**IN THE HIGH COURT OF NEW ZEALAND**
**AUCKLAND REGISTRY**

**CIV-2009-404-6905**

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| | BETWEEN | ANTHONY WHITFORD BLUNDELL<br>Plaintiff |
| | AND | STEVEN GRAHAM QUINN<br>Defendant |

Hearing: 10 June 2010
17 September 2010

Counsel: D Smith for Plaintiff
A Swan for Defendant

Judgment: 29 October 2010 at 10.30 am

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**RESERVED JUDGMENT OF ASSOCIATE JUDGE SARGISSON**
**(Summary Judgment Application)**

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*This judgment was delivered by me on **29 October 2010** at **10.30 am** pursuant to Rule 11.5 of the High Court Rules*

*Registrar/Deputy Registrar*

*Date .....*

Solicitors:
*David Rice & Associates, PO Box 72 226, Auckland*
*Walker & Associates, PO Box 2077, Auckland*

[1] The plaintiff, Mr Anthony Blundell, applies for summary judgment on his claim against the defendant, Mr Steven Quinn.

[2] The application is opposed.

**Background**

[3] The basis of Mr Blundell's claim is an unconditional agreement for sale and purchase of real estate of 16 November 2007. Mr Quinn agreed to purchase, and Mr Blundell agreed to sell, a rural property at Orere for $1.5 million. Settlement was to occur eight months later, on 16 July 2008.

[4] The agreement provided for a total deposit of $100,000. $20,000 was paid on the parties entering into the agreement and $80,000 was to be paid, and was paid, on 18 January 2008. The balance was due on settlement.

[5] Mr Quinn encountered difficulties selling two properties of his at Beachlands and Otama Beach. He needed to obtain an unconditional agreement for sale of one or the other of them to complete settlement. Mr Blundell was accommodating. He agreed, by letter, to extend the settlement date to 15 October 2008 should Mr Quinn be unable to do so.

[6] The original settlement date came and went. On 26 September 2008 Mr Quinn emailed Ms Denise Jenner, the real estate agent who had negotiated the agreement on behalf of Mr Blundell, advising, by reference to the "property collapse", that he had been unable to sell his properties. He considered the rural property at Orere had lost 30 per cent or more of its value. He requested the agreement be renegotiated.

[7] Mr Blundell, evidently, declined to enter into renegotiations. On 13 October 2008 Mr Quinn emailed Mr Terry Carson of David Rice & Associates, Mr Blundell's solicitors, directly, expressing his displeasure that Mr Blundell was, in his words, "attempting to coerce or strong-arm a settlement … rather than continuing to work together to find an alternative resolution".

[8] In any event, settlement did not occur on 15 October 2008. On 17 October 2008 David Rice & Associates served a settlement notice on Mr Quinn's solicitors, Shieff Angland. Shieff Angland responded on 30 October 2008. They confirmed Mr Quinn was unable to settle. They proposed the matter end there, Mr Quinn accepting the forfeiture of the deposit. The proposal was not accepted. On 6 November 2008 David Rice & Associates responded by fax advising that the agreement for sale and purchase of 16 November 2007 was cancelled.

[9] Mr Blundell eventually resold the property by agreement for sale and purchase of 1 May 2009, to the Auckland Regional Council for $1,050,000. The parties agree the purchase price was the best available in a declining market.

[10] Mr Blundell now applies for summary judgment on his claim against Mr Quinn. The claim comprises $350,000 (the difference between the price reserved by the original agreement for sale and purchase less the price obtained on resale to the Council, less the deposit retained), legal costs incurred on the original sale, interest under the agreement for sale and purchase (on the balance due on settlement to resale, and on the $350,000 shortfall thereafter to 12 October 2009), rates, insurance, and valuation costs incurred on resale. The total claim is for $510,313.84, plus interest on the $350,000 shortfall from 12 October 2009 and costs.

