



Case No: B87YJ484

IN THE COUNTY COURT AT MANCHESTER

Manchester Civil Justice Centre
1 Bridge Street West
Manchester M60 9 DJ

Date: 14/12/2016

Before:

RECORDER KHAN

Between:

Daniel Dennis Davies

Claimant

- and -

Alison Jane Metcalf

Defendant

Simon Mills (instructed by **Claimant** under the **Public Access Scheme**)

James Fryer-Spedding (instructed by **Brabners LLP**) for the Defendant

Hearing dates: 27,28,29,30 September 2016

Judgment Approved by the court

Recorder Khan:

Introduction

1. Maisie is a horse. She was born in 2005 and raised by her breeder, Susan Pimbley (**Mrs Pimbley**). In December 2013, Mrs Pimbley sold Maisie to the Defendant (**Mrs Metcalf**) for £3000. Having owned Maisie for a short period of time, Mrs Metcalf decided to sell her. After having been unsuccessful at selling Maisie herself, she instructed Jemma Coburn (**Mrs Coburn**) and Adele Plant (**Miss Plant**), who trade as Team Two Mills (**TTM**), to do so as her agents.
2. Mrs Coburn agreed to sell Maisie to the Claimant (**Mr Davies**) in November 2014 for £7500. By this action Mr Davies claims that, putting his case in its simplest terms, he was tricked into buying Maisie by what he was told by Mrs Coburn, and upon which he relied before agreeing to buy Maisie. Alternatively he claims that Mrs Metcalf has broken the terms, either the terms specifically agreed (the express terms) or the unspoken terms which became terms due to statute and the like (the implied terms), of the agreement which he entered into with her, via TTM. Mr Davies claims damages limited to a sum of £30,000. Mrs Metcalf denies all the claims that are made by Mr Davies against her.
3. The structure of this judgment will be as follows; I will set out the relevant sequence of events, in more detail than I have outlined above; I will identify the issues which I have to decide in summary form, and then in detail, and the legal principles relevant to such issues; I will undertake an analysis of the evidence which I heard and explain why in respect of those issues I have reached the conclusions that I have reached.

The relevant sequence of events

4. Mr Davies lives in Reigate. He was a solicitor, having been admitted to the Roll in 1977. He retired from private practice in 2002. At the age of 42 (Mr Davies is now aged 65) he took up the hobby of horse riding. Mr Davies has developed this hobby and from time to time has participated in various equestrian events or activities.
5. Maisie was born on 18 March 2015. Her official name and the one registered with Koninklijk Warmbloed Paardenstamboek Nederland (Royal Warmblood Studbook of the Netherlands) (**KWPN**), is Amazing. She was retained and developed by her breeder, Mrs Pimbley. Mrs Pimbley's intention was to advance Maisie as one of her own dressage horses through the various stages of the British Dressage (**BD**) competition structure. The relevant stages are: – introductory, preliminary, novice, elementary, medium, advanced medium, advanced. Maisie was registered with BD as Amazing V.
6. Having entered Maisie in various BD and other competitions between July 2011 and July 2013, with some degree of success, Mrs Pimbley decided to sell Maisie towards the end of 2013. In November 2013 she gave Maisie to Mrs Metcalf on trial, and after a successful trial period agreed to sell Maisie to Mrs Metcalf for £3000. There is a suggestion that Mrs Metcalf bought Maisie jointly with her daughter Emma Bowen (**Mrs Bowen**), but nothing really turns on this.

