IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV 2014-404-286
[2014] NZHC 491

BETWEEN	CROON BLOODSTOCK LIMITED Plaintiff
AND	MAUREEN JUNE CONQUER and IAN NOEL MARGAN as Trustees of the MJM Trust First Defendants
AND	JAMES BRIAN CONQUER Second Defendant
AND	MAUREEN JUNE CONQUER (formerly Maureen June Maxwell) Third Defendant

Hearing: 14 March 2014

Appearances: P Webb for plaintiff
C Bryant for defendants

Judgment: 21 March 2014

JUDGMENT OF THOMAS J

In accordance with r 11.5 I direct that the Registrar endorse this judgment with the delivery time of 2.30 pm on Friday 21 March 2014

Solicitors:
Brookfields, Auckland
Hesketh Henry, Auckland

Background

[1] The dispute concerns the sale and purchase of property at 291 North Road, Papakura (the property). The plaintiff, Croon Bloodstock Ltd, was the vendor. Rodney Croon is the plaintiff's sole director and shareholder. The plaintiff's business is the breeding of standard-bred horses which takes place on the property.

[2] The dispute revolves around whether the parties agreed that following settlement the purchaser (the first defendant) would lease the working farm on the property to the plaintiff for five years at no cost, the purchase price effectively having been discounted to reflect prepayment of rent. The defendants deny any such agreement and have given notice to the plaintiff to vacate the property.

[3] The plaintiff seeks an injunction to preserve the status quo.

Undisputed facts

[4] In February 2013 the property was listed under an exclusive agency with Bayleys Real Estate at $3.5 million plus GST. It did not sell.

[5] When the agency expired, a real estate agent for Barfoot and Thompson, James Conquer, the second defendant, approached Mr Croon and advised him that he knew of a potential purchaser for the property. The potential purchaser was Maureen Conquer, formerly Maureen Maxwell, the third defendant, at the time Mr Conquer's fiancée.

[6] Mr Croon signed an agency agreement with Mr Conquer. Mr Croon told Mr Conquer that the sale price was $3.5 million and he was willing to lease the stables and grazing land for three to five years at an annual rent of $80,000.

[7] On 25 May 2013 Mr and Mrs Conquer visited the property.

[8] On 31 May 2013 the property was inspected by a building inspector on Mrs Conquer's instructions.

[9] Mr Croon had obtained two valuation reports dated 13 February and 12 March 2013, valuing the property at $3.3 million exclusive of GST and $3.5 million inclusive of GST respectively.

[10] In June, Mr Conquer obtained an independent valuation of the property valuing it at $3.25 million plus GST.

[11] On 17 July 2013, Mrs Conquer made an offer of $3.1 million inclusive of GST. The sale and purchase agreement did not provide for any tenancies and required vacant possession on settlement.

[12] On 18 July 2013, the plaintiff countersigned the sale and purchase agreement by increasing the purchase price by $42,550 and reducing the due diligence period by ten working days. The counter offer was accepted by Mrs Conquer.

[13] On 24 July 2013, Mr Croon met with Mr and Mrs Conquer.

[14] On 6 September 2013, the sale settled. The purchaser was the first defendants, the trustees of the MJM Trust, as nominated by Mrs Conquer.

[15] On 24 October 2013, the Conquers returned from honeymoon and Mrs Conquer instructed her lawyers to prepare a draft lease.

[16] On 12 December 2013, Mr Croon received by e-mail a proposed lease for five years with an annual rent of $80,000 plus GST and a commencement date of 1 December 2013.

[17] On 6 January 2014, Mr Croon rejected the offer of the lease which was withdrawn by the defendants on 17 January 2014. The plaintiff was given 21 days to vacate the property.

