

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

**I TE KŌTI MATUA O AOTEAROA
MĀWHERA ROHE**

**CIV-2019-418-32
[2021] NZHC 2717**

BETWEEN CHRISTOPHER JOHN MEATES and
DONNA MARIE MEATES
Plaintiff

AND EILEEN MARIE TOPLISS
Defendant

Hearing: 9–11 August 2021

Appearances: T J Mackenzie for Plaintiffs
A C Hughes-Johnson QC and N Reive for Defendant

Judgment: 11 October 2021

JUDGMENT OF OSBORNE J

This judgment was delivered by me on 11 October 2021 at 3.30 pm pursuant to Rule 11.5
of the High Court Rules

Registrar/Deputy Registrar
Date:

[1] The owner of a sizeable block of land sets out to subdivide the land into two lots, planning to sell Lot 1. She obtains from the local Council resource consent to subdivide the property into Lots 1 and 2, with Lot 1 to be disposed of. The following year she signs (along with a couple) a brief document in which the couple agree to pay her \$400,000 (including a \$10,000 deposit) “for the purchase of her land”. A year later, after the intervention of her family, she seeks to return the deposit and asserts that she is not legally required to complete a sale of her land to the couple.

[2] The couple issue this proceeding in reliance upon the document as an enforceable contract.

[3] The owner defends the claim on the basis that she did not intend to be bound by the document, the terms of any agreement lacked certainty, the recording of the material terms of the agreement did not meet the requirements of s 24(1) Property Law Act 2007, and the agreement is not enforceable by reason of its being obtained by duress, undue influence or resulting from unconscionable dealing.

[4] The plaintiffs seek an order for specific performance. The defendant says the claim should be dismissed.

The evidence

[5] Fourteen witnesses were called:

Plaintiff's witnesses

- (a) Donna Meates: one of the two plaintiffs, who had the dealings over Lot 1 with the defendant during 2017 and took the agreement to the defendant in December 2017 to be signed;
- (b) Christopher Meates: her husband, a miner, who gave evidence as to his plans for Lot 1 and the disbursements incurred in relation to its purchase;
- (c) Garry Lindbom: a character witness;

- (d) Amanda Dodds: another character witness;
- (e) Kelvin Clapshaw: who says the defendant told him of her sale of Lot 1 to the plaintiffs;
- (f) Ryan Langridge: who negotiated to buy Lot 1 from the defendant and made a formal offer of purchase at \$500,000 in January 2016, which the defendant rejected;
- (g) Clarissa Turner: who saw “For Sale” signs in late 2018, made enquiries, and alerted her mother to the land; and
- (h) Prue Turner: Clarissa Turner’s mother, who unsuccessfully pursued a discussion with the defendant for purchase of Lot 1;

Defendant’s witnesses

- (i) Eileen Topliss: the defendant, who took steps towards subdividing her land and signed the document with the plaintiffs;
- (j) Graeme Topliss: the defendant’s elder son, who gave evidence about his dealings with his mother and his being shocked to find, ten months after she had entered into the agreement, that she had done so;
- (k) Robert Topliss: the defendant’s younger son, who also spoke about his dealings with his mother both before and after becoming aware of the agreement;
- (l) Gerhard Fitzgerald: the defendant’s brother who spoke of his observations of the defendant and her revealing to him, four months after the agreement was signed, that she had done something, with detail of the steps that then followed;

- (m) Shannon Hopkins: a surveyor and principal of Thorn Surveyors, who has undertaken the surveying and subdivision process of the defendant's land; and
- (n) Michael Curragh: the manager of Greg Daly Real Estate, who gave evidence of preparing a marketing appraisal on 3 December 2014 for the defendant and the defendant not signing an agency agreement.

The written agreement

[6] The agreement signed by the Meates and Mrs Topliss on 20 December 2017 reads:

Chris and Donna Meates hereby pay a \$10,000 deposit to Eileen Topliss for the purchase of her land in Kumara. A further \$10,000 cash will be paid, along with \$380,000 (which will go through our lawyers) at the completion of the purchase.

The facts

Introduction

[7] I will now set out the facts. Where the evidence was consistent as to factual matters, I will not refer to the particular witnesses. Where there were inconsistencies to be resolved, I will refer to the particular witnesses at that point.

Kumara

[8] Kumara is a small West Coast township, located about 20 km from Greymouth. As described by witnesses, most residents know one another, at least to some extent.

Mrs Topliss's circumstances

[9] Mrs Topliss is now 85 years old as at October 2020. She has been widowed some 30 years. Her two children, Graeme and Robert, live respectively in Greymouth and Western Australia.

[10] Mrs Topliss lives on a residential property at Fifth Street, Kumara. Directly adjacent is a block of farm land, approximately 79 ha (the farm block), which Mrs

Topliss owns. Mrs Topliss has also owned and trained racehorses, until around 2012. In addition to the farming operation, parts of the farm block were also mined until the mid-1990's. There is also on the farm block, on Greenstone Road, a rubbish dump which Mr and Mrs Topliss privately ran until it was subdivided off in the 1990's and sold to the Westland District Council, following which Mrs Topliss was employed to manage the dump for quite a number of years.

[11] Some years ago, to lower her workload and to increase her cashflow, Mrs Topliss leased the grazing land on the farm block to a local farmer, Murray Stewart, and that lease has continued.

The farm block

[12] Mrs Topliss's farm block is described by Mr Curragh as comprising approximately 30 ha in pasture, 45 ha of rough grazing/pakahi land, with the remaining three ha occupied by sheds and yards close to Mrs Topliss's house (the shed area). Mr Curragh describes it as "ideal run-off for a dairy farmer with potential to develop the pakahi areas".

The planning of a subdivision

[13] In 2015, when Mrs Topliss was 78 years of age, she gave thought to selling the farm block (without the shed area). This was because of her age and the fact that her family did not want the farm.

[14] Mrs Topliss instructed Mr Curragh to undertake a market appraisal of the farm block, with an assumption that three ha would be surveyed off for the shed area, leaving the remaining farm block at 75 ha. For subdivision purposes, these come to be known respectively as Lot 1 (farm block) and Lot 2 (shed area).

[15] Mr Curragh reported on 3 December 2014 that Lot 1 would have a total sale price in the vicinity of \$405,000.

[16] It was anticipated meetings between Mrs Topliss, Michael Curragh and the surveyor, Mr Hopkins, would follow, and they did. In April 2015, Mr Curragh

produced a draft subdivision plan showing Lots 1 and 2 (respectively 75.8920 ha and 3.0480 ha).

Marketing Lot 1

[17] Mr Curragh remained in contact with Mrs Topliss during 2015. In September 2015, through her solicitor Beverley Connors, he sought to obtain an agency appointment. He submitted an agreement for an agency which would have commenced in October 2015. He indicated he had at least two interested buyers wanting to buy a block such as Lot 1. Around the same time, Mrs Topliss arranged with her son, Graeme and his wife, for them to provide their property as security for a \$20,000 loan to go towards the subdividing and selling of Lot 1, to be repaid out of the proceeds of sale.

[18] In October 2015, Mrs Topliss is recorded by her solicitor as going to get the boundary (between Lots 1 and 2) straightened out as it would be easier to fence. On 20 October 2015, Mrs Connors records in correspondence that the plan has been agreed on and the resource consent application is underway. In the same email, Mrs Connors advises Mr Curragh in relation to the agency agreement:

Eileen took it with her a week ago. I think you need to go and see her and get her to commit to you as she seems to be drifting. I've explained that your commission will reflect your work and that you will get her the best price. She is also concerned about who will buy it as they will be her neighbours so I assume she is looking for a buyer herself. She clearly needs help with this Michael so you need to go and see her to get it sorted. I'd be very concerned if she under sold it or chased real buyers away in error.

[19] It transpired that Mrs Topliss did not give Mr Curragh an agency to sell Lot 1. In her evidence Mrs Topliss stated that she was not prepared to sign the agency agreement. She explained that she had not been happy with a photograph that Mr Curragh had taken of Lot 1 because it showed a large number of trees which were not on her property and did not show the farm block with open paddocks.

[20] At that point of her evidence Mrs Topliss stated Lot 1 had not been on the market for very long, and there had been no interest in the farm while it was on the market. She was unsure whether Mr Curragh had ever advertised Lot 1, and at the

time when the photograph was taken she told him that she was withdrawing the property from sale.

[21] Mrs Topliss's reference to Lot 1 not having been on the market for very long was clearly a misunderstanding on her part. Mr Curragh had no agency and had not been marketing the property. Any understanding in the community that Mrs Topliss might have Lot 1 available for sale is likely to have come from Mrs Topliss herself, through word of mouth. For instance, Mr Langridge, who was shortly to make an offer for Lot 1, learnt from the postie that Mrs Topliss had been talking about selling a large block of her land.

[22] In January 2016, it emerged from communications between Mrs Connors and Mr Hopkins that the resource consent process had been held up while Mr Hopkins was waiting for Mrs Topliss to put him in \$800 funds for the subdivision deposit.

[23] In the meantime, Mr Langridge (having heard of the possible sale of Lot 1) had visited Mrs Topliss. She had confirmed that she wanted to sell a large part of her land. She showed him around the property and showed him the draft survey plan. She said either that she had obtained resource consent or was obtaining it and would complete the subdivision if she had a deal to sell Lot 1. Mr Langridge then undertook significant due diligence, including taking a helicopter overflight across the property. There was some negotiation. Mrs Topliss initially indicated an asking price of \$350,000 which Mr Langridge stated the parties had orally agreed upon. But when he indicated his solicitor would draw up a formal agreement, Mrs Topliss stated she wanted more money, and named \$500,000. Mr Langridge and his wife decided to make an offer at that level.

[24] Mr Langridge's banker obtained from Mrs Connors a copy of the April 2015 draft subdivision plan on which there had been written the words:

I agree to positions hereon for Resource Consent purposes

EM Topliss (signature)

14.10.2015

[25] Around 26 January 2016, Mr Langridge's solicitor provided the form of agreement (signed by Mr Langridge and his wife) to Mrs Connors. Mr Langridge stated, and I accept, that after a period of a couple of weeks, Mrs Topliss came back to him to say that she had had further interest in the property from another local farmer who would be offering a figure of \$550,000 to \$600,000. (There was no evidence at trial that Mrs Topliss in fact had such other interest at that figure). Mr Langridge, upon making enquiries of other potentially interested farmers, came to the view that Mrs Topliss was trying to obtain a higher purchase price, whereupon he collected the form of agreement from Mrs Topliss and did not proceed further.

[26] Mr Langridge stated, and I accept, that in his dealings with Mrs Topliss he found her to be very confident and in control of what she was doing. She had been happy to show him around and to give him all the details several times. She appeared to know precisely what she wanted to sell in terms of Lot 1 and how it would be subdivided by reference to the plan which he was shown and was attached to the agreement for sale and purchase.

Resource consent

[27] Mr Hopkins was able to submit to the Westland District Council on 9 February 2016 the application for resource consent, with the deposit of \$800 attached.

[28] On 11 March 2016, the subdivision and land use consent was granted to Mrs Topliss, valid until 11 March 2021. (It has since been extended).

Mrs Topliss erects a "For Sale" sign

[29] Mrs Topliss stated that, at some time after the Langridge offer, she decided not to sell Lot 1. She explained she erected in that following period a "For Sale" sign, being a sign which she had but had never used. She explained that she erected it because she had found some marijuana plants growing on Lot 1 near Greenstone Road and the Police had advised her to erect a sign on the fence. She stated that this was "more a way to scare the drug grower off my land, rather than to get a sale". It is nonetheless clear from that latter evidence that, contrary to Mrs Topliss's evidence she

had “decided not to sell the farm block”, she was still in the market for a sale (even if not determined in that regard).

The plaintiffs’ interest in Lot 1 — February to May 2017

[30] Mr Meates is a nephew of Mrs Topliss.

[31] Mr and Mrs Meates have a mining operation, based in Kumara, but they were mining in Callaghans with a commitment to Ngāi Tahu for at least 10 years. They were looking for a large block of land on which they could build a workshop for their machinery. They also wanted to eventually build a home on the land and were looking for around 70 to 100 ha in the area of Kumara.