**Legal principles on summary judgment**

[11] Mr Blundell applies for summary judgment under r 12.2 of the High Court Rules. Rule 12.2 provides:

> **12.2 Judgment when there is no defence or when no cause of action can succeed**
>
> (1) The court may give judgment against a defendant if the plaintiff satisfies the court that the defendant has no defence to a cause of action in the statement of claim or to a particular part of any such cause of action.
>
> …

[12] The legal principles applying to applications for summary judgment were succinctly expressed by the Court of Appeal in *Krukziener v Hanover Finance Ltd* [2008] NZCA 187, (2008) 19 PRNZ 162 at [26]:

> The principles are well settled. The question on a summary judgment application is whether the defendant has no defence to the claim; that is, that there is no real question to be tried: *Pemberton v Chappell* [1987] 1 NZLR 1 at 3 (CA). The Court must be left without any real doubt or uncertainty. The onus is on the plaintiff, but where its evidence is sufficient to show there is no defence, the defendant will have to respond if the application is to be defeated: *MacLean v Stewart* (1997) 11 PRNZ 66 (CA). The Court will not normally resolve material conflicts of evidence or assess the credibility of deponents. But it need not accept uncritically evidence that is inherently lacking in credibility, as for example where the evidence is inconsistent with undisputed contemporary documents or other statements by the same deponent, or is inherently improbable: *Eng Mee Yong v Letchumanan* [1980] AC 331 at 341 (PC). In the end the Court's assessment of the evidence is a matter of judgment. The Court may take a robust and realistic approach where the facts warrant it: *Bilbie Dymock Corp Ltd v Patel* (1987) 1 PRNZ 84 (CA).

[13] There is no dispute that Mr Blundell has established a prima facie entitlement to the amount claimed. His counsel contends this is a straightforward case. Mr Quinn was required under an unconditional agreement for sale and purchase to settle and he refused to do so. This refusal is evidenced, counsel contends, by Mr Quinn's email of 26 September 2008, his failure to settle on 16 October 2008 and his solicitors' letter of 30 October 2008. I accept that the evidence adduced by Mr Blundell would, in the absence of any response by Mr Quinn, satisfy the Court that Mr Quinn has no defence: *MacLean v Stewart* (1997) 11 PRNZ 66 (CA) at 69. That is, Mr Quinn will need to respond if Mr Blundell's application is to be defeated. He will need to provide some evidential foundation for the defences raised: *Australian Guarantee Corporation (NZ) Ltd v McBeth* [1992] 3 NZLR 54 (CA) at 59.

[14] Mr Quinn opposes summary judgment on the ground that he has an arguable defence. While he listed a number of grounds of defence in his notice of opposition, his counsel pursued a single ground at the hearing: misrepresentation entitling him to cancel pursuant to s 7 of the Contractual Remedies Act 1979. The representation on which Mr Quinn relies is that there was consent for subdivision subject only to a final survey. It was accepted such was not the case.

**Mr Quinn's defence: misrepresentation**

[15] Whether Mr Quinn has an arguable defence based on s 7 of the Contractual Remedies Act will turn on:

a) Whether the misrepresentation was in fact made by or on behalf of Mr Blundell;

b) Whether the misrepresentation did in fact induce Mr Quinn's entry into the agreement for sale and purchase; and

c) Whether the effect of the misrepresentation was substantially to reduce the benefit of the agreement to Mr Quinn.

[16] Counsel were content, at the hearing, that I proceed on the basis that the effect of the misrepresentation, if indeed made, would be substantially to reduce the benefit of the agreement to Mr Quinn, or rather that consent for subdivision subject only to a final survey would go substantially to the value of the property.

[17] The ultimate issues for determination are, therefore, whether the misrepresentation was made and whether it induced Mr Quinn's entry into the agreement. The issue for determination on this application for summary judgment is whether Mr Quinn has provided some evidential foundation in respect of each.