Statement of claim

[18] The statement of claim sets out three causes of action:

1. Misrepresentation against the first and third defendants

[19] The plaintiff claims that it was induced to enter into the agreement for sale and purchase of the property (the agreement) by a misrepresentation, namely an assurance from the defendants that in return for agreeing to reduce the price of the property from $3.5 million to $3.1 million the first defendants would lease back the land and stud facilities to the plaintiff for five years at no cost. The third defendant did not have that intention. The plaintiff claims $400,000 in damages under s 6(1) of the Contractual Remedies Act 1979.

2. Unilateral mistake against the first and third defendants

[20] The plaintiff claims that it entered into the agreement in the belief that the first defendants would lease back the land and stud facilities to the plaintiff for five years at no cost. The defendants did not intend to do so. The defendants were aware of the plaintiff's mistake and its reliance on that mistake in entering into the agreement. The plaintiff seeks:

1. Cancellation of the agreement under s 7(3)(b) of the Contractual Mistakes Act 1977 (the Act); or

2. Compensation or restitution under s 7(3)(d) of the Act in the sum of $400,000.

3. Breach of fiduciary duty against Mr Conquer

[21] The plaintiff claims that Mr Conquer was engaged as its agent and therefore owed a fiduciary duty to it. He breached this duty by preferring his own interests and those of Mrs Conquer over the plaintiff's interests. The plaintiff seeks equitable compensation in the sum of $400,000.

Affidavit evidence

[22] Rodney Croon has filed three affidavits:

a. First affidavit (12 February 2014).

b. Affidavit in response to Maureen Conquer (4 March 2014).

c. Affidavit in response to James Conquer (4 March 2014).

[23] The defendants have also filed three affidavits:

a. Affidavit of Maureen Conquer (21 February 2014).

b. First affidavit of James Conquer (24 February 2014).

c. Second affidavit of James Conquer (12 March 2014).

Disputed facts

Knowledge of relationship

[24] Mr Croon claims that he was told not that Mr Conquer and Mrs Conquer were in a relationship until they visited the property on 1 June 2013. The defendants say that they have no memory of visiting the property on 1 June 2013 and there is no record of it in their diaries. The defendants claim that when Mr Conquer inspected the property on 23 May 2013 he explained to Mr Croon that the potential buyer was his fiancé. Then, when Mrs Conquer visited the property with Mr Conquer on 25 May 2013, Mr Conquer introduced her as his fiancé.

Suggestion of upfront payment for five year lease

[25] In his first affidavit, Mr Croon states that in the last week of June he suggested that, in order to address the defendants' tax concerns, $400,000 be deducted from the purchase price as a payment in advance for the lease. The defendants maintain that this conversation never took place.

Understanding of oral agreement of lease

[26] Mr Croon states he told Mr Conquer he would accept an offer that did not mention the lease in the agreement on the understanding that such arrangement was agreed orally. Mr Conquer denies that this conversation took place. He claims that he drafted an agreement on 3 July 2013 with a sale price of $3 million, conditional on leasing arrangements satisfactory to the purchaser being concluded and with a rent of not less than $80,000 per annum. On 4 July 2013 he advised Mr Croon that Mrs Conquer's advisors had insisted on having input on GST and other tax implications. He states that he did not know what this input would be and therefore

he could not possibly have discussed their concerns with Mr Croon the week before, as is claimed. He asks the question: if he had advised that the lease would be oral, why would he include a written clause on the lease in the draft agreement a few days later?

Money for improvements

[27] Mr Conquer says that when he presented the offer on 17 July 2013, he explained that the purchase price reflected money that would need to be spent on the homestead on the property to bring it to a state of good repair. Mr Croon asked if he could see the building inspection report and a copy of the agreement. Mr Conquer emailed these to him on the evening of 17 July 2013. Mr Croon claims that the only reason he wanted to think about the offer was because Mr Conquer had told him he would be liable for GST because Mrs Conquer was not GST registered. He denies that Mr Conquer mentioned money to be spent on the house.