[32] Mr and Mrs Meates learned that Mrs Topliss was looking to sell a large block of her land. It was common knowledge that others had tried to buy the land.

[33] Mrs Meates stated that, in February 2017, she visited Mrs Topliss at home to discuss the property. She asked her if the property was for sale which Mrs Topliss confirmed. Mrs Topliss explained that she was splitting the property to sell a larger lot. Mrs Meates recalls mention of either 75 ha or 78 ha.

[34] Mrs Meates stated Mrs Topliss explained she was too old to be looking after the farm and she wanted money to visit her son in Australia. Mrs Meates stated Mrs Topliss said it would be good if the Meates purchased the property as she would like them as neighbours, having had offers from other people whom she did not want as neighbours.

[35] Mrs Meates stated Mrs Topliss said she was looking for around \$500,000 for Lot 1 and the subdivision process was underway already.

[36] Mrs Meates said she then explained the Meates would need to get a valuation done as they would require bank funding for the purchase. Mrs Meates stated she explained to Mrs Topliss the Meates would prefer to keep this discussion to themselves as the Meates did not like everyone knowing their business in such a small town. Mrs

Meates stated Mrs Topliss agreed as she also didn't want the farmer who was leasing the paddocks to know that she had a buyer.

[37] Mrs Meates stated this initial visit lasted approximately one hour and the discussion around how the smaller lot would be cut off was completed without reference to the Thorn Surveyors' plan (which Mrs Meates was later to see).

[38] Mrs Topliss's evidence of initial meetings with Mrs Meates was very different. Mrs Topliss stated she started receiving visits from Mrs Meates around the beginning of 2017 or possibly earlier. She stated she thought Mrs Meates was being nice to her because she had been keeping poor health, and was just "friendly and nice". She stated the two would just chat away during the visits about all sorts of things "that were about nothing at all really". She stated visits "continued throughout 2017" occurring more often at the end of 2017. Mrs Topliss stated Mrs Meates did not at any time express interest in the land or her intention to purchase it, until near the end of the year. She noted Mrs Meates always came to her house alone. She stated Mrs Meates neither asked for nor obtained any information (including plans) from her about the land.

[39] Mrs Meates, on the other hand, gave evidence that, after her initial (February 2017) visit to Mrs Topliss, she arranged for Preston Rowe Paterson (PRP) to undertake a valuation of Lot 1. The written report subsequently provided by PRP was a valuation as at 21 March 2017, but was provided to Mr and Mrs Meates on 3 May 2017. It is recorded the instructions were received on 14 March 2017. (In the meantime, after his inspection of the property Mark Bolland of PRP had obtained a copy of the subdivision survey plan from the Council, which he then incorporated into his valuation report).

[40] Mrs Meates stated she had seen the "for sale" sign erected outside the property some time in March. She had contacted Mrs Topliss by phone on 13 March 2017 (producing telephone records which confirmed she had then made a telephone call to Mrs Topliss) to get permission and access for Mr Bolland, the valuer, to go on site to value Lot 1. She said she explained to Mrs Topliss the valuer was coming to value Lot 1 and Mrs Topliss agreed to that. She told Mrs Topliss she would contact her when Mr Bolland was ready so she could get the key to the gate. She says a few days later,

she visited Mrs Topliss at home, told her the valuation was to be done on 21 March 2017, and they again looked on site at the land. Mrs Topliss showed her the sheds area to be subdivided off (as Lot 2), pointing out a straight line from the back fence on a diagonal to include the sheds. Mrs Meates stated that, although she had not seen the Thorn plan at this point, the line she subsequently saw of the Thorn plan is a good representation of what Mrs Topliss had discussed with her. She said Mrs Topliss also confirmed there would be two titles issued.

[41] On 21 March 2017, Mrs Meates met Mr Bolland at the gate to the property, and explained what she understood about the land in the subdivision to him.

[42] In her evidence, Mrs Topliss accepted (at a date she could not remember) Mrs Meates had come to see her and asked if she could go out the back of the farm to have a look. She gave Mrs Meates the key which was later brought back. Mrs Topliss stated she did not understand Mrs Meates was considering purchasing the farm at this time, "otherwise I would not have given her the key".

[43] The PRP report valued Lot 1 at \$415,000.

[44] Mrs Meates stated she went to Mrs Topliss's home a few days after receiving the PRP valuation in May 2017 to show her the valuation. They went through the report, including the Thorn plan.

[45] Mrs Meates stated she then, on behalf of her husband and herself, offered Mrs Topliss \$400,000 for Lot 1. She stated Mrs Topliss said she was happy with that and accepted the offer.

[46] In his evidence, Mr Meates confirmed that, after the Meates had received their valuation, Mrs Meates headed off to make a \$400,000 offer to Mrs Topliss. Mrs Meates reported back that Mrs Topliss had accepted the offer and would be finishing off the subdivision. Mr Meates said, in the second half of 2017, there was regular communication between Mrs Topliss and Mrs Meates and Mrs Meates relayed to him that Mrs Topliss was still having trouble and delays with the subdivision.

[47] In her evidence-in-chief, Mrs Topliss referred to no particular visits between Mrs Meates' visit to collect and drop off the gate key and early December 2017.

[48] In cross-examination, Mrs Topliss denied Mrs Meates had visited her (earlier in the year) to talk about purchasing the land Mrs Topliss wanted to sell. Mrs Topliss stated that Mrs Meates' earlier visits had been "to feed me meals".

[49] In cross-examination, Mrs Topliss maintained she did not know why Mrs Meates had asked for a key, stating Mrs Meates had simply said she wanted to go for a look. Mrs Topliss denied there had been any mention of Mrs Meates' valuer. She denied Mrs Meates had subsequently come back to her house with a copy of the valuation report, including the plan. She stated the first time she knew anything about the valuation was when Mrs Meates came with the money (in December 2017). Mrs Topliss denied there had ever been an (oral) agreement reached with Mrs Meates in May 2017.

[50] Mrs Topliss was cross-examined by Mr Mackenzie as to her raising \$30,000 finance from the bank in June 2017. Initially she said she was sure that she had not borrowed the money to spend on the subdivision but later in her evidence stated that she could not remember what the loan was for, adding:

The loan probably would've been to clear the farm as I had fencing things to do.

[51] Mr Mackenzie pointed out to Mrs Topliss that her agreement with her brother expressly recorded that the loan (and interest and bank charges) would be repaid from the proceeds of the first property she sold in Kumara and that the money was being used to facilitate the subdivision and creation of new titles ready for sale, Mrs Topliss replied:

Yeah well I knew I wanted the loan to tidy it up a bit — fencing. But I didn't get it divided — subdivided.

Mrs Topliss's reference to the property not having been sub-divided recognises the title issue process was still not completed. The surveyor, Mr Hopkins, confirmed the conditions attached to the resource consent have now been met and the subdivision

application can be granted on payment of the application fee and Mrs Topliss's reserve contribution. But Mrs Topliss has yet to have those steps put in place.

Mrs Topliss and Kelvin Clapshaw discuss the sale of Lot 1

[52] An important witness in relation to the events of 2017 was Kelvin Clapshaw, an auto mechanic who has known both Mr and Mrs Meates and Mrs Topliss for years. Mr Clapshaw said he had done a lot of work for Mrs Topliss, dealing with her may be half a dozen times or more a year. His work included work on her car, the motorbike which the grandchildren used during the holidays, and the lawn mower. Mr Clapshaw relayed an incident in June 2017 when he went to Mrs Topliss's house to fix her lawn mower. After he finished the job, Mrs Topliss offered him a coffee and they talked. Mrs Topliss told him someone was buying the farm but she was having trouble with the Council in relation to subdivision and access to the property. She said she was selling the property because it was too much for her. She said it was "locals" who were interested. Mr Clapshaw said to her "it's not Donna and Chris is it?" to which she replied "yes it is". Mr Clapshaw explained he knew the Meates had been looking for a block of land so he had "put two and two together".

[53] Mr Clapshaw said Mrs Topliss further explained she needed to subdivide as she wanted to keep the sheds as her son's gear was in it. Mr Clapshaw said she also mentioned she was having trouble with the farmer who was leasing her paddocks. Mr Clapshaw said he told Mrs Topliss he would let Mrs Meates know of that when he next saw Mrs Meates.

[54] Mr Clapshaw was subsequently to see Mrs Topliss again in mid-2018, returning to put a radiator in her vehicle. He said on that occasion he asked how things were going with the sale of the farm, to which she replied that one of her boys had got involved, and he was not happy with the price she had negotiated with the Meates.

[55] Mr Clapshaw said in his dealings with Mrs Topliss she never indicated she had felt any pressure or intimidation from Mrs Meates. She seemed to genuinely want to sell the property and was fine with what was occurring, until the discussion about her son getting involved.

[56] Mrs Topliss gave evidence in response to Mr Clapshaw's evidence. She stated she has only known Mr Clapshaw for about five years and she does not accept he has done work as frequently as he has stated. In relation to the incident in June 2017 which Mr Clapshaw referred to, Mrs Topliss stated she does not recall Mr Clapshaw coming into her house at any time or the June 2017 visit to fix her lawn mower. She states she does not believe she would have discussed matters relating to someone buying the farm or difficulties with the Council with Mr Clapshaw as "these matters were nothing to do with Mr Clapshaw". She further noted there had been no trouble with the Council in relation to the subdivision or of access to the property. She also stated it was not true that the property was becoming too much for her, because she had leased it at that time. She further stated she was not having trouble with the farmer who had leased the paddock, enjoying a good relationship with him.

[57] She stated that she did recall Mr Clapshaw returning to put a radiator in her vehicle but is unsure of the date and is unable to recall any conversation with Mr Clapshaw in which he asked how things were going with the sale.

[58] In further evidence, Mr Clapshaw reasserted he had regularly come out to Mrs Topliss's property. In relation to the mid-2017 visit, he confirmed the discussion about the Meates had "just come up in conversation" and he stood by the contents of the discussion as he had related them. He believed Mrs Topliss was telling him the truth when she discussed a problem with access.

[59] In cross-examination, Mr Clapshaw restated he had been in Mrs Topliss's house "on many occasions". He explained the layout of the rooms in the house in some detail. In relation to the discussion about difficulties with the lessee, he stated that he was going by what Mrs Topliss told him. He added he believed she had stated that there were problems with the fencing and with the stock on the farm.

[60] When it was suggested to him he had not made a visit in mid-2018, Mr Clapshaw stated he was going off an invoice book, relating to fixing Mrs Topliss's vehicles, which he had dug out. He said he believed the dates he had are "fairly accurate of timeframe". All this was in response to cross-examination as to the fact

Mrs Topliss's sons were to say in evidence they only found out about the agreement and the difficulties with it in October 2018.

[61] When Mr Clapshaw was cross-examined on the basis Mrs Topliss did not regard any of these matters as Mr Clapshaw's business and she does not believe she would have discussed them with him, Mr Clapshaw agreed it was not any of his business. But he said the discussion had arisen in a "passing conversation" when he happened to ask Mrs Topliss out of interest how she was getting on with the farm sale. Mr Clapshaw concluded his evidence by saying the fire service look after their community and their elders, and Mrs Topliss was one of his elders with whom he had always got along and would assist or help if he could.

The plaintiffs' dealings with Mrs Topliss — May to December 2017

[62] In her evidence, Mrs Meates described events in the months after what she said was the May 2017 visit which concluded with the \$400,000 oral agreement. Mrs Meates said in those following months she visited Mrs Topliss on a number of occasions to see how the subdivision was progressing. She said she also received numerous calls from Mrs Topliss saying she was having no end of problems with Council getting consent for the subdivision, and that she could never get responses from anyone at the Council. (Mrs Meates noted she now knows the consent had already been granted).

[63] Mrs Meates said Mrs Topliss said she still wanted to sell to her and did not want Mrs Meates to think she had not been trying to sort this out. She also told Mrs Meates on one occasion the surveyors had been in contact with her with someone interested in buying the property and she had told the surveyors she already had a buyer. (This information accords with the evidence — below at [101] — as to Mr Hopkins' discussing with Mrs Topliss the interest of a third party in Lot 1). Mrs Meates said Mrs Topliss referred to the Council having required her to widen the road on the property and that Mrs Meates offered to bring some fines down from the gold claim and help dig the road out. She stated Mrs Topliss later told her her brother Gerhard (Fitzgerald) had done that for her but she was now having trouble with the surveyors.