7. Mrs Metcalf and Mrs Bowen decided to sell Maisie. There appears some conflict or controversy about when that decision was taken, but I do not need to determine that issue. Mrs Metcalf advertised Maisie for sale on the website of a publication known as HorseQuest on 12 April 2014 at a price of £7750 ono. Not having had any success with this advertisement, Mrs Metcalf advertised Maisie for sale, on 25 September 2014, in a publication known as Horse and Hound (on its website and in its printed magazine). On this occasion Maisie was advertised for sale for £6750.
8. The advertisement in Horse and Hound met with the same degree of success as the advertisement in HorseQuest, and consequently Mrs Metcalf instructed TTM, who are based in Willaston, which is on the Wirral, to sell Maisie on her behalf. Mrs Bowen spoke to Mrs Coburn and provided her with some information, obtained from Mrs Pimbley, about Maisie to enable Mrs Coburn to market Maisie for sale. That information is recorded in a document which was described during the trial as the sales memorandum.
9. The terms of the agreement between TTM and Mrs Metcalf were that Mrs Metcalf would receive the sum of £6500, less any expenses incurred by TTM from the amount which TTM received on selling Maisie. Mrs Metcalf delivered Maisie to TTM on 25 October 2014. Maisie was advertised for sale by TTM on Facebook and on links to YouTube. She was offered for sale at a price of £7500. Although I was not told when TTM advertised Maisie on Facebook, the YouTube sales video is dated 29 October 2014. There is no dispute that Mr Davies did not see the YouTube video.
10. On 30 October 2014, Mr Davies saw that TTM were advertising a horse called Merlin for sale at a price of £6500. Having seen the advertisement, Mr Davies telephoned TTM and spoke to Mrs Coburn. During the course of the discussion, Mr Davies told Mrs Coburn about his personal circumstances and the type of horse for which he was looking. There is a dispute about what was discussed, and I will deal with that below. Mrs Coburn gave Mr Davies details of other horses which TTM were offering for sale if Merlin was not suitable, namely Maisie and a horse called Donna. Following their conversation, Mrs Coburn sent to Mr Davies, by text, the YouTube videos of both Maisie and Donna. As a result of this discussion, Mr Davies agreed to travel to TTM's premises on 31 October 2014 principally to see Merlin.
11. Following an overnight stay at a nearby hotel, Mr Davies met Mrs Coburn on 31 October 2014. The details of the discussions between Mr Davies and Mrs Coburn are disputed, and I will deal with those matters below. The following matters are not in dispute; Mrs Coburn rode Maisie, Mr Davies rode Maisie, and this ride was videoed by Miss Plant on her mobile phone, Mrs Coburn arranged for Mr Davies to view another horse, Lester, based in Newmarket. Mr Davies visited Newmarket to inspect Lester, but for reasons which I do not need to explain Lester was of no interest to Mr Davies.
12. What is disputed as to what occurred on 31 October 2014 is what documents relating to Maisie Mr Davies saw or was shown, what Mrs Coburn and Mr Davies discussed (I will deal with that below) and whether or not Mr Davies rode Merlin. According to Mr Davies he only saw the front of Maisie's passport; according to Mrs Coburn Mr Davies looked at the following documents, "*the pack of papers relating to Maisie which included her Dressage Record IBOP Certificate and a photograph of her*" (**the Documents**).
13. According to Mrs Coburn, having seen Mr Davies ride Maisie, and knowing of Merlin's size and temperament, she took the view that Merlin was "*too much horse*" for Mr

Davies and informed him that Merlin would not be suitable, not least because she was concerned that Mr Davies might be injured in any trial ride of him. Mrs Coburn says that Mr Davies insisted upon riding Merlin, and Mrs Coburn and Miss Plant and Mr Davies travelled to a nearby stables to do so. Mr Davies rode Merlin for a short period of time, no more than two minutes according to Mrs Coburn, but recognising Mr Davies's difficulties she asked him to dismount. Mr Davies denies that he insisted on and actually rode Merlin. The question of whether or not Mr Davies rode Merlin is not a matter which is directly relevant to the issues which I have to decide; it is no more than tangential. If anything it goes to the question of credit. I will explain below my assessment of the evidence/witnesses. Resolving this conflict is not in the circumstances something I need to do.

14. Mrs Coburn agreed to send to Mr Davies the link of the video clip of him riding Maisie, which she did on 2 November 2014. There was an exchange of texts between Mr Davies and Mrs Coburn on 3 November 2014 as follows;

Mr Davies to Mrs Coburn *"Hi Jemma, many thanks for link. Hopefully all shld be Ok. Will contact you most likely tmrw. Rgds Danny"*;

Mrs Coburn to Mr Davies *"okay great I think she will b perfect for u x"*.