Meeting regarding lease

[28] Mr Croon initially deposed that the meeting on 24 July 2013 was called by the defendants to discuss the lease. However, in his response to Maureen Conquer's affidavit, he states that "there was no discussion of the lease between us at all". There was also no discussion of the horses as he was not concerned about them given he thought they were remaining on the property in line with the verbal agreement. Mrs Conquer states that the main purpose of the meeting was to discuss chandeliers that Mr Croon's wife wanted to keep. She says that she did not object to horses remaining on the property after settlement for foaling and was happy to discuss a lease in a month's time when the couple returned from their honeymoon.

Vacant possession

[29] The defendants state that Mr Croon confirmed at the 24 July 2013 meeting that the property would be vacant on settlement and he would ask (or had asked) his employee Gary Jenkins to vacate the guest cottage.

Approach on interim injunction application

[30] An application for an interim injunction requires the Court to assess three key factors:[1]

(a) whether there is a serious question to be tried;
(b) the balance of convenience between the parties; and
(c) the overall justice of the case.

Is there a serious question to be tried?

[31] The plaintiff must satisfy the Court that the claim is not vexatious or frivolous.[2] In doing so, the plaintiff must "adduce sufficiently precise factual evidence to satisfy the court that he has a real prospect of succeeding in his claim for a permanent injunction at the trial".[3]

[32] The Court is not required to attempt to resolve conflicts of evidence in respect of facts which may determine the case, nor is it concerned with deciding difficult questions of law which "call for detailed argument and mature considerations".[4]

[33] In summary, the Court must consider:[5]

> first, what each of the parties claims the facts to be; second, what are the issues between the parties on these facts; third, what is the law applicable to those issues, and, fourth, is there a tenable resolution of the issues of fact and law on which the plaintiff may be able to succeed at the trial.

Misrepresentation

[34] The plaintiff claims $400,000 in damages under s 6 of the Contractual Remedies Act which provides that relief is by way of damages. As is accepted by the

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1 *American Cyanamid v Ethicon Limited* [1975] AC 396 (HL) and *Klissers Farmhouse Bakeries Ltd v Harvest Bakeries Ltd* [1985] 2 NZLR 129 (HC) (CA).
2 *Klissers Farmhouse Bakeries Ltd v Harvest Bakeries Ltd* and *NZ Tax Refunds Ltd v Brooks Homes Ltd* [2013] NZCA 90 at [12].
3 *Re Lord Cable (dec'd)* [1977] 1 WLR 7, [1976] All ER 417.
4 *White v Bank of New Zealand* [2013] NZHC 1087 at [15] quoting *American Cyanamid Co v Ethicon Ltd* above n1.
5 *Klissers Farmhouse Bakeries Ltd v Harvest Bakeries Ltd,* above n1 at 133.

plaintiff, this cause of action cannot found a basis for the granting of an interim injunction.

Mistake

[35] Mr Webb accepts that it is this cause of action on which the plaintiff must rely for the purposes of the application for the injunction. The relief sought in the statement of claim is cancellation of the agreement under s 7(3)(b) of the Act or compensation. For the purposes of the application, the plaintiff's position must be that damages would not be an adequate remedy.

[36] The real issue is whether there is a serious question to be tried in respect of the plaintiffs' claim for relief under the Act.

[37] Section 6(1) of the Act provides:

> **6 Relief may be granted where mistake by one party is known to opposing party or is common or mutual**
>
> (1) A Court may in the course of any proceedings or on application made for the purpose grant relief under section 7 of this Act to any party to a contract—
>
> (a) If in entering into that contract—
>
> (i) That party was influenced in his decision to enter into the contract by a mistake that was material to him, and the existence of the mistake was known to the other party or one or more of the other parties to the contract (not being a party or parties having substantially the same interest under the contract as the party seeking relief); or
>
> (ii) All the parties to the contract were influenced in their respective decisions to enter into the contract by the same mistake; or
>
> (iii) That party and at least one other party (not being a party having substantially the same interest under the contract as the party seeking relief) were each influenced in their respective decisions to enter into the contract by a different mistake about the same matter of fact or of law; and
>
> (b) The mistake or mistakes, as the case may be, resulted at the time of the contract—

(i) In a substantially unequal exchange of values; or

(ii) In the conferment of a benefit, or in the imposition or inclusion of an obligation, which was, in all the circumstances, a benefit or obligation substantially disproportionate to the consideration therefor; and

(c) Where the contract expressly or by implication makes provision for the risk of mistakes, the party seeking relief or the party through or under whom relief is sought, as the case may require, is not obliged by a term of the contract to assume the risk that his belief about the matter in question might be mistaken.