[64] Mrs Meates described these matters as having carried on for several months, until December 2017.

[65] Mrs Topliss in her evidence confirmed Mrs Meates made continuing visits throughout 2017, but stated that during those visits they would just “chat away ... about nothing at all really”, not about her land.

[66] In late November 2017 Mrs Topliss was hospitalised with pneumonia for a few days. She stated Mrs Meates, for the first time, brought her two cooked meals to put in her fridge or freezer (this evidence being at odds with her evidence (above at [48]) that Mrs Meates’ earlier visits had been “to feed me meals”). Mrs Topliss said that Mrs Meates told her on this visit (for the first time) she was interested in purchasing Lot 1 and had \$10,000 as a deposit. Mrs Topliss says that Mrs Meates said she would be able to go away and have a good holiday for herself. She stated Mrs Meates said not to tell anyone about the offer, not even her sons. Mrs Topliss said at this time the property had been “off the market for about two years”.

[67] Mrs Topliss said for the rest of December Mrs Meates hounded her on an almost daily basis, repeating her plans to buy the property and continually stressing that she should tell her no one of her interest. Mrs Topliss said on a number of occasions Mrs Meates “stood over me. I felt threatened”. On each occasion, Mrs Topliss stated, Mrs Meates would raise the sale of the land and Mrs Topliss would tell her that she did not want to sell.

[68] Mrs Topliss stated Mrs Meates on these visits said it was their intention to mine the farm property and to erect a dwelling house on it.

[69] Mrs Topliss stated Mrs Meates, on Wednesday 20 December 2017, turned up at her home again shortly before 3.00 pm, while she was standing by the kitchen bench. She said Mrs Meates put in front of her a document Mr and Mrs Meates had already signed and dated and told Mrs Topliss to sign it. Mrs Topliss said she read the document. She stated Mrs Meates then said: “here’s some money. Go and have a good holiday”. Mrs Topliss stated Mrs Meates opened a bag in which she had \$10,000 in bank notes, which she put on the top of the bench. Mrs Topliss said they had “quite

an argument over this ... for quite a time” because Mrs Topliss did not want the money and did not want to sell the farm. She said she tried to give the money back repeatedly but Mrs Meates refused to take it.

[70] Mrs Topliss added Mrs Meates was “very demanding”, describing her as a “strong woman who engages in kick boxing as a sport”. She said that Mrs Meates was standing with her arms spread and leaning in towards her and repeated time and time again that she was not to tell anyone about the money or the sale of the property.

[71] Mrs Topliss said Mrs Meates made it quite clear she had to sign the document there and then. She did not believe that Mrs Meates would have allowed her to try to contact her lawyer, but would have insisted that she sign the document there and then.

[72] Mrs Topliss stated in the end she signed and dated the document. She said she felt really upset and bullied and that is the only reason she ever signed “her so-called agreement”. Mrs Meates stated there was not a Thorn plan produced with the document when she signed it.

[73] She stated she threw the money in the bag back towards Mrs Meates who threw the money back at her and went out the door.

[74] Mrs Topliss stated she was unable to recall whether she considered consulting her solicitor, knowing at the time she would have been away on her Christmas break.

[75] Mrs Topliss stated she afterwards felt panicked and put the money in a drawer under her bed, forgetting it in the following days when she was very involved cleaning and painting at the Kumara Race Club for the coming races, working long hours.

[76] The Meates gave a very different picture of the events in December 2017. Mr Meates described his wife and himself thinking they should have a written document recording the earlier oral agreement. The two typed up the document. For convenience, I repeat its contents:

Chris and Donna Meates hereby pay a \$10,000 deposit to Eileen Topliss for the purchase of her land in Kumara. A further \$10,000 cash will be paid, along

with \$380,000 (which will go through our lawyers) at the completion of the purchase.

[77] Mr Meates confirmed in his evidence he had recognised that, if Mrs Topliss were to be bound, the Meates needed to have something in writing.

[78] Mrs Meates stated in her evidence at the time Mrs Meates visited Mrs Topliss to “put the deal in writing” the Meates had also become concerned about the current state of the property, which had not been fertilised or mown, and had a lot of ragwort and gorse on it.

[79] Mrs Meates said she explained to Mrs Topliss the Meates thought the agreement should be put in writing and they should pay a deposit — that would mean she was covered (in case the Meates pulled out) and the Meates were covered (in case someone else came with an offer to purchase). Mrs Meates stated Mrs Topliss said:

you don't have to do that Donna as I trust you and I won't be selling it to anyone else.

Mrs Meates responded they would both be covered this way. Mrs Meates said Mrs Topliss was happy with this and signed the written agreement and took the money.

[80] Mrs Meates said they knew in December 2017 they could not get a full sale and purchase agreement from solicitors signed because at that stage Lot 1 had not been subdivided off. Mrs Meates stated she explained to Mrs Topliss the deposit would give her some funds to finish off the subdivision process and that another \$10,000 would be available if Mrs Topliss needed it. She said they agreed that lawyers were to draw up a formal agreement for sale and purchase once title became available.

[81] Mrs Meates stated she attached one of the original title plans to the contract although it was not one of the later survey plans. She stated they both knew precisely what was being sold, which was Lot 1 from the 2015 survey plan which had been included in the valuation report.

[82] Mrs Meates stated there was no pressure at all from the Meates.

[83] In oral evidence, Mrs Meates further explained the reference in the agreement to “going through our lawyers” in this way:

The agreement that was signed was our agreement but when you actually could go to finish the sale then once the subdivision and everything was done then the changeover of money and the title deeds needs to go to a lawyer, the same as what it does when you buy a home. It needs to all go through lawyers.

[84] She then explained the absence of a settlement date in the agreement:

We couldn't give a date because the subdivision and the consents hadn't been done by then, well apparently the consents had but we did not know that. Because that hadn't been done, we couldn't give a date because we didn't know when the council would actually get that work done. So therefore we couldn't put a date on it, sometimes it takes months, sometimes it can take several months. So we didn't know when that was actually going to happen. So we couldn't put a date on it.

[85] She stated it was her understanding the transfer would occur as soon as Mrs Topliss had completed the subdivision and the consents, when the Meates would be able to go to the lawyers and change the money over. She stated Mrs Topliss said that she would do that immediately but Mrs Meates knew it was going to take longer.

[86] Mrs Meates produced her telephone records which indicate she had made three calls to Mrs Topliss in 2017 and four calls in 2018. She estimated Mrs Topliss would have telephoned her five or six times.

[87] Mrs Meates stated Mrs Topliss's allegations that she had been hounded and was scared of being assaulted, with Mrs Meates standing over her were completely untrue. Mrs Meates responded it was untrue that she had hounded Mrs Topliss on an almost daily basis about the plans she had for the property. Mrs Meates stated she and Mrs Topliss got on very well through this whole process, never once had an argument and had no problems whatsoever. Mrs Meates stated she prided herself on being a kind person, liked helping people and is an honest person. Mr Mackenzie led evidence from Mrs Meates as to her community involvement, to be referred to by later witnesses, which has been significant.

[88] In cross-examination, Mrs Meates maintained that her visits to Mrs Topliss through 2017 were in relation to the purchase of the property, involving not many

visits at all. She stated she took her a roast meal (not two) when Mrs Topliss told her that she had just got out of hospital. Mrs Meates was emphatic that she did not raise the purchase for the first time in December, having done that on her first visit back in February 2017.

[89] When cross-examined as to her discussion about the \$10,000 deposit, she accepted that she may have said Mrs Topliss should go on a holiday (as well as giving her the money to help her with paying her subdivision costs).

[90] Mrs Meates rejected the suggestion she had told Mrs Topliss to keep matters to herself in strong terms. She explained she and Mr Meates liked to keep their personal and business life to themselves because Kumara is a very small community, where people talk a lot. Mrs Meates denied she had said to Mrs Topliss not to tell her family. She assumed that Mrs Topliss would tell her family. Mrs Meates said she had been talking about “people in the community finding out”. When it was put to Mrs Meates again that she had told Mrs Topliss not to tell anyone including the family, Mrs Meates replied that “Eileen is a woman of her own” and she was sure that she would tell her family anything.

[91] Mrs Meates denied Mrs Topliss had ever told her she did not want to sell Lot 1. She said Mrs Topliss was very involved in the whole process and referred to the various discussions they had, including in relation to the road formation.

[92] When Mr Hughes-Johnson cross-examined Mrs Meates, by reference to the December 2017 documents, about matters that would be included in the “next agreement with the lawyers”, Mrs Meates stated the only time the lawyers were going to be brought in was when the money was to be paid over. She explained when questioned as to the lawyers drawing up a formal agreement for sale and purchase:

A formal purchase agreement, sales and purchase is the actual paying of the property.

[93] When Mr Hughes-Johnson suggested such an agreement would contain provisions about when money were to be paid etc, Mrs Meates replied she would not

have a clue. She referred to the December 2017 document as the agreement that they had.

[94] There is thus a sharp conflict in the evidence of Mrs Meates and Mrs Topliss as to their contact in the months following the execution of the 20 December 2017 agreement.

Events after December 2017

[95] Mrs Topliss stated, in the weeks following the signing of the agreement, Mrs Meates visited her uninvited on a number of occasions. This was despite Mrs Topliss making it plain she did not want her there. She said the occasions were all similar. On one occasion, after she told Mrs Meates to leave, the latter came and sat in a chair beside her, leaned over her and was “right in [Mrs Topliss’s] face”. Mrs Topliss states she was concerned if she said the wrong thing to Mrs Meates she might have done something stupid like attack her. She stated Mrs Meates was sitting and crying. She said Mrs Meates finally left when she realised that Mrs Topliss was not having anything to do with her. She said Mrs Meates’ crying occurred on more than one occasion. She said Mrs Meates kept on about buying the property from her but she repeatedly told Mrs Meates it was not for sale. She said she spoke to Mrs Connors at one point and thereafter started locking her door and keeping it locked even when she went outside.

[96] In her initial brief of evidence, before Mrs Topliss’s brief was served, Mrs Meates in referring to the period in early 2018 simply stated the same pattern (as earlier) continued through the first half of 2018, with Mrs Topliss telling the Meates she was working on it but the Council were holding it up.

[97] In evidence responding to what Mrs Topliss had said about that period, Mrs Meates stated she never visited Mrs Topliss over the few weeks following the signing of the agreement and was never told by Mrs Topliss she did not want her there at any time. She was never asked to leave. She stated she was never crying at Mrs Topliss’s home at any time, and what Mrs Topliss is saying about such visits is untrue.

[98] The next evidence related to Mrs Topliss's dealing with the \$10,000. She stated, at some point after the Kumara race meeting (held annually in January) when things had quietened down, she went to the drawer where the money was and noticed the bag of money. She says she then made an appointment to see her bank manager and, in the company of her sister-in-law Joan Fitzgerald, went to see the bank manager, explained the situation and deposited the money. As she had never counted the money, the bank staff did that and it was exactly \$10,000 tied in bundles. Mrs Topliss stated she had never intended to use the money and has not done so.

[99] The money was subsequently held on a deposit until attempts were made by Mrs Connors to return it to the Meates in 2019. The Meates rejected those attempts.

Potential buyers in 2018

[100] I will return shortly (from [108] below) to Mrs Topliss's interactions with family members from March 2018, but will first identify the evidence relating to other potential buyers during 2018.

[101] Mrs Topliss's surveyor, Mr Hopkins, stated he was approached in 2018 on a confidential basis by a third party who asked if he knew of any blocks of land suitable for developing for honey production. Mr Hopkins thought of Mrs Topliss's property. As a result he spoke with Mrs Topliss and sounded her out on an offer on behalf of the third party for, he recalls, initially \$270,000. He stated that Mrs Topliss was not interested at that amount so he was asked by the third party to increase the offer, he recalls, to \$320,000, with the purchaser to do all the work and pay the fees associated with the purchase. Mrs Topliss also declined that offer.