15. Mr Davies showed the video clip of him riding Maisie to Gordon Murphy (**Mr Murphy**) and Mark Meade (**Mr Meade**). Both Mr Murphy and Mr Meade are British Horse Society instructors who have worked with Mr Davies for many years, training Mr Davies in, in particular, dressage. Mr Murphy viewed the clip again, this time only with Mr Davies, on 4 November 2014.
16. Mr Davies carried out a second trial ride of Maisie at TTM's premises, on 10 November 2014. His ride was again videoed by Miss Plant, this time with a camcorder owned by Mr Davies. During the course of this trial ride, Maisie pulled up abruptly. According to Mr Davies this was a significant event and gave an insight into Maisie's temperament/ability. If anything this goes to the issue of whether or not Maisie was of satisfactory quality. There is a dispute between Mr Davies and Mrs Coburn as to whether or not Mr Davies hacked out Maisie on 10 November 2014. Mr Davies, Mr Murphy and Mr Meade all subsequently watched this second recording of Mr Davies riding Maisie.
17. After having seen the second recording with Mr Murphy, Mr Davies telephoned Mrs Coburn. He informed Mrs Coburn that he wished to proceed, but wanted Maisie examined by a vet. The examination took place on 18 November 2014 and was conducted by a Paul Thomason (**Mr Thomason**). As a result of the examination Mr Thomason identified, and informed Mr Davies of, what were described as serious dental issues. Mr Davies then spoke to Mrs Coburn, to whom Mr Thomason had also spoken. Mrs Coburn arranged for the dental work to be undertaken. Once this was completed, and on 19 November 2014 terms were finalised for Mr Davies's purchase of Maisie. Mr Davies paid £7500, which was transferred directly to TTM's account. Additionally Mr Davies paid a sum of £290 for the cost of transporting Maisie to Mr Murphy's stables, Margery Hall Stud, Lower Kingswood in Surrey on 20 November 2014.
18. Following the completion of the sale, TTM accounted to Mrs Metcalf; from the £7500 they deducted the sum of £615, comprising livery, farrier, dental and advertising costs. I assume that TTM remitted the sum of £5855 to Mrs Metcalf and retained the balance.

19. Mr Davies, Mr Murphy and Mr Meade agreed a strategy to enable Mr Murphy to make an assessment of Maisie and which would enable Mr Murphy to devise a training method, to teach Mr Davies how best to ride Maisie. For his part, Mr Meade would hack out Maisie. Mr Murphy's schooling of Maisie started in December 2014 in circumstances in which he describes Maisie making "*an unsatisfactory start*".
20. Mr Meade rode Maisie on a number of occasions, once when Mr Davies rode another horse. Mr Meade describes Maisie initially as "*a very quiet ride*". However, during January 2015, Mr Meade describes matters as being "*altogether unsatisfactory*". He states that Maisie became ill behaved for no apparent reason, bucking regularly, once in Mr Davies's presence.
21. Additionally and on 17 January 2015 Maisie bucked in a manner that was "*so fast, deliberate and severe*" that Mr Meade was thrown to the ground, albeit without suffering any injuries. Mr Meade reported this incident to Mr Davies. A few days later and on 22 January 2015, Mr Meade describes that whilst riding Maisie "*I felt so threatened by her I was minded prematurely to terminate the ride and get off... I saw it through but was glad to reach a prompt end without anything untoward happening*". Mr Meade reported this incident to Mr Davies, and again spoke to him on 24 January 2015, expressing the view to Mr Davies that Maisie was "*positively unsafe*".
22. Mr Murphy also had concerns about Maisie. On 29 January 2015, he informed Mr Davies that Maisie "*was no horse for a 64-year-old amateur/pleasure rider*" and had "*profound training issues and was incorrigibly unwilling*".
23. On 30 January 2015, Mr Davies wrote to Mrs Coburn. In his letter he expressed concern about Maisie, based on the information which Mr Murphy and Mr Meade had provided to him. He asked if Mrs Coburn could "*suggest something that might yet resolve the difficulty and restore confidence*". Mrs Coburn did not reply to Mr Davies letter, and accordingly he again wrote on 7 February 2015. On this occasion he also suggested that she might want to speak to Mr Murphy and Mr Meade to discuss "*their respective findings and experiences*".
24. In response to that correspondence Miss Plant telephoned Mr Davies on 10 February 2015. Mr Davies and Miss Plant discussed various alternative solutions. Suffice it to say that no agreement was reached as to how to resolve the problems about which Mr Davies had complained.
25. Accordingly and on 15 February 2015, Mr Davies wrote directly to Mrs Metcalf. In the letter, Mr Davies sought, amongst other things, clarification of the nature of the relationship between TTM and Mrs Metcalf, and in particular whether or not Mrs Metcalf was the author of the sales memorandum (in fact it had been completed by Mrs Bowen). Coincidentally, and on the same day, Mrs Pimbley sent a text to Mr Davies in which she informed Mr Davies "*hi saw her on the road today. The GIRLS have told her to ignore you! Little do they know!*"
26. Not having had a response to the letter of 15 February 2015, Mr Davies wrote to her, on 23 February 2015. He requested that she provide "*a full and frank reply within the next 7 days*". She did not do so. Accordingly Mr Davies again wrote to Mrs Coburn (and also addressing the letter to Miss Plant) on 4 March 2015. He asked them to confirm that they were acting as selling agents for Mrs Metcalf in connection with the sale of Maisie to him.