[38] The plaintiff submits that s 6(1)(a) of the Act will have effect where one party seeks to take advantage of an erroneous belief formed independently of the other party.[6] The erroneous belief in this case is Mr Croon's belief that an oral lease agreement had been made.

[39] As evidence of the plaintiff's mistake and that it was material to it, Mr Webb refers to the following:

(a) The agreement provided for settlement to take place on 30 August 2013. The foaling season is the end of August/beginning of September. It is inconceivable that an experienced commercial breeder would place himself in the position of having to provide vacant possession of the property at such a crucial time for his business. In Mr Webb's submission, Mr Croon must have agreed to the settlement date because, in his mind, occupancy of the property was secured;

(b) The business spent some $20,000 between July and September on renovations to the stable block to provide accommodation for the plaintiff's employee. Again, in Mr Webb's submission, it is inconceivable that a business would expend $20,000 in carrying out renovations to a building on a property if vacant possession were required;

[6] *King v Wilkinson* (1994) 2 NZ ConvC 191,828.

(c) Settlement took place on 6 September 2013 after a slight delay. The draft lease was not sent to the plaintiff until 12 December 2013, a very long time, in Mr Webb's submission, had the defendants really been concerned about obtaining vacant possession.

[40] In Mr Webb's submission, the evidence makes it clear that, if Mr Croon had not believed he would obtain a lease, he would not have entered into the agreement.

[41] Mr Webb paints a picture of Mr Croon being a trusting and naïve man who did not consider that he required legal advice before entering into the agreement. Mr Croon's affidavit of 4 March does not support that position. At paragraphs 18 and 19 he said:

> 18. I was trying to obtain bridging finance to purchase another property. My normal bank manager was on leave …
>
> 19. The due diligence period was reduced at insistence of my lawyer as he thought it was reasonable for me to find an alternative property within the original time frame.

[42] Three observations arise from that evidence. First, Mr Croon's own evidence was that his lawyer considered the agreement. If it was in fact part and parcel of the whole transaction that there was an unwritten lease with the purchase price reduced by $400,000 representing forward payment of rent, it would seem unwise at least for Mr Croon not to have raised this with his lawyer. Indeed, commercial good sense would suggest that Mr Croon would want some sort of assurance or security for that $400,000 prepayment of rent.

[43] Secondly, the evidence shows that, at the time when he countersigned the agreement, Mr Croon was clearly looking for another property to buy. His affidavit evidence is that he was trying to obtain bridging finance for that purpose and the due diligence period was reduced in his counter offer because his lawyer thought it was reasonable for him to find an alternative property within a short time frame. This suggests that Mr Croon was not intending to stay on the property but was intending to move or certainly was open to that course.

[44] Thirdly, he cannot have intended the purchase price for the property to have included an allowance of $400,000 representing five years of future rent if he was considering buying another property. If he were considering moving, he would not prepay rent.

[45] Even if the plaintiff can establish his own mistake, the next requirement of s 6(1)(i) is that the mistake was known to the other party. In this regard the plaintiff says that Mr Conquer was acting as agent for Mrs Conquer and not for the plaintiff at all. The mistake was, in Mr Webb's submission, known to Mr Conquer who was the agent in fact for Mrs Conquer and she therefore had knowledge via her agent. Mr Webb asks the Court to infer from the relationship of Mr and Mrs Conquer, they being engaged at the crucial time when the agreement was entered into, that she must have known the detail of Mr Conquer's conversations with Mr Croon. The couple were about to marry and were to use the homestead on the property as their home. Therefore, in Mr Webb's submission, although there is no evidence of Mr Conquer informing her of his conversations with Mr Croon, it is to be inferred that he did so.