[102] Mr Hopkins stated he also spoke to Mrs Connors, as Mrs Topliss's solicitor. He referred to an email response he received from Mrs Connors on 12 September 2018 in which Mrs Connors (after confirming that Mrs Topliss would be providing a \$3,000 cheque for the reserve contribution), went on to state:

Please let your friend know that Eileen has a buyer and really can't be dealing with anyone else unless they pull out. Unlikely but I'll let you know if it happens.

[103] In her evidence, Mrs Topliss stated Mr Hopkins had “offered to purchase the main block”. She stated she could not remember the amount, and she thought it was strange he should make an offer. She stated she told him the land was not for sale. She did not refer to Mrs Connors’ 12 September 2018 email (with the reference to the fact Mrs Topliss already had a buyer).

[104] Around the same time as these exchanges were taking place (in September/October 2018), Prue Turner approached Mrs Topliss to buy Lot 1. Mrs Turner gave evidence she had during that period learned from her daughter Mrs Topliss had land for sale. She said it was common knowledge that the land was for sale, as there were “For Sale” signs dotted around the property.

[105] Mrs Turner stated her daughter initially made a telephone enquiry of Mrs Topliss, and was told the property was “under negotiation”. Mrs Turner subsequently, when on the West Coast, sought to visit Mrs Topliss at home but she was not in. Mrs Turner stated she wrote a letter about six weeks later to Mrs Topliss, asking if the property was still for sale or under negotiation or back on the market. She said she received a phone call from Mrs Topliss several days later (her cell phone records indicating to her that it was on 28 November 2018), and Mrs Topliss told her the land had already been sold. When challenged in cross-examination in relation to that phone call, Mrs Turner stated she was absolutely positive about it. When told by Mr Hughes-Johnson that Mrs Topliss would say that the land had not been sold, Mrs Turner said Mrs Topliss had told her the land was sold and the reason she said that she knows positively is that she was ready to purchase with cash. She had told Mrs Topliss that in the phone call, to which Mrs Topliss replied it did not matter because it had been sold.

[106] In her evidence, Mrs Topliss referred to both the phone call and letter from Mrs Turner. In response to Mrs Turner’s request to buy the farm, she told her it was not for sale. Mrs Topliss said when she received the letter, her “home help” told her Mrs Turner was good friends with Mr and Mrs Meates. Mrs Topliss then became angry and threw the letter in the fire. Mrs Topliss did not refer to the phone call on 28 November of which Mrs Turner had given evidence. When I pointed out to Mrs Topliss that both through Mrs Connors (to Mr Hopkins) and directly herself to Mrs

Turner she had told people in 2018 that the property had been sold, Mrs Topliss responded:

Yeah, because I was getting hounded. People wanted to buy it all the time. Different ones. And the easiest way was to get rid of them and say it was been sold.

[107] When I asked Mrs Topliss to whom she was referring to when she said “there’s already a buyer and I can’t deal with anyone unless they pull out”, Mrs Topliss stated she did not know.

Mrs Topliss’s discussions with family members

[108] In the meantime a number of discussions took place between Mrs Topliss and family members.

[109] Mr Fitzgerald (Mrs Topliss’s younger brother) lives at Greymouth and works at his partner’s shop at Paroa. He is very close to Mrs Topliss. He describes her as someone who was pig-headed and wanted to do everything for herself, and did not like to bother him. He was aware Mrs Topliss had been considering what to do with her property as it had become more difficult for her to manage. He had in fact suggested selling part of it off, an idea which she initially seemed quite keen on but “would not follow it through”. He stated in his evidence that:

The only time she did anything anywhere near concrete about it was when she approached Mike Curragh of [Greg Daly] Real Estate.

[110] Mrs Topliss in discussion with Mr Fitzgerald would allude to her lack of cash. Mr Fitzgerald perceived she was struggling financially. He was aware from her that neither of her sons had shown any enthusiasm for taking on the property.

[111] Mr Fitzgerald explained that, although he had a very close relationship with Mrs Topliss, she would not discuss a business matter such as a purchase offer with him. Mr Fitzgerald also stated he would not know anything about her finances (other than that she had borrowed money off his brother to pay for a starter motor).

[112] Mr Fitzgerald observed a difference in Mrs Topliss in early 2018. Something appeared to be troubling her. She appeared forgetful.

[113] In March 2018, Mrs Topliss spoke to him at the shop in Paroa, saying there was something she needed to speak to him about confidentially. She said she had signed a piece of paper. She did not say what was on the paper. After a brief visit she left without saying anything more.

[114] Mr Fitzgerald stated the story unfolded over her next few visits. Mrs Topliss referred to the \$10,000 she had received from Mrs Meates. She told him Mrs Meates had stood over her in a threatening manner and told her to sign the document, and had told her not to talk anyone about it. She said she had tried unsuccessfully to push the money back to Mrs Meates. He said Mrs Topliss had explained she had not told him anything because Mrs Meates had instructed her not to.

[115] Mr Fitzgerald described Mrs Topliss as continuously visiting the shop and breaking down. He said at that point the problem was going nowhere and she needed legal representation. He was aware Mrs Topliss had been with Mrs Connors but understood from Mrs Topliss there was a conflict of interest. He says at that point he arranged for Mrs Topliss to see Mr Whitcombe of Whitcombe, Guinness & Kitchingham, and he accompanied her to see Mr Whitcombe. (It is clear there was a significant passage of time before these arrangements in relation to new legal representation occurred — the documentary record shows Mrs Connors was acting for Mrs Topliss throughout 2018 and at least until June 2019, with Mr Whitcombe not being engaged until sometime around October 2019).

[116] Mrs Topliss's younger son, Robert, was in the habit of speaking to his mother every few weeks from his home in Western Australia. He received a call from his uncle, Mr Fitzgerald, in September 2018, concerned about Mrs Topliss. Robert Topliss booked a flight to New Zealand arriving on 6 October 2018.

[117] He described his mother, on arrival, as being in a highly confused state, very down and troubled, and mentioning she did not have any money and did not know where it was going.

[118] Robert Topliss went through her papers and came across the agreement. He stated he was very confused and asked her what it was and she described it as a loan

because her car was broken. She said Mrs Meates had kept coming round and in the end asked her to sign the document, putting a stack of cash on the kitchen counter and telling her to spend it on herself. He said his mother had told him she had tried to give it back to Mrs Meates but she would not take it back. She then explained to him she had held it in the house for some three months before putting it in the bank, not knowing what else to do with it.

[119] He said his mother broke down, saying she had been so scared and felt bullied. He said his mother said to him she was told by Mrs Meates not to tell anybody, especially Graeme and himself. He said his mother said she did not understand “why family would do this to each other”.

[120] In cross-examination Robert Topliss stated he had not been aware of any steps his mother had been taking to sell Lot 1. In answer to my question, Robert Topliss indicated he had attended a meeting with Mrs Connors involving his mother, Graeme and himself in October 2018 before he returned to Perth. (This meeting must have occurred approximately one month after Mrs Connors had said in her 12 September 2018 email to Mr Hopkins (above at [102]) that “Eileen has a buyer and really can’t be dealing with anyone else”.)

[121] Graeme Topliss also gave evidence. He is a mine manager and lives in Greymouth and has regular weekly contact with Mrs Topliss. He has noticed over the last few years his mother becoming more confused, forgetting matters and losing items, and repeating herself over and over again.

[122] Graeme Topliss stated he was unaware his mother had signed any document relating to the farm until October 2018, when Robert made his visit to New Zealand. Graeme Topliss stated he would have expected to have been consulted about this at the time and to have known about it. He was questioned by Mr Mackenzie about the \$20,000 loan he and his wife had taken out in 2015 to provide money to Mrs Topliss to facilitate the subdivision but he appeared to have little detailed recollection of it.

[123] Graeme Topliss confirmed he had gone with Robert and his mother to see Mrs Connors while Robert was still in New Zealand, and he (Graeme) had then followed on with his mother with further visits a couple more times.

Further discussions between Mrs Topliss and Mrs Meates — late-2018

[124] In the meantime, while discussions commenced among the Topliss family and meetings were taking place with Mrs Connors, Mrs Meates was pursuing progress with Mrs Topliss. This was against the background, in Mrs Meates' evidence, that Mrs Topliss had led her to believe the Council were holding matters up.

[125] Mrs Meates states in September 2018 she visited Mrs Topliss, because the subdivision was dragging on and they wanted to get things sorted by Christmas. Mrs Meates states Mrs Topliss said on that visit "it will all be sorted by then". Mrs Topliss did not refer to that discussion in her evidence. Significantly, Mrs Meates' evidence as to the discussion is consistent with Mrs Connors' 12 September 2018 email to Mr Hopkins (above at [102]), recording Mrs Topliss had a buyer and that it was unlikely they would be pulling out.

[126] Mrs Meates stated she ran into Mrs Topliss at the Paroa Dairy in the following month, on 28 October 2018, and that Mrs Topliss said she was coming to see Mrs Meates on Wednesday to talk about the sale. Mrs Meates assumed she must still be having trouble with the Council or surveyors. She could not wait until the Wednesday so she called to Mrs Topliss's home on 29 October to see what Mrs Topliss wanted to see her about. In that visit she says that Mrs Topliss told her the farm was in a trust and her sons did not want to sell it any more. She then went onto say that they wanted to farm the property. She said Mrs Topliss seemed quite nervous telling her that, and it seemed to her that someone had pressured Mrs Topliss. Mrs Topliss said she was waiting until Wednesday as she had an appointment with the bank to withdraw the \$10,000 and to give it back to the Meates. Mrs Meates informed Mrs Topliss the deposit had been paid and the agreement signed, and the Meates had missed out on other ground they could have purchased. Mrs Meates suggested to Mrs Topliss that she take a week to think about things and then they should talk again. Mrs Meates stated she was worried other people were pressuring Mrs Topliss into reneging on the

contract when Mrs Meates knew from her dealings that Mrs Topliss genuinely had wanted to sell it, to retain a small lot for herself and to have some money to spend.

[127] Mrs Meates stated she went back to Mrs Topliss's home on 12 November 2018 to talk to her but as she got out of her car Mrs Topliss opened a window and said "I'm not allowed to talk to you". When Mrs Meates asked her who told her that, she replied "my lawyer". At that point Mrs Meates responded with something like "I didn't realise we were getting lawyers involved and I guess I had better contact mine". She left the property and thereafter the lawyers were involved.

[128] In her evidence, Mrs Topliss did not refer to the contact between herself and Mrs Meates as described by Mrs Meates as occurring in September, October and November 2018, save to refer to the visit by Mrs Meates during which Mrs Topliss told her that she was not allowed in and that Mrs Connors had told her to say that.

[129] The absence of any challenge by Mrs Topliss to Mrs Meates' evidence as to the September/October 2018 discussions, and the consistency in the evidence in relation to the November visit in which Mrs Topliss referred to Mrs Connors' instructions as to not talking, point strongly towards the accuracy of Mrs Meates' detailed recollections. At least until September 2018, before Robert and Graeme Topliss became directly involved, Mrs Topliss was continuing to indicate that the transaction was on track (albeit with alleged Council holdups). Mrs Topliss's discussions of 28/29 October with Mrs Meates, occurring after Robert and Graeme had taken their mother to discuss the agreement with Mrs Connors, are a natural outcome of the sons' intervention. They are consistent with Mrs Topliss explaining to Mrs Meates her sons did not want to sell the farm albeit with questionable explanations that the farm was in a trust and the sons "wanted to farm it". Significantly, neither son gave evidence of wanting to farm Lot 1. The highest it was put was by Graeme who indicated, if he inherited the farm with his brother, he would possibly retain half of it.

[130] Subsequently at trial Mrs Meates gave evidence, not of either son wishing to farm the property, but rather of a desire to hold the property because her grandchildren (at various ages up to 18 years old) have become interested in the farm and used to come out to her home quite a bit.

Correspondence between lawyers

[131] Back in 12 September 2018, Mrs Connors had written her email to Mr Hopkins stating that Mrs Topliss had a buyer for the property and could not be dealing with anyone else unless they pulled out (above at [102]). No other correspondence involving Mrs Connors has been produced until 26 November 2018 when a barrister, Dale Lester, wrote to Mrs Connors on behalf of Mr and Mrs Meates. He referred to the agreement and the payment of the \$10,000 deposit. He asked Mrs Connors to raise with Mrs Topliss her obligation to complete the sale, complete the subdivision and have title issued.