**The alleged misrepresentation**

[18] It is not in dispute that Mr Quinn and Ms Jenner met at the Orere property on 22 September 2007 and discussed the subdivision potential of the property. It is not in dispute that Ms Jenner provided Mr Quinn with a draft survey plan. It is not in dispute that Mr Quinn subsequently determined that the representation, if indeed made, must have been false. Either subdivision consent had lapsed or, as seems more likely, the subdivision consent application had lapsed, no subdivision consent having ever been granted. The distinction is, for present purposes, of no moment. Mr Quinn determined that the property did not have subdivision consent subject only

to a final survey. For convenience, I refer throughout to the subdivision consent application having lapsed.

[19] Mr Quinn deposes that Ms Jenner represented to him at the meeting that the property had subdivision consent subject only to a final survey. Ms Jenner denies this. She deposes that she provided him with the draft survey plan so that he might look into subdivision potential himself. She deposes that she was not instructed to go beyond such advice and did not do so. She deposes that she was well aware Mr Blundell had abandoned his application for subdivision consent.

[20] Counsel for Mr Blundell quite properly accepted that resolution of the material conflict of evidence as to whether Ms Jenner made the representation alleged is not appropriate on summary judgment. I proceed, therefore, on the basis that Ms Jenner, on behalf of Mr Blundell, misrepresented on 22 September 2007 that there was subdivision consent for the property subject only to a final survey.

**Inducement**

[21] A party seeking to justify his or her repudiation of a contract under s 7 of the Contractual Remedies Act will not succeed unless it can be shown that the misrepresentation induced him or her to enter into the contract. The representation must be causative. It need not, however, be the sole cause. It is enough that the misrepresentation was a significant factor which influenced the contracting party in his or her decision to proceed: *New Zealand Motor Bodies Ltd v Emslie* [1985] 2 NZLR 569 (HC) at 595.

[22] A representation cannot have been causative if the representee regarded it as unimportant: *Smith v Chadwick* (1884) 9 App Cas 187 (HL) at 194. It cannot have been causative if the representee, before acting on it, is made aware of the true position: *Buxton v Birches Time Share* [1991] 2 NZLR 641 (CA) at 647. In the latter instance, the representor must show that the truth was plainly brought to the attention of the representee. It is not enough that the representee could have discovered it had he or she searched, or even that the representee was invited to verify the position from a source that was made available to him or her.

[23] A party may justify his or her repudiation of a contract on the basis of a subsequently discovered misrepresentation: *Thompson v Vincent* [2001] 3 NZLR 355 (CA) at [89]. That case involved an agreement for sale and purchase of a motel business. The vendor represented to the purchaser that there were 22-24 units when in fact consent was confined to 12. The Court of Appeal found that the defendants were entitled to repudiate on the ground of misrepresentation, notwithstanding that they repudiated unaware of that entitlement on a quite different ground.

**Discussion**

[24] Mr Quinn's evidence is that the representation was a significant factor influencing his entry into the agreement. Indeed, he deposes it was determinative:

> If Mr Blundell had told me the subdivision consent had lapsed, I would not have entered into the purchase of the property.

[25] Mr Quinn deposes that the truth was brought to his attention only on 21 November 2007. He categorically denies knowledge of the subdivision consent application having lapsed prior to his entering into the agreement. He continues that it would have made no sense to enter into the agreement but for the representation.

[26] Counsel for Mr Blundell invites me to reject the above evidence. The Court will not normally, of course, engage in such an exercise on summary judgment. But counsel for Mr Blundell submits that the above evidence is inherently lacking in credibility and that the Court need not accept it uncritically. Counsel submits it is a defence contrived in an attempt to thwart summary judgment. I address this submission shortly. I turn first to three preliminary matters, and then to the parties' evidence.

