to the lower laneway. That was required under the contract for sale. After the discussion with their solicitor the plaintiff and her husband made a decision. They decided to accept the ownership of the site, with the flaws enumerated above, of which they were now fully aware. They decided, in short, to affirm the contract.

[42] They followed up their affirmation of the contract with a range of acts of ownership of the property. So, they instructed Mrs Thompson to write to the

Hamiltons requiring them to show good title. In December 2000 they applied for full planning permission to build a house. In Spring 2001 they put the site up for sale. The plaintiff has claimed that the attempt to sell the site was a mitigating action, designed to reduce the losses she was suffering because of the misrepresentations. I do not accept this. The law makes it clear that acts of ownership, including attempts to sell property acquired after an actionable misrepresentation, can themselves be acts of affirmation- see for example *Re Hop and Malt Exchange and warehouse Co Ex p. Briggs (1866) L.R. 1 Eq. 483.* In that case a shareholder tried to sell shares he had bought after actionable misrepresentations had been made to him about the shares. The attempt to sell was treated by the court as an act of affirmation inconsistent with any right to rescind. I hold that the same principle applies to the course of action entered into by the plaintiff and her husband after November 2000 when they first became aware of the truth of their situation. Through that course of action the plaintiff affirmed her ownership of the site, and I hold that any losses she may have incurred from that date onwards, *which resulted from her own use, control or management of her land,* were losses for which she shares responsibility as a joint tenant of that land. *She cannot claim damages for these losses from any of the defendants*. No one else is responsible for them because no one else took the actions that generated them. This of course includes any loss she may have sustained as a result of her decision to build a house that did not comply with her planning permission.

**Are the Defendants liable for any of the plaintiff's losses**?

[43] It is clear that the Defendants are not liable for any losses *resulting from the actions of the plaintiff* after November 2000. However, there may be some losses she sustained which resulted **not** from her own acts, such as any loss or damage arising from the uncertainty attaching to the plaintiff's title from the date on which she acquired the property until the date when the Hamilton's action against the Russells finally came to an end.

[44] In the absence of agreement on what damages, if any, are recoverable in light of the courts finding the Plaintiff is required to file a written argument within one week setting out any claim and the precise basis thereof. The relevant defendants will have a further week to respond in writing. If a further short hearing is required it will be convened shortly thereafter.

[45] As far as the claims against the Russells (fourth and fifth defendant) and Boyd (sixth defendant) regarding their impugned behaviour the evidence was inconclusive and in any event did not establish harassment or otherwise constitute a pleaded and actionable tort. The claims against them are dismissed. I don't doubt they acted with incivility and that their ill founded claims to the laneway caused the Plaintiffs anguish.