

Malsh J.
 Henchy J.
 O'Donoghue J.

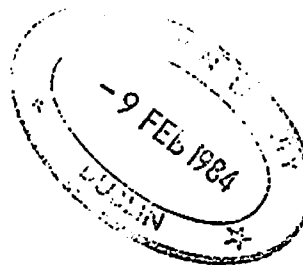
THE SUPREME COURT

1981 No. 4995P

DONAL M. GAHAN

v.

MAURICE BOLAND AND WENDY BOLAND



Judgment of Henchy J.
delivered the 20th January 1984

(NEM. DISS.)

The defendants Maurice and Wendy Boland are husband and wife.

In February 1981 they had on offer for sale the property known as Glencarrig, situate at Bride's Glen, Loughlinstown, Co. Dublin.

That property consists of a dwellinghouse and some 3¼ acres of land.

The plaintiff, who is a solicitor, entered into a written contract on Monday the 16 February 1981 for the purchase of the property for £135,000. In the present proceedings he has sought an order for the rescission of that contract. When his case came for hearing before Murphy J. in the High Court he succeeded in getting that order. The defendants now appeal.

The order for rescission was made as a result of certain events

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which are said to have taken place on Friday the 13 February 1981.

On that day the plaintiff visited the defendants at Glencarrig.

The purpose of the visit was to inspect the property and to make

certain inquiries about it. The plaintiff says that amongst the

inquiries he made was one as to whether a projected motorway

connecting Dublin and Wicklow would affect the Glencarrig property.

His evidence was that Mr. Boland assured him that the property would

not be affected by the proposed motorway and that this assurance led

him to enter into a written contract on the following Monday for the

purchase of the property. It seems to be common case that the

proposed motorway is in fact routed to pass through the Glencarrig

property. That is something the plaintiff did not discover until after

he had signed the contract.

There was a conflict of evidence as to what representation, if

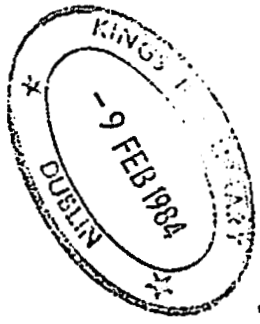
any, was made as to the motorway. The judge, however, having

reviewed the evidence was of the clear opinion that an innocent but

false representation was made by Mr. Boland to the effect that the

property would not be affected by the motorway, if and when it came

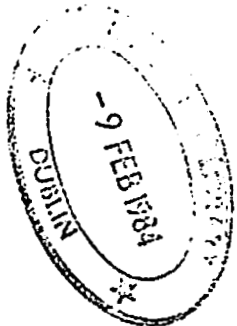
to be constructed; that this representation was a material one made



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with the intention of inducing the plaintiff to act on it; and that it was one of the factors that induced the plaintiff to enter into the written contract on the following Monday to purchase the property.

Having perused the transcript of the evidence, I am satisfied that there was ample evidence to support those findings as to the misrepresentation relied on by the plaintiff for rescission of the contract. Once there was evidence to support the judge's findings in that respect, the defendants' main ground of appeal, namely that the findings as to misrepresentation are unsustainable, must be held to fail. This Court cannot set aside primary facts of that nature found by the judge and supported by evidence.



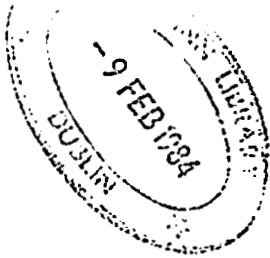
The alternative or secondary ground of appeal argued was that, even if the defendants' argument as to the misrepresentation fails, the claim for rescission should have been rejected because the plaintiff should be held to have had constructive notice of the true position as to the route of the proposed motorway. It was suggested that the plaintiff, a solicitor and an intending purchaser, having made inquiries of the vendors as to whether the property would be affected by the motorway, was required, by the

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application of the doctrine of constructive notice, to pursue those inquiries in quarters where he would have been reliably informed as to the true position. For that reason, it is submitted, he should be held disentitled, for the purposes of rescission, to rely on the misrepresentation made and should be deemed to have constructive notice of the true position as to the route of the motorway.

I was unable to accept this argument. I consider it to be well-settled law that the only knowledge that will debar a purchaser from repudiating a contract he has been induced into by the vendor's misrepresentation is actual and complete knowledge of the true situation. It does not lie with a vendor, who has by his misrepresentation induced the purchaser to enter into a contract to purchase, to have his misrepresentation excused or overlooked and to have the purchaser deprived of a right to rescind because he did not ignore the misrepresentation and pursue matters further so as to establish the truth of what was misrepresented. That would be unconscionable and unfair. The doctrine of constructive notice, as it arises under s. 3 of the Conveyancing Act, 1882 and as it was applied by this Court in Somers v. W. 1979 I.R. 94, has no application to the facts of this case.

I would dismiss this appeal.



J.P.H.
20-1-84