[46] The defendants submit that the plaintiff must prove that Mrs Conquer had actual knowledge of the plaintiff's mistaken belief. Constructive knowledge is not sufficient.[7]

[47] Ms Bryant notes that Mr Conquer was formally the plaintiffs' agent rather than that of Mrs Conquer. In her submission, the evidence made it clear that Mr Croon was aware that Mr Conquer could not bind Mrs Conquer who was taking advice from her lawyers.

[48] The defendants say that there is no evidence that Mrs Conquer was aware of the plaintiff's belief. Mrs Conquer assessed the capital value of the property at $3 – 3.1 million, did not want to purchase the property with a lease in place but was prepared to negotiate a five year lease at $80,000 plus GST per annum following settlement. The agreement was signed on that basis.

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[7] *Tri-Star Customs and Forwarding Ltd v Denning* [1999] 1 NZLR 33 (CA).

[49] Mrs Conquer's affidavit evidence was that she was not and had never been prepared to offer the list price of $3.5 million. She said that her offer did not include any allowance for five years' rent as part of an oral agreement to lease the property and that she had never discussed that possibility with either Mr Croon or Mr Conquer. Furthermore, she would not enter into such a significant relationship as a five year lease without clear and enforceable terms defining that relationship. She did not know what the tax implications would be if the capital value of the property were discounted in lieu of rent but she assumed there would be some. Her affidavit evidence showed that she was concerned properly to address all GST and tax issues in connection with her purchase of the property.

[50] As at 3 July 2013 Mrs Conquer was preparing an offer of $3 million for the property conditional on a lease in terms satisfactory to her at an annual rent of not less than $80,000. Whilst that offer was not in fact given to Mr Croon, it is relevant to Mrs Conquer's knowledge which must be established pursuant to s 6(1). Mrs Conquer's evidence goes further by saying that she specifically told Mr Croon that she would talk to him about the lease on her return from honeymoon and that she had no objection to the horses staying on the property for the foaling season. That contention is disputed by Mr Croon.

[51] The defence says that that was in fact what happened. Mrs Conquer instructed her lawyers on her return from honeymoon to deal with the lease. The defendants do not dispute that they would lease the property to the plaintiff for five years at $80,000 per annum and that is precisely what was offered to the plaintiff in December 2013.

[52] The plaintiff appears to rely on the $400,000 difference between the original asking price of $3.5 million and the sale price of $3.1 million. That does not take into account two vital issues in the defendants' submissions.

[53] First, that immediately after viewing the property in May 2013, Mrs Conquer arranged for a building report which was carried out on 31 May. That identified that the property required substantial work.

[54] Mr Conquer says that he told Mr Croon that the purchase price reflected the amount of money that would need to be spent on the homestead to bring it into a good state of repair. Mr Croon disputes that. However, Mr Conquer e-mailed a copy of the building report to Mr Croon on 17 July, the day of the offer, at the same time as sending him a soft copy of the offer. His e-mail said:

> As promised here is the soft copy of the offer, unsigned. Also the building report is a big file so will send in a separate e-mail.

[55] The irresistible inference is that the content of the building report had implications for the price of the property.

[56] Secondly, Mr Conquer obtained a valuation for the property pursuant to his obligations under the Real Estate Agency Act, that is, because of his relationship to the purchaser of the property. That gave a current market value of $3.25 million but indicated a range from $3.1 to $3.4 million. That gives support to the defendants' case that the offer of $3.1 million was a fair offer for the property and took no account of any forward lease payments.

[57] The problem Mr Croon faces in proving Mrs Conquer's knowledge of his mistake is compounded by the absence of any evidence that Mr Conquer told Mrs Conquer of Mr Croon's insistence on an oral lease agreement (and the defendants deny that the conversation between Mr Croon and Mr Conquer ever even happened).