[132] Mrs Connors sent a holding reply on 20 December 2018. She stated she had discussed the letter with Mrs Topliss and her sons, and was gathering more information so the claims could be fully reviewed in the New Year.

[133] The Meates' current counsel, Mr Mackenzie was then instructed by the Meates and in March 2019 advised Mrs Connors that he had received instructions to issue proceedings for a specific performance.

[134] Mrs Connors replied by email on 11 March 2019. She suggested proceedings not be issued and the parties instead have a round table meeting. She made a number of points including:

- (a) the plan used by the Meates' valuer had not been provided by Mrs Topliss and was an earlier plan, before boundaries were readjusted;
- (b) Mrs Connors had been working with Mrs Topliss during the relevant period and Mrs Topliss knew the need to have a comprehensive agreement if she was to sell the property;
- (c) Mrs Topliss had never discussed the Meates as buyers with Mrs Connors;

- (d) Mrs Topliss was adamant that she would never sell the land to someone who would mine it. Mr Meates had sometime earlier wanted to buy the land but had been told by family to go away;
- (e) the \$10,000 bundle of cash had been forced on Mrs Topliss at a time she was ill and just on Christmas when Mrs Connors' office was closed, with the direction to spend it and not to tell anyone; and
- (f) Mrs Topliss had not understood the document she signed to be anything other than a receipt to acknowledge that she had the cash.

[135] On 3 October 2019 Mr and Mrs Meates issued this proceeding.

Mrs Topliss's capacity and decision-making

[136] For Mrs Topliss, Mr Hughes-Johnson raised Mrs Topliss's age on the basis that "in cases involving the elderly the [courts] have been receptive to examining whether the age of the contracting party, in the context of the factual setting of the case in question, materially affected his or her ability to contract".

[137] Mrs Topliss was 80 years of age during her dealings in 2017 with Mr and Mrs Meates. She was living on her own on a Kumara residential property without, it seems, the intervention of family or health providers. She was dealing with her lawyer, a real estate agent and a surveyor in relation to her affairs without any noted assistance from others. It is clear she valued her independence — her brother describing her as "pig-headed and [wanting] to do everything herself". Her decision-making around 2016/2017 was significantly influenced by decisions her sons had made, Robert indicating he had no interest in the farm and Mrs Topliss having tried unsuccessfully to have Graeme come back to live there. Mr Fitzgerald's evidence confirmed their lack of enthusiasm for taking on the property was a matter impacting on Mrs Topliss. She would report to Mr Fitzgerald and others the difficulties she was having — difficulties managing the farm (notwithstanding that it was leased out) and difficulties managing her finances (a matter which she did not support by documentary evidence). For some reason, she had a tendency — evidenced by her responses to the evidence of Mr Clapshaw — to play down the extent to which she was receiving visits and

support from other people, and was prepared to discuss her affairs in the course of social conversation with others. The evidence of Mr Langridge points to a person who appeared confident and in control of what she was doing throughout a number of visits. Mr Clapshaw's discussions with her through 2017 and 2018, following regular contact between the two, points to a person who was focused, until "one of her boys had got involved", on selling the farm block.

[138] I find that Mrs Topliss's rejection in her evidence of detailed evidence provided by witnesses such as Mr Clapshaw, Mr Langridge and Ms Turner stems not from any lack of memory of the discussions in question but from a willing refusal to now acknowledge that she had such discussions. As Mr Mackenzie repeatedly suggested to her in her cross-examination, the sort of detail Mrs Topliss provided in relation to her dealings over these years with Mrs Meates is irreconcilable with her lack of recall (or outright rejection) of inconvenient discussions with or statements made to truly independent witnesses.

Mrs Topliss's focus on selling Lot 1

[139] I also find, on the evidence, that Mrs Topliss's determination to sell wavered over time. Her brother's reference to her initially seeming quite keen on the idea of sale is clearly correct. It led to her instructions to Michael Curragh (Greg Daly Real Estate) to assess the land on a subdivided process and to give his appraisal of its value, together with marketing recommendations. The fact it was Mrs Topliss herself who contacted Shannon Hopkins to carry out surveying on the property so soon after the Curragh appraisal indicates that she then remained focused on subdivision and sale. These were significant steps, involving cost, for a person who was consistently focussed on the tightness of her finances. Mrs Topliss's signature upon the survey plan for resource consent purposes (14 October 2015) indicated a continuing focus on completing the subdivision and selling the farm, as did her \$20,000 loan on the same day arranged by Graeme and his wife (to be repaid out of the sale proceeds). Her failure around the same time to give Mr Curragh an agency contract seems from Mrs Connors' email to have been driven by Mrs Topliss's desire to control the process herself (so as to find the right buyer) rather than any indecision about selling at that point. Similarly, there were Mrs Topliss's negotiations with the Langridges in late-

2015 (initially stipulating a sale price of \$350,000) — which I accept on Mr Langridge’s evidence the parties orally agreed upon. That appears to have led Mrs Topliss to review her expectations, resulting in her stipulation of a \$500,000 sale price, only to not sign the formal agreement when it was presented to her. As Mr Langridge indicated in his evidence, Mrs Topliss’s further suggestion that a “local farmer” had offered more than the \$500,000 appears to have been “Eileen just saying that to try and obtain a higher price”.

[140] Mrs Topliss’s ability to conduct this negotiation as she saw fit, having earlier reached an oral agreement with Mr Langridge, is directly relevant to what subsequently happened with Mrs Meates.

[141] In her evidence Mrs Topliss spoke of telling the agent she was withdrawing the property from sale. What in fact occurred was she never gave Mr Curragh an agency in the first place and he did not advertise the property. The sale of the property therefore always remained within Mrs Topliss’s control. I reject her evidence she at some point “withdrew the property from sale”. Mrs Topliss described the point at which she decided not to sell the farm at all as being when she rejected the Langridges’ offer, (that is, January 2016). The evidence is to the contrary. I accept Donna Meates’ evidence that, in February 2017 when the Meates were looking for a block of land, it was common knowledge around Kumara Mrs Topliss was wanting to sell her block. I accept also Mrs Topliss’s evidence the “For Sale” sign was put outside the property in March 2017 — a matter Mrs Topliss explains by reference to the discovery of marijuana on the property. Whatever the initial prompting, it indicated a willingness to sell the property. I accept also the evidence of Mrs Turner that in 2018 she saw “For Sale” signs dotted around the property. I accept also Mrs Topliss confirmed in the meantime (June 2017) to Mr Clapshaw she was selling the property because it was too much for her (indicating at the same time the locals interested were Donna and Chris Meates). I also find it significant, despite Mrs Topliss’s close relationship and confidence in her brother Mr Fitzgerald, he did not refer to any advice from Mrs Topliss that she had stopped being interested in selling the property after refusing the Langridge offer.

Assessment of the evidence of Mrs Topliss and Mrs Meates

[142] I then come to the interactions between Donna Meates and Mrs Topliss through 2017. I prefer the evidence of Donna Meates as to the matters discussed during her initial visits to Mrs Topliss. Mr and Mrs Meates were looking to find a block of land around Kumara as necessary accommodation for the workshop to support their mining operation. It makes sense, with the knowledge that existed as to Mrs Topliss's land, they would approach Mr Meates' aunt for a direct discussion. It also makes sense they would raise their interest with Mrs Topliss before she might become committed to anyone else. I accept, given the background of the Langridge offer, (as Mrs Meates stated) Mrs Topliss said she was looking at around \$500,000 for the block and explained how the subdivision was planned. It is equally logical, and I accept, that Mrs Meates would have obtained a valuation of the block as the Meates arranged in March 2017. I accept also Mrs Meates' evidence that in March she arranged by telephone with Mrs Topliss for the valuer to go onto the site, and that Mrs Topliss provided her with a key for that access. I reject Mrs Topliss's evidence that she did not understand that was the purpose of getting the key; that Mrs Meates was considering purchasing the farm at the time; and that (if she had known) she would not have given Mrs Meates the key. I find Mrs Topliss to have been a fully informed participant in the arrangements the Meates made to get a valuation done.

[143] I accept Mrs Meates, in discussing with Mrs Topliss the intention to have a valuation done, explained to Mrs Topliss the Meates would prefer to keep the purchase to themselves, as they did not like everyone knowing their business in such a small town. I accept, as Mrs Meates stated, Mrs Topliss agreed and stated she also did not want the farmer who was leasing the paddocks to know that she had a buyer. Those are understandable discussions to be taking place in the context of a proposed purchase with a subdivision still to be completed in a small community.

[144] I find, as stated by Mrs Meates, she visited Mrs Topliss at home after the valuation became available in May 2017 to show her the valuation and to take her through it. It would not have made sense for the Meates to obtain that valuation and for the Meates to then not promptly act on it to make an offer to Mrs Topliss. I accept Mrs Meates' evidence having discussed the valuation, she offered Mrs Topliss

\$400,000 for the block and Mrs Topliss said she was happy with that offer and accepted it. It is significant early in the next month on 7 June 2017 (unbeknown to the Meates), Mrs Topliss obtained from the ANZ a \$30,000 loan. When cross-examined by Mr Mackenzie as to whether this was for money towards completion of the subdivision, Mrs Topliss rejected that and said that it was for “developing the farm more”. She stated that she had never borrowed money to spend on the subdivision. I reject Mrs Topliss’s evidence in this regard both in relation to the June 2017 loan and the \$20,000 loan which her brother, Graeme, took out in October 2015. In relation to that Mrs Topliss had expressly agreed the money was being used to facilitate the subdivision and creation of new titles ready for sale. I reject Mrs Topliss’s suggestion in cross-examination she could not remember what that loan was for. She was simply unprepared in her evidence to accept she had actively taken these steps to finance the completion of the subdivision.

[145] I then move to the events of November/December 2017. It is clear Mrs Meates in the interim had continued to visit Mrs Topliss from time to time. I accept Mrs Meates’ evidence progress on the subdivision was discussed during those visits. I accept her evidence Mrs Topliss told her she was having problems with the Council getting the consent for the subdivision. I accept Mrs Meates’ evidence that Mrs Topliss discussed a Council requirement for the widening of the road and that Mrs Meates told her that the Meates could assist with the road.

[146] The evidence establishes Mrs Topliss had to be hospitalised with pneumonia in November 2017.

[147] I accept Chris and Donna Meates came to a point in December 2017 where they wished to get an agreement in writing and to pay a deposit so that both parties were “covered” meaning “protected”.

[148] I prefer Mrs Meates’ evidence on the matters where their evidence differs to that of Mrs Topliss as to what occurred in December 2017, in addition to bolstering my findings in relation to Mrs Topliss’s rejection of the discussions from February 2017. It makes sense that Mr and Mrs Meates, this many months on, would be wanting to know for certain whether they had Mrs Topliss’s commitment to sell the property.

I accept also Mrs Meates' evidence they had become concerned about the state of the property with weeds and a lack of fertilisation and mowing. I accept Mrs Meates explained to Mrs Topliss the parties should put their agreement in writing and the Meates pay a deposit so both sides were covered in case someone else came to Mrs Topliss with a purchase offer. I accept Mrs Meates explained the deposit would give Mrs Topliss some funds to finish off the subdivision process. Mrs Meates conceded in cross-examination she may have also said to Mrs Topliss that she should go on a holiday (Mrs Topliss having recorded that in her brief of evidence). I accept Mrs Meates probably did suggest Mrs Topliss take a holiday as well as referring to the use of the funds for the completion of the subdivision.

[149] I prefer the evidence of Mrs Meates in relation to whether there was a further discussion in December (following on from the February discussion) about keeping the transaction to themselves. Mrs Meates places that discussion in February whereas Mrs Topliss states it was discussed when the December agreement was signed. Given the nature of the request, the logical time for at least the first discussion of that topic was at the outset of the discussions in February.

[150] Given my findings in relation to Mr Clapshaw's evidence, as to his discussion with Mrs Topliss in June 2017, it is clear in any event Mrs Topliss did not feel constrained to keep strictly confidential her dealings over the property with the Meates. As with Mrs Topliss's contemporary discussions with Mrs Meates, she told Mr Clapshaw not only about difficulties she was having with the Council over the subdivision and access to the property (clearly a reference to the roading issue) but also she was selling the property and it was the Meates who were the purchasers.

