

# Paul Joyce v Bowman Law Limited

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Positive/Neutral Judicial Consideration

## Court

Chancery Division

## Judgment Date

18 February 2010

Case No: HC08C01373

High Court of Justice Chancery Division

**[2010] EWHC 251 (Ch), 2010 WL 517050**

Before: Mr Justice Vos

Date: 18/02/

**2010**

Hearing dates: 8th, 9th, 10th and 11th February **2010**

## Representation

Mr Simon Williams (instructed by Ross & Craig ) for the Claimant.

Ms Eva Ferguson (instructed by Beachcroft LLP ) for the Defendant.

## Approved Judgment

Mr Justice Vos:

## Introduction

1. The Defendant, Bowman Law Limited (“Bowman”), a firm of licensed conveyancers, acted for Mr Paul Peter Anthony Joyce (“Mr Joyce”), the Claimant, when he purchased Warren Cottage, Severals Road, Bepton, West Sussex (the “Property”) for £360,000 from Dorothea Elizabeth Bannister Chesters (the “Vendor”) on 2nd September 2005. A somewhat dilapidated cottage, dating back between 200 and 300 years (“Warren Cottage”), stood on the Property in a plot of 0.12 hectares or 0.30 acres.

2. The Property had been advertised with an option for the buyer to purchase the lower end of the existing garden (the “Additional Land”) for £20,000 within 12 months, if the Vendor's application for planning permission to erect one dwelling on that land was unsuccessful. The Additional Land extended to 0.09 hectares or 0.22 acres. The Property and the Additional Land, therefore, together amounted to 0.21 hectares or 0.52 acres.

3. Contracts for the sale of the Property were exchanged (the “Contract”), and completion (“Completion”) took place simultaneously on 2nd September 2005. At that time, Mr Joyce thought that the Contract contained an option in the form that it had been advertised. In fact, it contained a seller's option instead.

4. On 3rd February 2010, Bowman admitted negligence in failing to appreciate the nature of the option that the Contract contained, and in advising Mr Joyce wrongly that, if the Vendor failed to obtain planning permission within 12 months of completion, he (Mr Joyce) would be able to purchase the Additional Land. Bowman also admitted that it was negligent in permitting Mr Joyce to enter into the Contract when, in fact, it contained a seller's option rather than a buyer's option.

5. The question that arises in these proceedings is what, if any, damages, Mr Joyce is entitled to recover from Bowman for its negligence.

### Background facts

6. The sales particulars for the Property, which were “subject to contract”, included the following wording:-

“A picturesque character cottage...

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... of damages, should, before finally deciding, consider whether the amount conforms with the requirement of Lord Blackburn's fundamental principle. If it appears not to conform, the judge should examine the question again to see whether the particular case falls within one of the exceptions of which Lord Blackburn gave examples, or whether he is obliged by some binding authority to arrive at a result which is inconsistent with the fundamental principle.’

(2) On the authorities as they stand the diminution in value rule appears almost always, if not always, to be appropriate where property is acquired following negligent advice by surveyors. Such cases as *Philips v Ward* [1956] 1 All ER 874, [1956] 1 WLR 471, *Pilkington v Wood* [1953] 2 All ER 810, [1953] Ch 77

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(3) That is not, however, an invariable approach, at least in claims against solicitors, and should not be mechanically applied in circumstances where it may appear inappropriate. In *Simple Simon Catering Ltd v J E Binstock Miller & Co* (1973) 228 EG 527 the Court of Appeal favoured a more general assessment, taking account of the 'general expectation of loss'. In other cases the cost of repair or reinstatement may provide the appropriate measure (see *Dodd Properties (Kent) Ltd v Canterbury City Council* [1980] 1 All...

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... than those I have mentioned above.

117. The value of the house at mid-2008 figures would have been £1,135,000. That figure less £380,000 purchase costs and £375,000 build costs, amounts to a basic profit of £380,000.

*Issue 6: Has Mr Joyce failed to mitigate his loss?*

118. Mr Williams argued that Mr Joyce should not have his damages reduced because he failed to mitigate his loss. He argued that it was not reasonable for Mr Joyce to be forced to undertake a smaller project. I disagree. This is not a matter of weighing in fine scales how an injured party should behave (see *Banco de Portugal v Waterlow* [1932] A.C. 452 at page 506), nor is it equivalent to requiring a claimant to embark on speculative and costly litigation (see *Pilkington v. Wood* [1953] 1 Ch 770 at page 777). It is simply requiring that Mr Joyce do what he always wanted to do, namely develop the Property to the greatest level possible. It has not been suggested that he would not have been able to develop the Property profitably on the basis of the January 2006 Plans and I think that he must give credit for the profit he would have made had he done so. He could, in my judgment, have obtained permission without the Additional Land for the January 2006 Plans, by early 2007, and could have completed the building and got it ready for sale by the end of 2007. Had he done so, he would have made a profit of £245,000 as I have explained above.

*Issue 7: What damages is Mr Joyce entitled to?*

119. For the reasons I have explained above, therefore, it...