[58] At [19] of Mr Croon's affidavit, he says that in late June he told Mr Conquer that he would accept an offer for purchase that did not include mention of the lease, but "I stipulated that this would be on the understanding that such arrangement was agreed orally". He does not depose that Mr Conquer responded to this statement (or, indeed, that Mr Conquer passed this statement on to Mrs Conquer). Mr Croon says that, when Mrs Conquer made the offer to purchase at $3.1 million on 17 July 2013, "[i]n my mind this offer was the asking price of $3.5 million less the $400,000 reduction for the lease". However, he did not confirm this with Mr or Mrs Conquer.

[59] The evidence shows that, at best, any mistake was in Mr Croon's mind as his own affidavit appears to acknowledge. Indeed, there is compelling evidence to suggest that at the time of his counter offer Mr Croon intended to move and cannot have considered the purchase price to reflect a $400,000 reduction on account of five years' prepaid rent.

[60] The property valuations highlight another problem for the plaintiff. Section 6(1)(b) of the Act provides that the mistake must have resulted in a substantially unequal exchange of values or the conferring of a benefit or imposition of an obligation substantially disproportionate to the consideration. An unequal exchange of values is not immediately apparent, given the sale price for the property was just over $3.1 million and there was a range of values given by three valuers. The plaintiff relies on is what it says is the reduction of $400,000 in the purchase price from $3.5 million to $3.1 million. However, the evidence was that the property was on the market at $3.5 million with a different agent and did not sell. Two offers of $3 million were, it seems, received. The most recent valuation gave a current market value of $3.25 million but indicated a range from $3.1 to $3.4 million.

[61] Furthermore, relief under the Act is available only as between the parties to the contract. Section 8 provides that a disposition of property to an assignee (here, the first defendants) cannot be invalidated provided the disposition was supported by consideration and the assignee has acted in good faith. In this case the agreement was assigned to the MJM Trust. The effect of this would be to limit the plaintiff's claim to one against Mrs Conquer in damages, not entitling it to injunctive relief.

[62] Lastly, even if the hurdle of s 8 could be overcome, the Court has a discretion pursuant to s 7(3) to make such order as it thinks just, including cancelling the contract or granting relief by way of compensation. Ms Bryant's submission is that, even if the plaintiff were able to satisfy a Court that the grounds in s 6(1) are met, it is a matter that could be compensated by damages rather than Court ordered cancellation. This is particularly so, in her submission, because Mr and Mrs Conquer have their family home on the property. They paid $3.1 million for it and are currently undertaking extensive renovations. In those circumstances,

Ms Bryant suggests it would be unlikely that the Court would order them to vacate their home. Damages would be a more likely outcome in her submission.

[63] Given the analysis of the evidence before the Court and the relevant law as set out above, I am not persuaded that there is a tenable resolution of the issues of fact and law on which the plaintiff may be able to succeed at trial in a claim for cancellation of the agreement on the grounds of mistake.

Breach of fiduciary duty by Mr Conquer

[64] Under this third cause of action, the plaintiff seeks equitable damages of $400,000. The plaintiff accepts that this cause of action against Mr Conquer is not relevant to the application for injunctive relief except by way of providing further context to the circumstances.

Where does the balance of convenience lie?

[65] Even if I were to hold that there is a serious question to be tried, I am not satisfied that the balance of convenience would favour the plaintiff.

Would damages be an adequate remedy?

[66] It has been said that "[t]he very first principle of injunction law is that you do not obtain injunctions to restrain actionable wrongs, for which damages are the proper remedy".[8]

[67] In the case of interim injunction, the question is:[9]

> whether *if* the plaintiff *were* to succeed at trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined...

[68] The plaintiff refers to the difficulty involved not only in relocating the horses but also finding a suitable facility for them. Specialised facilities to ensure the safekeeping of the horses would most likely need to be built which would take at

[8] *London and Blackwall Railway Co v Cross* (1886) 31 Ch D 354.
[9] *American Cyanamid Co v Ethicon Ltd* above n1, at 408

least three months. Since January, the plaintiff has been searching for an appropriate parcel of land to develop but none has yet been found.