*Preliminary matters*

[27] First, the alleged misrepresentation is material. That is, its tendency is to induce a reasonable person to enter into the agreement. I accord this consideration its logical place in determining whether the representation did in fact induce Mr

Quinn to enter into the agreement: see *Savill v NZI Finance Ltd* [1990] 3 NZLR 135 (CA) at 145. It weighs in favour of Mr Quinn.

[28] Secondly, the issue is as to the basis on which Mr Quinn entered into the agreement on 16 November 2007. It is not as to the basis on which Mr Quinn later repudiated the agreement. The latter need not be referable to the former. Counsel for Mr Blundell emphasised that the "real reason" the defendant failed to settle was not the subdivision consent application having lapsed, but rather that he did not want to raise bridging finance and because the market had turned. Such may well have been the case but it is, for present purposes, irrelevant. The enquiry is into the reasons Mr Quinn entered into the agreement. Evidence of Mr Quinn's subsequent conduct is to be assessed with that firmly in mind.

[29] Thirdly, as to the reasons Mr Quinn entered into the agreement, that Mr Quinn was enthusiastic about the property (as the evidence establishes he was) does not preclude a finding that the misrepresentation was nonetheless a significant factor influencing his decision to enter into the agreement. A "certain degree of keenness to buy" in *New Zealand Motor Bodies Ltd v Emslie* did not preclude the Court finding a "rosy profit forecast" to be one of several factors influencing the decision of the plaintiff in that case to agree to purchase shares (see 595). Similarly, the Court in *Pearson v Wynn* (1986) 2 NZCPR 449 (HC) rejected the submission that the plaintiff in that case "fell in love with the property and wanted it willy nilly" regardless of its irrigation system, finding that the misrepresentation that the property was fully irrigated was in fact an inducement to enter into an agreement for its purchase (see 454-455). Against these cautionary remarks I turn to the evidence.

*The parties' evidence*

[30] The parties' evidence was more exhaustive than would ordinarily be the case. Additional affidavits were filed in rebuttal and reply to rebuttal. Counsel agreed, at the hearing, that all of the affidavits should be considered.

[31] The parties' accounts are broadly consistent except as to timing. Their common features are as follows.

[32] Mr Quinn and Ms Jenner met at the property on 22 September 2007. They discussed the subdivision potential of the property.

[33] Mr Quinn emailed Ms Jenner on 24 September 2007. The email reads:

> Further to our meeting on site on [22 September 2007], please remember to send through to me the full surveyors report on the subdivision proposal.
>
> I would like to talk with the surveyor over the next day or two.

[34] Mr Quinn subsequently discovered the subdivision consent application had lapsed. The Council later advised him to contact the surveyor regarding possible reinstatement.

[35] Mr Quinn contacted the surveyor. The surveyor advised him that the subdivision consent application had lapsed but that it could be reinstated. This would have to be done in Mr Blundell's name. Failing this, Mr Quinn would need to apply afresh. The surveyor's evidence is consistent with this.

[36] Mr Quinn sought, accordingly, to secure the cooperation of Mr Blundell. Mr Quinn, in his affidavit in support, deposes that he contacted Mr Blundell, who declined him assistance. Ms Jenner and Mr Blundell (with whom Mr Quinn in his affidavit in rebuttal belatedly agrees) depose that Mr Quinn contacted Ms Jenner. Ms Jenner contacted Mr Blundell, who declined Mr Quinn assistance. Ms Jenner relayed this to Mr Quinn.

[37] These are the common features of the evidence. Where the parties' evidence diverges is as to the timing of the discovery that the subdivision consent application had lapsed and of the subsequent steps to have it reinstated.