[151] Mrs Topliss repeatedly in her evidence adopted the term "hounding" to describe Mrs Meates' contact with her leading up to the signing of the December agreement. On my assessment of the evidence as to the events of 2017, I do not find Mrs Meates' visits to be appropriately described as "hounding" in the sense of "harassing". She was persistent, but that was understandable, given Mrs Topliss's confirmed preparedness to sell and her repeated allegations as to "Council delay". Given the oral agreement reached in May 2017 and the Meates's need to get on with

their purchase of land and construction of a workshop, Mrs Meates' subsequent contacts to pursue progress were legitimate.

[152] I do not accept Mrs Topliss's evidence that Mrs Meates's behaviour during the 20 December 2017 meeting was "very demanding" or that Mrs Topliss had cause to feel threatened. Rather, I find Mrs Meates put her case to Mrs Topliss by pointing out the importance both to Mrs Topliss and to the Meates of having a written agreement and thereby each other's commitment, and the attraction for Mrs Topliss of having \$10,000 cash (of use both in relation to the subdivision and as a fund for any holiday Mrs Topliss might wish to take). I find Mrs Topliss would have experienced a sense of pressure in this situation, both pressure to provide her written agreement given the non-completion of the subdivision during the period since the February 2017 discussion, and a sense of pressure to obtain some cash funds against the background of her repeated insistence (to her brother and others) that she was finding it difficult to manage financially.

[153] I do not find it of consequence to determine whether, in early December 2017, Mrs Meates provided Mrs Topliss with one cooked meal (Mrs Meates' evidence) or two (Mrs Topliss's evidence). Were it consequential, I would have found that Mrs Meates provided the single roast meal of which she gave evidence, upon the basis of my finding that she is the more reliable witness of events through 2017. What I do find, having regard to the evidence of witnesses such as Mr Lindbom and Mrs Dodds, is that Mrs Meates' bringing of a meal to Mrs Topliss was an act of natural kindness on her part, consistent with her conduct towards other elderly folk.

[154] I find in these circumstances that, in signing the agreement on 20 December 2017, Mrs Topliss gave her true consent to the transaction there recorded.

[155] In my assessment of Mrs Topliss's evidence I also take into account the statements made on her behalf by Mrs Connors in the email of 11 March 2019 (above at [134]):

She is adamant that she would never sell the land to someone who would mine it. Sometime before Mr Meates, who is a gold miner, had wanted to buy her land and he had been told by family to go away.

[156] I reject this (hearsay) explanation for why Mrs Topliss would not have entered into a contract with the Meates. On my findings, Mrs Topliss had clearly been prepared to discuss the sale to Mrs Meates through the course of 2017. There was no suggestion that Mr and Mrs Meates intended to mine the land. No evidence was led for Mrs Topliss that anyone had in fact told the Meates “to go away” at this time.

[157] In my assessment of Mrs Topliss’s reaction to the events of 20 December 2017, her subsequent actions (and inactions) have significance. Mrs Meates had observed in her evidence, I consider correctly on my assessment of Mrs Topliss, that “Eileen is a woman of her own”. Mr Fitzgerald used the “pig-headed” description. Mr Langridge described Mrs Topliss in her negotiations with him as “being very confident and in control of what she was doing”. Having regard to the evidence I have heard as to Mrs Topliss’s subsequent conduct, following her revelation of events to her sons, there is a need for care in not attributing to Mrs Topliss in 2016 and 2017 the sort of distress and lack of confidence that others have seen in her in more recent times. Despite her very close relationship to her brother, Mr Fitzgerald, she did not complain to him for many months afterwards of the sort of overbearing conduct on the part of Mrs Meates which has since been enunciated. Rather, some several months after the December 2017 agreement, Mrs Topliss’s focus (as related by Mr Fitzgerald) was on the fact that she had come into possession of \$10,000 (in the meantime placed by her on a bank deposit on 15 February 2018). Had there been overbearing conduct on the part of Mrs Meates of the nature and extent now alleged by Mrs Topliss, I am satisfied she would have raised that very promptly with her brother at least. I am satisfied that what happened was that, by March 2018, when she came to speak to her brother about “signing the paper” and accepting the \$10,000, the upset with which she spoke was driven out of regret at having so committed herself. In this regard, it is also significant Mrs Connors, Mrs Topliss’s solicitor, had been involved through the subdivision process and continued to be her solicitor throughout 2018 yet was not called as a witness. In September 2018, Mrs Connors had confirmed to Mr Hopkins that Mrs Topliss already had a buyer for the property and could not deal with anyone else. That reference can only have been to the Meates.

[158] There is then the unsatisfactory explanation given by Mrs Topliss to her son, Robert, in October 2018 when the 20 December 2017 agreement was discussed. Mrs

Topliss's explanation to Robert at the time — "it was a loan because my car was broken" — is not an explanation which she has subsequently supported in her evidence. It cannot be put down to confusion given the certainty with which she has given her evidence as to the discussions which she had with Mrs Meates. Given the content of the December agreement, the \$10,000 clearly was not a loan. Its immediate availability was intended to assist Mrs Topliss with either the completion of the subdivision or holiday costs or both, nothing to do with her car.

[159] I am driven to conclude that Mrs Topliss was prepared to invent an explanation of events to overcome her sons' sense of disappointment in her — an understandable response in a situation where, as described by Graeme, "my brother and I were shocked about the discovery that a document had been signed without my brother or me being consulted". It is unhappily the case that Mrs Topliss, along the way, repeatedly displayed a tendency to invent explanations which were either not correct at all or took liberties with the truth. Examples included her reference to Council delays, problems with the lessee, trouble with the surveyors, the receipt of higher offers, and the farm being "in trust".

[160] I am also satisfied on the evidence that Mrs Topliss has blurred in her own recollection a number of events which post-date her dealings with the Meates. The most obvious of these is her repeated reference in her evidence to having changed her mind about selling the property because of an interest that her grandchildren are taking in the property (this in contrast to the position of Robert and Graeme who had not indicated any enthusiasm for taking the property on). It appears from Mrs Topliss's questions the oldest of the grandchildren is 18 or may be 20 — Mrs Topliss's answers to questions indicated she is not closely involved in their lives but their interest is in coming to the property to go out the back on motorbikes and to help with things such as the wood.

[161] I accept on Mrs Topliss's evidence this interest of the grandchildren is genuinely a contributing factor now to her resistance of the Meates' claim. But I find it is clearly established on the evidence the predominant reason for Mrs Topliss wishing to avoid the agreement lies in the view, as strongly expressed to her by her brother, that she should have got more money for the property (having regard to the

earlier \$500,000 offer). Significantly, in that context, Mrs Topliss called no valuation evidence as to the market value of the block in December 2017, when the Meates' agreement was signed, or May 2017 when the oral agreement was made.

The subdivision as it now stands

[162] Mr Hopkins gave evidence as to the point Mrs Topliss's subdivision has now reached. The Council has provided certification under s 223 Resource Management Act 1991.

[163] Titles have yet to issue for Lots 1 and 2 but the application in that regard can be made as soon as Mrs Topliss completes payment of the reserve contribution (\$3,000) and some modest remaining application fees.

A claim in contract

The major matters in determining the existence of the contract

[164] As Mrs Topliss's defence of the claim against her begins with the proposition that the parties did not enter into what the law would recognise as a contract, it is helpful to set out here what the authors of *Burrows, Finn and Todd* on the Law of Contract in New Zealand refer to as the five major matters with which the Court's may be concerned in determining the existence of a contract:¹

- (a) the making of an offer;
- (b) the fact of acceptance of an offer so that an agreement has been reached;
- (c) the communication of that acceptance;
- (d) the requirement of certainty — whether the agreement reached by the parties contains a sufficiently definite statement of the terms by which the parties are to be bound that a court may accord legal effect to the agreement; and

¹ Jeremy Finn, Stephen Todd and Matthew Barber *Law of Contract in New Zealand* (6th ed, Lexis Nexis, Wellington, 2018) at 41.

- (e) whether the creation or continuance of the obligations so undertaken is expressly or impliedly condition on some event or some action by some person.

[165] I will first consider these requirements and come below to the affirmative defences which invoke the statutory requirements under the Property Law Act 2007 and specific common law/equity defences.

The making of an offer

[166] As the plaintiffs rely on the document dated December 2017 as their contract, it is unnecessary to analyse parties' agreement by reference to the May 2017 oral discussions between Mrs Meates and Mrs Topliss. Had it been necessary for the purposes of this judgment, I would have preferred Mrs Meates' evidence in relation to the April 2017 discussion and would have found that Mrs Topliss then accepted an offer of \$400,000 for Lot 1.

[167] The plaintiffs have preferred to base their claim on the December 2017 document and my analysis is therefore in relation to that.

[168] The document clearly represented the offer of Mr and Mrs Meates to purchase Mrs Topliss's Kumara land for \$400,000.

The acceptance of the offer

[169] Mrs Topliss, by signing and dating the December 2017 document clearly accepted the offer of Mr and Mrs Meates contained in that document.

Communication of acceptance

[170] Communication of the acceptance was completed by Mrs Topliss executing the document in the presence of Mrs Meates (who was then able to take away an original copy of the signed document).

The requirement of certainty

[171] As indicated by the summary of requirements in *Burrows, Finn & Todd*, there needs to be a sufficiently definite statement of the terms by which the parties are to be bound if a court is to accord legal effect to the agreement.

[172] As observed by Tipping J in *T A Dellaca Ltd v PDL Industries Ltd (Dellaca)*:²

A contract for the sale and purchase of land to be enforceable (leaving aside the need for writing) must contain certain minimum terms. I have always guided myself on such a point by saying that there must as a minimum be clear reference to the five Ps: parties, price, possession, parcels (sufficient description of the land), and payment.

[173] The document makes clear the identity of the parties — the Meates as purchasers and Mrs Topliss as vendor.

[174] The document also makes clear the price, namely \$400,000 comprising two payments of \$10,000 each and an additional payment of \$380,000.

[175] For Mrs Topliss, Mr Hughes-Johnson submits that the remaining “minimum terms” are not identified with certainty — in relation to possession and payment, because a time or date are not specified and, in relation to the land (or “parcels”) because the reference to “her land in Kumara” does not sufficiently define the property.

The land to be sold and purchased

[176] The circumstances relating to the subject land in *Dellaca* are relevant here. In *Dellaca*, the parties had been in discussion about the possible sale to the plaintiff of land and buildings owned by the defendant on the Esplanade in Westport. It happened that the defendant also owned a dilapidated house and section across the road. Tipping J rejected the defendant’s assertion that there was an insufficient description of the land concerned, explaining his Honour’s reasoning:³

It was argued by Mr Miller that there was uncertainty as to whether or not the dilapidated house and section across the road was included. In my judgment it is perfectly clear on the evidence that it was not included, although the

² *T A Dellaca Ltd v PDL Industries Ltd* [1992] 3 NZLR 88 at 97.

³ At 97.

plaintiff did offer to take that land if PDL wanted to be quit of it. I am satisfied that the land and factory building was all that Mr Dellaca was intending to buy when the deal was struck on 22 January and I am equally satisfied that this is all Mr Bainbridge was intending to sell. No allegation of mistake is raised.

[177] Both Mr Hughes-Johnson and Mr Mackenzie recognised that it is settled law that extrinsic evidence is admissible to objectively prove what the parties intended the words used to mean to assist the Court with interpreting the text of a contract.⁴

[178] Here, it is objectively plain that the parties, when signing the document, intended the words “her land in Kumara” to refer to that part of Mrs Topliss’s Kumara land — the farm block — which was identified as Lot 1 in Mrs Topliss’s subdivision documentation.

[179] Responsibly, Mr Hughes-Johnson did not seek to advance the defence on this point strongly, limiting his observation to saying that Mrs Topliss does not acknowledge it was clear which land was to be sold, “against the background that she did not intend to sell the land”. In short, Mrs Topliss was denying that the land being sold was certain simply because she denied that she intended to sell the land at all. I find, to the contrary, that her intention to sell Lot 1 was clear.