[69] The only evidence in support of this is Mr Croon's assertions. The position advanced is that damages cannot be properly assessed at this stage because the horse breeding business is so unpredictable. The implication the Court is asked to accept is that, if the plaintiff were successful in cancelling the agreement, damages for the cost and inconvenience of finding and developing a new suitable property and moving the horses would be inadequate. The plaintiff says that his business is complex and sophisticated and having to vacate will effectively shut him down for 12 months and potentially affect his ability to proceed with breeding for the next season.

[70] The defendants' position is that damages would be an adequate remedy and indeed, even if the claim in mistake is successful, the Court would be unlikely to order cancellation of the agreement given that the property is Mr and Mrs Conquer's home on which they are spending significant sums of money. Ms Bryant submits that, as the breeding season is in August and September, it would make more sense for any move to take place sooner rather than later.

[71] Mr Conquer, an estate agent, made some inquiries as to availability of suitable alternative accommodation for the plaintiff. He made three telephone calls and considers that there are appropriate facilities available. This is disputed by the plaintiff. I indicated at the start of the case that I would place limited weight on Mr Conquer's affidavit, given that the plaintiff did not have the opportunity to respond. However, I would have expected at least an affidavit from Mr Croon up-dating the Court on his search for a new property, given that the issue had been highlighted by the Judge at callover on 17 February 2014.

[72] I am satisfied that damages would be an adequate remedy. The plaintiff will most likely have to relocate the business at some stage and now would seem a sensible time, given when the breeding season takes place. As indicated, even if the plaintiff were to succeed in mistake, the only cause of action where a remedy other than damages is sought, it is by no means certain that he would receive any relief other than damages.

Status quo

[73] As the horses are already on the property, the status quo could be said to favour the plaintiff.

Relative strength of the parties' cases

[74] For the reasons set out above I assess the defendants' case as stronger certainly under the claim in mistake which is the only claim which could support injunctive relief.

Other considerations

[75] The defendants submit that:

(a) The relationship between the plaintiff and the defendants has been permanently damaged and the defendants should not be forced to continue a relationship with the plaintiff;

(b) The plaintiff has made alterations to the stables without the knowledge or consent of the defendants;

(c) The defendants recently discovered something of concern to them potentially associated with the plaintiff's use of one of the buildings on the property. I am not persuaded of the relevance of this.

Overall justice of the case

[76] The ultimate and overriding requirement is overall justice.[10] In this case, following the analysis set out above, that rests with the defendants.

Decision

[77] I have found that:

(a) Of the plaintiff's three causes of action, mistake is the only one which could found a basis for granting an interim injunction.

[10] *E R Squibb & Sons (NZ) Ltd v ICI NZ Ltd* (1988) 3 TCLR 296.

The plaintiff is unlikely to succeed on this ground given the absence of consistent evidence as to Mr Croon's mistake, the lack of evidence regarding Mrs Conquer's knowledge of his mistake and Mr Croon's failure to show that the mistake led to an unequal exchange of values. Even if the claim were successful, the Court is likely to find that damages are the appropriate remedy.

(b) The balance of convenience favours the defendants. I am satisfied that damages would be an adequate remedy in the circumstances.

[78] For these reasons, the application is dismissed..

[79] It was accepted by the defendants that the plaintiff will require some time to organise a move. In the circumstances, the plaintiff is to have a period of six weeks from the date of this decision within which to find alternative accommodation and vacate the property. It is to pay rent at the rate set by the Judge at the callover on 17 February 2014, classified as an agistment fee, of $1,500 per week GST inclusive.

[80] There would seem no reason why costs on a 2B basis are not appropriate, although I have not heard the parties in this regard. Leave is given to have the matter referred to me if counsel cannot agree on costs between them.

Thomas J