[38] I turn first to the parties' evidence as to the timing of the discovery:

a) Mr Quinn, in his affidavit in support, deposes that he discovered the subdivision consent application had lapsed "[f]ollowing entering into the agreement". He was no more specific.

b) Ms Jenner, in her affidavit in reply, deposes that Mr Quinn advised her, further to his email of 24 September 2007, that he had contacted the surveyor. She deposes that Mr Quinn then indicated to her, by telephone on 28 September 2007, that he had contacted the Council and been advised the subdivision consent application had lapsed. This is consistent with her diary entry of that date and her accompanying notes. These refer to the subdivision consent application having lapsed and, indeed, Mr Quinn having questioned the price in light of the "no go" with the subdivision.

c) Mr Quinn, in his affidavit in rebuttal, denies Ms Jenner's account. He deposes that he was in the Hawke's Bay on business on 28 September 2007, which is consistent with his diary entry of that date. He belatedly deposes how and specifically when he discovered the subdivision consent application had lapsed: on telephoning the Council on 21 November 2007. He seeks to corroborate this with a diary note. The note is consistent with his discussing the subdivision consent application with the Council on that date.

[39] I turn next to the parties' evidence as to the timing of the subsequent steps to have the subdivision consent application reinstated:

a) Mr Quinn, in his affidavit in support, deposes that in following up on the Council's advice he contacted Mr Blundell, who declined him assistance. He was no more specific as to when.

b) Ms Jenner, in her affidavit in reply, deposes that Mr Quinn contacted her, not Mr Blundell. She deposes that this was on 30 October 2007. This is consistent with her diary entry of that date. This refers to the possibility of Mr Quinn picking up the application in Mr Blundell's name. Ms Jenner also deposes that Mr Quinn raised the possibility of an offer conditional on the two cooperating to secure subdivision consent. This too is consistent with her diary entry of that date.

c) Mr Quinn, in his affidavit in rebuttal, agrees that he contacted Ms Jenner. He deposes that it was on 21 November 2007.

d) Ms Jenner, in her affidavit in reply to rebuttal, denies this. She refers to an email of 22 November 2007. Mr Quinn writes:

> Hi Denise
>
> Just a couple of quick things:
>
> Can you shoot through a phone number for [Mr Blundell]. I would like to be able to contact him directly to arrange a meeting about chattels etc (in the shed) and also be able to talk about visiting the property on occasions.
>
> Best regards
>
> Steve Quinn

By reference to this email, and the lack of an entry in what she describes as a "comprehensive diary", she deposes to the belief that that Mr Quinn did not discuss subdivision issues with her on 21 (or 22) November 2007.

[40] There is, in short, a material conflict of evidence as to timing. This goes directly to the question of inducement. This is because if Mr Quinn discovered the subdivision consent application had lapsed *prior* to entering into the agreement on 16 November 2007, and decided to proceed nonetheless, it was not Ms Jenner's representation which led him to do it, but his own deliberate decision: see *Buxton v Birches Time Share* at 647. He will be unable to rely on Ms Jenner's representation.

*The issue for determination*

[41] The issue for determination in the present case reduces, therefore, to whether Mr Quinn's evidence as to timing is, as counsel for Mr Blundell submits, inherently lacking in credibility such that the Court need not need accept it uncritically. Counsel for Mr Blundell points to three features of Mr Quinn's evidence by reference to which he submits a robust approach to it is plainly warranted:

a) The inconsistencies in Mr Quinn's evidence;

b) Mr Quinn's failure to earlier raise the issue of subdivision consent and the inherent improbability of such a failure; and

c) Mr Quinn's lack of explanation as to the above.

[42] I largely accept counsel for Mr Blundell's submissions. I address each of these three features in turn.

*Inconsistencies in Mr Quinn's evidence*

[43] Counsel for Mr Blundell points, first, to inconsistencies in Mr Quinn's own evidence. For example, certain of Mr Quinn's evidence is internally inconsistent:

a) In his affidavit in support he does not say how (or specify when) he discovered the subdivision consent application had lapsed. He says he then contacted the Council who confirmed such was the case. In his affidavit in rebuttal, however, he says he made the discovery *on* contacting the Council, on 20 November 2007. He makes no attempt to explain this discrepancy.

b) In his affidavit in support he says he contacted Mr Blundell (he does not say when) seeking to secure his cooperation in having the consent application reinstated. He says Mr Blundell denied him assistance. In his affidavit in rebuttal, however, he says it was Ms Jenner whom he contacted, on 21 November 2007. He says it was Ms Jenner who advised him Mr Blundell was unwilling to assist. He again makes no attempt to explain these discrepancies.