The date and timing of payment and possession

[180] The December document did not state either a date or dates on which possession must be given. Payment of the balance of the purchase price was to be “at the completion of the purchase”.

[181] Mrs Meates was asked by Mr Mackenzie to explain in her evidence matters relating to the December document. Mrs Meates’ evidence in that regard was as follows:

Q. The \$10,000, the deposit – if we just look at it, it says, \$10,000 deposit and then a further 10 thousand. Why’s it split up like that?

A. We were going to give her \$10,000 because she needed money to help her with getting the stuff surveyed and then if she needed any more we had another \$10,000 available for her to help her with that process.

⁴ *Bathurst Resources Ltd v L & M Coal Holdings Ltd* [2021] NZSC 85 at [75]–[77].

- Q. Okay. The [contract] document just in its last line, it says, “we’ll go through our lawyers”. Can you tell us what that means or what, not so much what you thought it meant but what do you think parties, you and Mrs Topliss were saying to each other?
- A. The agreement that was signed was our agreement but when you actually could go to finish a sale then once the subdivision and everything was done then the changeover of money and the title needs to go through a lawyer, the same as what it does when you buy a home. It needs to all go through lawyers.
- Q. This, if you buy, you would know that if you buy a house in the, if I say, in the normal way through lawyers, it usually a date when you’re going to get it.
- A. Yes.
- Q. This doesn’t have one on it.
- A. We couldn’t give a date because the subdivision and the consents hadn’t been done by then, well apparently the consents had but we did not know that. Because that hadn’t been done, we couldn’t give a date because we didn’t know when the council would actually get that work done. So therefore we couldn’t put a date on it, sometimes it takes months, sometimes it can take several months. So we didn’t know when that was going to actually happen. So we couldn’t put a date on it.
- Q. What was your understanding of how that was going to occur – when and how it was going to happen?
- A. Well as soon as she had completed the subdivision and the consents. As soon as she’d done that we would be able to then go to the lawyers and change the money over. She was going to do that immediately so.
- Q. Why do you say that?
- A. She told us that she would do it immediately but then I knew that it was going to take longer. We couldn’t put a date on it because when you go for consent, you don’t know when that consent’s going to be issued, it’s up to the council when the consent is issued.

[182] Mrs Topliss did not in her evidence reply directly to this evidence of Mrs Meates.

[183] For Mrs Topliss, Mr Hughes-Johnson submitted that there were six matters of timing which the December document did not identify, relating to:

- (a) the making of an application to the local authority for approval of the relevant plan;

- (b) the subsequent depositing of the plan;
- (c) when transfer of the land is to be effected and payment of the purchase price is to be made;
- (d) when possession is to be given and taken;
- (e) when the further \$10,000 is to be paid; and
- (f) when the balance of the purchase price is to be paid.

[184] For the Meates, Mr Mackenzie submitted, in relation to:

- (a) payment — the time and means of payment can be expressed or can be found on evidence; and
- (b) possession — while a possession date would normally be important, the Court may find or imply a condition that possession is to occur within a reasonable time (the contract being unconditional) and that a failure to stipulate an express settlement date is not fatal.

[185] The December document was silent as to the time for payment of the second \$10,000. I find Mrs Meates made it clear to Mrs Topliss that before completion, Mrs Topliss could at any time call for the additional \$10,000 (which would then be paid in part payment of the purchase price). Assuming an agreement is found to exist and to be enforceable, she will retain that right.

[186] The 2017 document expressly provides that the \$380,000 will be paid “at the completion of the purchase”. There is no uncertainty as to the time for payment unless there is uncertainty as to the date for completion.

[187] On the face of the December 2017 document, the time for completion (payment of the balance of the purchase price and transfer of title) was not defined. However, the background of Mrs Topliss’s progress towards the subdivision and the discussions which I find took place during 2017 between Mrs Topliss and Mrs Meates make it

clear that the “completion of the purchase” referred to in the 2017 document was a reference to the point at which new titles had become available for Mrs Topliss’s land and the parties then had the modest time needed to complete settlement.

[188] As Mr Hughes-Johnson recognised, the 2017 document did not need to include an express condition as to the depositing of the survey plan given the deemed conditions in that regard under s 225 Resource Management Act. Those conditions (expressly s 225(2)(b) of the Act) effectively put time limits (two years after the resource consent or one year after the agreement, whichever is later) on the period that a purchaser may have to wait before taking steps to rescind the contract for lack of progress. Furthermore, the Supreme Court in *Steel v Serepisos* has recognised that there is a duty resting on a vendor, in Mrs Topliss’s position, to take all reasonable steps to deposit the plan.⁵

[189] The 2017 document accordingly was a conditional contract, albeit with no date fixed for the issue of titles or the completion of the sale.

[190] The law on this matter is well settled and was stated by Mahon J in *Hunt v Wilson*, in a judgment which was upheld on appeal.⁶ His Honour stated:⁷

The rule is decisively stated in *Aberfoyle Plantations Ltd v Cheng* [1960] AC 115; [1959] 3 All ER 910 (PC). It was there held that where there is a conditional contract, and where the contract fixes a date for the completion of the sale, the condition must be fulfilled by that date, and where no date for completion of the sale is fixed then the condition must be fulfilled within the reasonable time allowed for the completion of the contract. That case was followed and applied by the New Zealand Court of Appeal in *Scott v Rania* [1966] NZLR 527. In this case no time was fixed for completion of the contract and the condition in question, which in my view is a condition precedent, had to be fulfilled within whatever was a reasonable time for completion of the contract as a whole. The question of what amounts to reasonable time is a matter of fact to be determined in accordance with the circumstances of each particular case.

[191] Here, Mr Hopkins confirmed that the subdivision conditions relating to Mrs Topliss’s land had been met and the subdivision application can be granted on payment

⁵ *Steel v Serepisos* [2006] NZSC 67, [2007] 1 NZLR 1 at [13] per Blanchard J, [23] per Tipping J, [136]–[137] per Anderson J.

⁶ *Hunt v Wilson* [1975] 2 NZLR 592; aff’d *Hunt v Wilson* [1978] 2 NZLR 261 (CA).

⁷ At 597.

of the \$300 application fee. The Council's involvement will be at an end as soon as Mrs Topliss pays the balance required (fee and reserve contribution). There was no suggestion in the evidence that Mrs Topliss is not in a position to meet those costs promptly. It is clear that she has failed to do so simply because she does not wish to complete the sale.

[192] Mr Hopkins also gave evidence as to the time involved in lodging the subdivision plans with Land Information New Zealand and for titles then to issue. He stated that the time involved might be six to eight weeks.

[193] In these circumstances, and allowing both for the proximity of the execution of the December document to Christmas and the uncertainties which attach to any administrative process, a reasonable time for completion would have been five months from the date of the 2017 document. In other words, 20 April 2018.

[194] The 2017 document therefore did not fail to have contractual force on account of any deficiency in relation to the date for completion.

Satisfaction of the "five p's" requirement

[195] Accordingly, what was identified by Tipping J as the "five p's" requirement is satisfied in this case.

A concluded agreement

[196] Mr Hughes-Johnson submitted, whether or not the "five p's" requirement was established, the parties had not in this case reached a concluded agreement. He likened the December 2017 document to an agreement expressly made "subject to contract". He relied in particular upon the reference to lawyers in the second sentence which reads "A further \$10,000 cash will be paid along with \$380,000 (*which will go through our lawyers*) at the completion of the purchase" (emphasis added). Mr Hughes-Johnson, for the determination of whether the December 2017 document fell within

the “subject contract” category, invoked the test identified by Tipping J in *Dellaca*, where his Honour stated:⁸

Ultimately it all comes down to determining the true intention of the parties and whether or not they intended to be bound, irrespective of their intent to enter into a more formal agreement, or whether they agreed that there should be no obligation on either side until the more formal agreement had been signed or the outstanding points resolved.

[197] On the face of the December 2017 document, the involvement of lawyers at completion clearly does not signify an agreement between the parties that no obligation was being created until a more formal agreement had been signed.

[198] In her evidence, however, Mrs Meates had elaborated upon the involvement of lawyers, stating:

We also agreed that we would have lawyers draw up a formal agreement for sale and purchase once the title was available.

We attached one of the original title plans to the contract although it was not one of the later survey plans. At this stage however we both knew precisely what was being sold and what the written contract was for — lot 1 from the 2015 survey plan, as valued and shown in the valuation report, as per the Resource Consent she had applied for.

[199] Mr Mackenzie led further evidence from Mrs Meates on that topic, through the following exchange:

Q. ... The contract document just in its last line, it says, “we’ll go through our lawyers”. Can you tell us what that means or what, not so much what you thought it meant but what do you think parties, you and Mrs Topliss were saying to each other?

A. The agreement that was signed was our agreement but when you actually could go to finish a sale then once the subdivision and everything was done then the changeover of money and the title needs to go through a lawyer, the same as what it does when you buy a home. It needs to all go through lawyers.

[200] Mrs Meates was cross-examined by Mr Hughes-Johnson in the following exchange:

⁸ *T A Dellaca Ltd v PDL Industries Ltd*, above n 2, at 95–96.

- Q. Now what you've said in your evidence is that you contemplated that later there'd be a reference to lawyers for a further agreement to be signed –
- A. No not a further –
- Q. – to be prepared?
- A. No. This was our agreement. This was the agreement that we had come to. Later on when there was time for the paying of the money to Mrs Topliss it would need to go through a lawyer the same as what it does when you buy a home. I don't know how to do that. I would need to obviously go through a lawyer for him – for the lawyers to transfer money over for the final sale. This was the agreement – this is our agreement. The lawyers were only there at the end as it was when I bought my home to transfer money over. It should all go through – the money should always go through lawyers as far as I'm aware.

[201] It is clear from the December 2017 document, and how it would have been read by both parties, that the focus of the wording in the second sentence (“which will go through our lawyers”) was on the payment of money at completion. It was also clear from Mrs Meates' additional evidence that she and Mrs Topliss anticipated Mrs Meates' lawyer would, when the titles were available, draw up a further contract document which would be signed. Given Mrs Meates' uncertainty as to exactly how finalised titles would appear, and what other detail would surround them, it was entirely understandable that Mrs Meates would expressly anticipate a further document being executed. But such does not cut across the certainty on the key matters on which the parties were agreeing on 20 December 2017. The 20 December 2017 document clearly fell within the category identified by Tipping J in *Dellaca* as one by which the parties intended to be bound, irrespective of any intent to enter into a more formal agreement.

Section 24(1) Property Law Act 2007

[202] Section 24(1) Property Law Act imposes a requirement for material terms of an agreement to be recorded in writing:

- 24 Contracts for disposition of land not enforceable unless in writing**
- (1) A contract for the disposition of land is not enforceable by action unless—
- (a) the contract is in writing or its terms are recorded in writing;
and

- (b) the contract or written record is signed by the party against whom the contract is sought to be enforced.

...

[203] In addressing the requirements under s 24(1) Mr Hughes-Johnson recognised that the issue of enforceability under that provision is intertwined with Mrs Topliss's certainty arguments (which I have rejected). In short, he submitted that because the December 2017 document "did not deal with a number of pivotal elements", it therefore fell foul of the requirement for writing under the Property Law Act.

[204] On the facts of this case, there is no distance at all between the previous arguments as to uncertainty and the submission in relation to s 24(1). The material terms are all either stated in the December 2017 document or otherwise deemed or implied.

Duress and undue influence

[205] By her pleading, Mrs Topliss pleaded defences of duress and undue influence as follows:

D. FOR A FOURTH AND ALTERNATIVE GROUND OF DEFENCE / DURESS / UNDUE INFLUENCE

- 29. Should it be held that the agreement is not uncertain (contrary to the contentions of Mrs Topliss) then she is entitled to and has avoided the agreement by reason of having been subjected to improper pressure resulting in her will being overborne such that her free will and judgment was displaced.

Particulars

- (i) on 20 December 2017 Mrs Meates attended Mrs Topliss at her house with the intention of having her sign the memorandum.
- (ii) during the course of the visit Mrs Meates subjected Mrs Topliss to improper pressure in that she insisted upon the memorandum being signed by Mrs Topliss against her will.
- (iii) further Mrs Meates insisted upon Mrs Topliss receiving cash in the sum of \$10,000, purporting to be a deposit, also against her will in circumstances where the free will and judgment of Mrs Topliss were overborne.
- (iv) Mrs Meates insisted that Mrs Topliss should not communicate any element of the purported agreement to any third party thus

depriving Mrs Topliss of the opportunity to discuss the agreement with third parties.