[44] Certain of Mr Quinn's evidence is also at least seemingly inconsistent with undisputed contemporary documents:

a) Mr Quinn's email to Ms Jenner of 24 September 2007. Mr Quinn indicates he would like to talk with the surveyor in the following days. His evidence is that he did not do so until 21 November 2007, nearly two months later and following entry into the agreement.

b) Mr Quinn's email to Ms Jenner of 22 November 2007. Mr Quinn requests Mr Blundell's telephone number so that he might arrange a meeting about the chattels and discuss visiting the property. The tone of the email is equable. Yet his evidence is that only a day earlier he had discovered that Ms Jenner's representation that the property had subdivision consent subject only to a final survey, but for which he would not have purchased the property, indeed but for which he says it would have made no sense to purchase the property, was entirely false. The email is in moderate terms, it fails to address what on Mr Quinn's evidence can only have been a discovery of some considerable moment and instead concerns itself with relative trifles.

[45] I also observe that the corroborative documents (the diary entries) advanced by Mr Quinn do not greatly advance his case:

a) The diary entries of 27 and 28 September 2007 corroborate his account that he was in the Hawke's Bay. But they hardly establish that Ms Jenner did not, or could not, telephone him on either of those dates. They do not refer to any such telephone conversation, but Mr Quinn alleges he telephoned the surveyor on 21 November 2007 and there is no reference to that in the diary entry of that date.

b) The diary entry of 20 November 2007 is consistent with his having discussed the issue of subdivision consent with the Council on that date. I afford it some weight. But it came only in rebuttal (indeed the specific date came only in rebuttal). And it falls well short of establishing that he did not discover the subdivision consent application had lapsed earlier. This is especially significant because on his original evidence he deposed that he made the critical discovery prior to telephoning the Council, the Council merely confirming it.

[46] Counsel for Mr Blundell submits, and I accept, that these factors go to the appropriateness of a robust approach to Mr Quinn's evidence.

*Mr Quinn's failure to raise the issue now raised*

[47] Counsel for Mr Blundell points, secondly, to Mr Quinn's failure to raise the issue of subdivision consent at any stage prior to having been served with this proceeding. I accept that this failure is telling.

[48] Central to Mr Quinn's defence is that the representation as to subdivision consent induced his entry into the agreement. He deposes that he would not have entered into the agreement but for the representation. He later deposes that it would have made no sense to enter into the agreement but for the representation.

[49] Counsel for Mr Blundell submits it is inherently improbable that Mr Quinn would have failed to raise an issue of such self-professed importance on discovering he had entered into the agreement on an entirely false premise. Mr Quinn deposes he discovered the subdivision consent application had lapsed on 20 November 2007. But he does not claim to have expressed any concern to either Ms Jenner or Mr Blundell. As noted earlier, his email to Ms Jenner of the following day is equable in tone and makes no mention of the issue of subdivision consent. Mr Quinn paid the second tranche of the deposit on 18 January 2008 without demur. Indeed, Mr Quinn remained positively excited. He emailed Ms Jenner on 20 December 2007 stating:

> We have been out to the farm quite a number of times ([Mr Blundell] is OK with this) and can't wait to get out there full time.

[50] When Mr Quinn did try and resile from the agreement it was absent even passing reference to the issue of subdivision consent. Rather it was by reference to concerns as to bridging finance and the property market, about which Mr Quinn expressed deep regret. Mr Quinn emailed Ms Jenner on 26 September 2008 stating that he would still very much like to proceed, that he wanted to "pull [the] deal from the fire". Similarly, he emailed Ms Jenner on 2 October 2008 stating that he and his wife still had a "strong attraction" to the farm and "would do the deal in a heartbeat if [they] could."

[51] Counsel for Mr Blundell submits, and I accept, that this is entirely inconsistent with his only discovering the falsity of the representation subsequent to

entering into the agreement. Rather, it further underlines that he must have done so prior to entering into the agreement, and decided to proceed regardless.

*Mr Quinn's failure to explain these inconsistencies*

[52] Counsel for Mr Blundell points, finally, to Mr Quinn having failed to acknowledge, and certainly failed to attempt to explain, the internal inconsistencies in his evidence, its inconsistency with his emails of 24 September and 22 November 2007, or its inconsistency with his earlier failure to raise the issue that he now says was of considerable importance to him. I accept that these factors too are telling.

[53] Counsel for Mr Quinn surmised at the hearing that, on becoming aware of the subdivision consent application having lapsed on 20 November 2007, Mr Quinn decided, confident as to the state of the property market, to proceed nonetheless. He might, for example, have sought to obtain consent afresh. His initial concern, counsel suggested, gave way to nonchalance or stoicism. Mr Quinn's position, counsel surmised, might have then reverted to one of renewed concern. He could ill afford to be so magnanimous when the market soured and he encountered difficulties selling his properties. Counsel surmised that his failure to raise the issue earlier is consistent with this narrative, and consistent, further, with his only having discovered the subdivision consent application had lapsed subsequent to entering into the agreement.

[54] I am unable to accept counsel for Mr Quinn's submission. It is pure conjecture, entirely unsupported by Mr Quinn's evidence. It is, in any case, inherently improbable that magnanimity of only a day's gestation would extend to proceeding with a purchase that on Mr Quinn's evidence was nonsensical but for subdivision consent. There was no renewed concern as to the issue of subdivision consent on the property market souring. Rather, as the evidence makes clear, there was fresh concern as to the souring property market, and considerable regret that this stood in the way of settlement. There is, in short, no realistic evidential basis for Mr Quinn's assertion that he discovered the subdivision consent application had lapsed prior and not subsequent to his entering into the agreement, and no credible attempt

to explain the inherent improbability, the evidence considered as a whole, of that assertion.

*Conclusion*

[55] A robust approach to Mr Quinn's evidence is plainly warranted. Mr Quinn's evidence as to when he discovered the subdivision consent application had lapsed is entirely lacking in credibility. On application of a robust approach I reject it. The evidence considered as a whole establishes that he discovered the subdivision consent application had lapsed prior to entering into the agreement on 16 November 2007. That is Ms Jenner's evidence corroborated by a carefully kept and comprehensive diary. It is consistent with Mr Quinn's email of 24 September 2007. It is consistent with his failure to raise the issue of subdivision consent in his email of 22 November 2007, or thereafter. It is not called into question by any explanation that Mr Quinn might have otherwise chosen to advance in his evidence.

[56] That being so, and Mr Quinn's having chosen nonetheless to enter into the agreement, it was his own deliberate decision that led him to do so, and not any representation as to subdivision consent that Ms Jenner may or may not have made. Mr Quinn has no arguable defence to Mr Blundell's claim. I order accordingly.

**Result**

[57] I grant summary judgment on Mr Blundell's claim as follows:

a) For the sum of $510,313.84 per Mr Blundell's statement of claim; and

b) For interest under the agreement for sale and purchase on $350,000 from 12 October 2009 until the date of judgment.

**Costs**

[58] Costs should follow the event. Mr Blundell is therefore entitled to costs on a 2B basis with disbursements as fixed by the Registrar.

**Leave**

[59] Leave is reserved in the event further submissions are needed with respect to the calculation of interest. A memorandum may be filed on **two days' notice** if the Court's further input is needed.

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Associate Judge Sargisson