- (v) Mrs Meates did not allow Mrs Topliss an opportunity to seek legal advice in relation to the purported agreement, thus depriving Mrs Topliss of an opportunity to obtain professional legal advice in relation to the terms of the proposed agreement or to give proper consideration to the terms of the proposed agreement and to exercise her will in a free and unrestricted manner.

30. In the premises, the purported agreement has been proper[ly] avoided by Mrs Topliss.

[206] In opening submissions, Mr Hughes-Johnson referred to this ground of defence as based on “duress and undue influence” as it was in the pleading. He noted an overlap when considering the defence of undue influence in that it is founded on unconscionability (that is, that it is unconscionable for a person to rely on a transaction that has been procured by overbearing another’s will). For authority as to what Mrs Topliss must establish, Mr Hughes-Johnson referred to a single Court of Appeal authority, *Pharmacy Care Systems Ltd v Attorney-General (Pharmacy Care Systems)*, a case involving a defence of duress.⁹

[207] In his closing submissions, Mr Hughes-Johnson again referred jointly to duress and undue influence, and relied upon *Pharmacy Care Systems* for the elements of duress. He did not go on to make any detailed submissions, either by way of authority or otherwise, in relation to undue influence.

[208] Instead, Mr Hughes-Johnson developed a discrete submission in relation to “unconscionable dealing”, by reference to the Court of Appeal’s judgment in *Gustav & Co Ltd v Macfield Ltd (Gustav)*.¹⁰

[209] Leave was not sought on behalf of Mrs Topliss to amend her pleading to incorporate a defence of unconscionable dealing. Given that her defence was not opened at trial on the basis of such an assertion, that in itself is sufficient to dispose of this particular defence. As the factual basis of the defence is closely related to that

⁹ *Pharmacy Care Systems Ltd v Attorney-General* (2004) 2 NZCCLR 187 (CA). Leave to appeal refused: *Pharmacy Care Systems Ltd v Attorney-General* (2004) 17 PRNZ 308.

¹⁰ *Gustav & Co Ltd v Macfield Ltd* [2007] NZCA 205; aff’d *Gustav & Co Ltd v Macfield Ltd* [2008] NZSC 47, [2008] 2 NZLR 735.

involved in the duress defence, I will nevertheless go on to consider the defence on the facts, after dealing with the duress and undue influence allegations.

Duress

[210] In *Pharmacy Care Systems*, Hammond J delivering the judgment of the Court of Appeal, identified the defence of duress by reference to seven elements:¹¹

In summary, the elements of duress in New Zealand law today are these: First, there must be a threat or pressure. Secondly, that threat or pressure must be improper. Thirdly, the victim's will must have been overborne by the improper pressure so that his or her free will and judgment have been displaced. Fourthly, the threat or pressure must actually induce the victim's manifestation of assent. Fifthly, the threat or pressure must be sufficiently grave to justify the assent from the victim, in the sense that it left the victim no reasonable alternative. Sixthly, duress renders the resulting agreement voidable at the instance of the victim. This may be addressed either by raising duress as a defence to an action, or affirmatively, by applying timeously to a court for avoidance of the agreement. Seventhly, the victim may be precluded from avoiding the agreement by affirmation.

[211] When the Supreme Court refused to grant leave to appeal in the *Pharmacy Care Systems* case, the Court observed that the law of New Zealand on the subject of duress is sufficiently clear and settled, referring in particular to the decision of the Privy Council in *Attorney-General for England and Wales v R*.¹²

[212] Lord Hoffmann, delivering the judgment of the majority of their Lordships in *Attorney-General for England and Wales v R* identified two elements in the wrong of duress:¹³

- (a) pressure amounting to compulsion of the will of the victim; and
- (b) the illegitimacy of the pressure.

[213] Lord Hoffmann's judgment is also helpful in the present context in examining the alternative defences of undue influence and unconscionable bargain. His Lordship

¹¹ *Pharmacy Care Systems Ltd v Attorney-General* (CA), above n 9, at [98].

¹² *Pharmacy Care Systems Ltd v Attorney-General* (SC), above n 9, at [2], citing *Attorney-General for England and Wales v R* [2003] UKPC 22, [2004] 2 NZLR 577.

¹³ At [15].

noted that undue influence concentrates in particular upon the unfair exploitation by one party of the relationship which gives him ascendancy or influence over the other.¹⁴

[214] Lord Hoffmann disposed of the unconscionable bargain defence in a single paragraph:¹⁵

[29] If the transaction was not such as to give rise to an inference that it had been unfairly obtained by a party in a position to influence the other, it must follow that the transaction cannot be independently attacked as unconscionable.

[215] In focusing on Mrs Topliss's allegation of duress, I adopt the two-fold test identified by Lord Hoffman.

[216] First, did Mrs Meates exert pressure over Mrs Topliss amounting to compulsion of her will?

[217] On the evidence, I am not satisfied that the pressure Mrs Topliss felt was such as to overbear her will. I am satisfied, as earlier recorded, that Mrs Meates's pursuing the deal was persistent. As I have found, there had been a form of oral agreement reached in May 2017, upon the basis of the PRP valuation, for a purchase at \$400,000. For whatever reason, Mrs Topliss in the months that followed effectively deferred progress on the deal by alleging (incorrectly) there were problems with the Council. I have no doubt that these delaying steps derived from a diffidence on Mrs Topliss's part to come to the final step of parting with the farm block. But I am satisfied on the evidence that, when the agreement was signed on 20 December 2017, Mrs Topliss's execution of it constituted her free will. The availability of the cash deposit is likely to have contributed to Mrs Topliss's decision to commit but it was no more and no less than a sweetener.

[218] My findings in relation to Mrs Topliss's state of mind on 20 December 2017 flow substantially from the fact that I prefer the evidence of Mrs Meates to that of Mrs Topliss both in relation to 20 December 2017 in particular but also in relation to all events leading up to then.

¹⁴ At [21].

¹⁵ At [29].

[219] Mrs Topliss has therefore not established that there was pressure amounting to compulsion of her will.

[220] The second question would have been whether the pressure involved was illegitimate.

[221] I find that such pressure as Mrs Meates exerted was not illegitimate. The Meates had responded to common knowledge that Mrs Topliss was subdividing her property with the intention of selling the farm block. They had responsibly obtained a registered valuation. For the purposes of the valuation Mrs Topliss's subdivision plan was obtained. The Meates' (accepted) offer of May 2017 was based on the valuation. Mrs Meates reasonably understood at that time and in the following months that the parties had a deal and were working towards its completion, albeit delayed (as Mrs Topliss repeatedly asserted) through problems with the Council. Mrs Meates' persistence or pressure through the following months was entirely legitimate. For whatever reason, Mrs Topliss chose not to share with Mrs Meates any second thoughts she was having about the transaction but instead explained (incorrectly) there was simply a delay in the subdivision process. Against this background, the decision of the Meates to put something in writing, to offer Mrs Topliss some cash up front, and to ask Mrs Topliss to commit in writing was both sensible and legitimate. The Meates had business needs for the property and needed either certainty or to move on with other planning.

[222] Accordingly, neither of the elements of duress as recognised by the Privy Council is established. The defence of duress fails.

Undue influence

[223] In *Attorney-General for England and Wales v R*, the Privy Council followed the recent House of Lords decision in *Royal Bank of Scotland plc v Etridge (No 2)*.¹⁶

[224] Lord Hoffmann summarised the legal position thus:¹⁷

¹⁶ *Attorney-General for England and Wales v R*, above n 12, at [21], citing *Royal Bank of Scotland plc v Etridge (No 2)* [2001] UKHL 44, [2002] 2 AC773.

¹⁷ At [21].

... Like duress at common law, undue influence is based upon the principle that a transaction to which consent has been obtained by unacceptable means should not be allowed to stand. Undue influence has concentrated in particular upon the unfair exploitation by one party of a relationship which gives him ascendancy or influence over the other.

[225] A similar statement of the law can be found in the judgment of Richardson J in the Court of Appeal's decision in *Contractors Bonding Ltd v Snee*,¹⁸ where his Honour stated:¹⁹

[U]ndue influence consists in the gaining of an unfair advantage by an unconscientious use of power by a stronger party against a weaker in the form of some unfair and improper conduct, some coercion from outside, some overreaching, some form of cheating, and generally, though not always, some personal advantage obtained by the stronger party. It is directed at conduct within a relationship which justifies the conclusion that the disposition or agreement was not the result of a free exercise of the disponent's will. The doctrine is founded on the principle that equity will protect the party who is subject to the influence of another from victimisation.

[226] Mrs Topliss's treatment by the Meates during 2017 lacks any element of victimisation of the nature identified in *Contractors Bonding Ltd*. I reach that conclusion for the same reasons as apply to the duress defence.

Unconscionable bargain

[227] As in the findings of Lord Hoffmann in *Attorney-General for England and Wales v R*,²⁰ it follows from my above findings that the transaction entered into between Mrs Topliss and the Meates cannot be independently attacked as unconscionable.

[228] In addressing unconscionability, Mr Hughes-Johnson relied particularly on observations of the Court of Appeal in *Gustav*.²¹ Focusing on the concept of a qualifying disability or disadvantage, Arnold J in *Gustav* noted that it is an open-ended concept, with relevant characteristics including those relating to age, mental or physical infirmity and stress or anxiety.²²

¹⁸ *Contractors Bonding Ltd v Snee* [1992] 2 NZLR 157 at 165.

¹⁹ At [165].

²⁰ At [29].

²¹ *Gustav & Co Ltd v Macfield Ltd*, above n 10.

²² At [30].

[229] Mr Hughes-Johnson referred to a series of old English cases noted in Nelson Enonchong's text, *Duress, Undue Influence and Unconscionable Dealing*.²³ The author, in discussing recognised types of special disadvantage, discusses an 1862 and an 1864 case in particular, observing:²⁴

Very old age is normally accompanied by a diminution in the mental faculties, so that a very old person is a vulnerable party vis-à-vis a middle-aged person with experience and full mental abilities. For this reason the law treats old age, with accompanying diminution of capacity and judgment, as a special disability.

[230] Those observations do not advance Mrs Topliss's defence. While she may be categorised (on her own case) as "very old", it is not possible to conclude on the evidence that her aging had been visibly accompanied by a diminution in mental faculties. To the contrary, her dealings not only with the Meates but with several other interested parties and professionals evidenced her retention of full mental faculties.

Outcome

[231] Each of Mrs Topliss's defences fail. The Meates have established that they entered into an enforceable contract with Mrs Topliss.

[232] The Meates are entitled to the remedy they seek, namely an order of specific performance. Such an order will be made but reserving leave to the plaintiffs to apply for such further directions as may be required in the event that Mrs Topliss does not cooperate in relation to completion. Those directions may extend not only to execution of any documents necessary for settlement but also to any prior requirements in relation to the issue of titles.

[233] Costs must follow the event.

²³ Nelson Enonchong *Duress, Undue Influence and Unconscionable Dealing* (3rd ed, Sweet & Maxwell, London, 2018).

²⁴ At 16-019, citing *Baker v Monk* (1864) 4 De G J & S 388; and *Clark v Malpas* (1862) 4 De G F & J 401.

Orders

[234] I order:

- (a) there is a declaration that the document executed by the plaintiffs and the defendant on 20 December 2017 is an enforceable contract for the sale of the consented (“Lot 1”) Lot 1 to be subdivided from the plaintiff’s property at Kumara being Lot 2, DP 453418 (the contract);
- (b) the defendant shall specifically perform the contract by completing the proposed subdivision and giving title to the subdivided Lot to the plaintiffs without avoidable delay and in any event no later than 10 January 2021;
- (c) the defendant is to pay to the plaintiffs their costs on a 2B²⁵ basis together with disbursements to be fixed by the Registrar.

Osborne J

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²⁵ High Court Rules 2016, Category 2 under r 14.3(1) and band B under r 14.5(2).