27. Mr Davies also wrote to Mrs Metcalf on 4 March 2015. Ignoring some of the emotive language in Mr Davies's letter, he informed Mrs Metcalf that "*unless I hear from you favourably and to my satisfaction during the course of the next 14 days I shall regard myself at liberty to institute proceedings without further notice*". On 6 March 2015, Mr Davies again wrote to Mrs Metcalf (and sent a copy directly to Mrs Coburn and Miss Plant). The purpose of the letter was to inform Mrs Metcalf that he had provisionally arranged for Maisie to join a herd of broodmares, and Maisie would be available for inspection/trial facilities during the course of the next 10 days.
28. On 13 March 2015, Mr Davies received a recorded delivery letter from Mrs Metcalf dated 21 February 2015. The letter had been Mrs Metcalf's response to Mr Davies's letter to her of 15 February 2015; she apparently had assumed, in the light of his subsequent correspondence that her letter of 21 February 2015 had gone astray, hence she re-sent it by recorded delivery. Again it is not necessary for me to dwell in detail on the contents of the letter; suffice it if I say that the letter purports to answer the correspondence that Mr Davies had sent to her. Mr Davies responded on 14 March 2015. In the letter he again requested that Mrs Metcalf clarify the nature of the arrangement between her and TTM.
29. On 21 March 2015, Mr Davies bought a horse to replace Maisie. He attended at an auction conducted by Brightwells, and purchased Fernando at a cost of £30,648. Having purchased Fernando, and having informed Mrs Metcalf (and Mrs Coburn/Miss Plant) of his intentions in advance, Mr Davies gave Maisie to the Twemlows Stud Farm in Whitchurch, Shropshire, on 27 March 2015. He informed Mrs Metcalf that he had done so in a letter dated 2 April 2015.
30. On 7 April 2015, Mr Davies again wrote to Mrs Metcalf. In the letter he provided to her details of the specific losses that he had sustained, totalling some £14,022.38. Additionally, he informed Mrs Metcalf that he would be looking to her to compensate him for the inconvenience, loss of amenity and disappointment that he had sustained as a result of what he described in his letter as "*misrepresentation and breach of contract*". Mrs Metcalf replied in a letter dated 19 April 2015. She apologised for not having responded to previous correspondence due to her having been ill. She denied liability for Mr Davies's claims, suggesting "*there is no contractual relationship between us. You did not acquire Maisie from me. Any claim against me will be vigorously defended*".

The issues

31. In summary form, the issues for me to decide are as follows;
 - i) Did Mrs Metcalf sell Maisie "in the course of a business" for the purposes of **section 14 Sale of Goods Act 1979?**
 - ii) Does the principle caveat emptor apply?
 - iii) Did Mrs Metcalf, through TTM, make actionable misrepresentations concerning Maisie? If so were any such representations made fraudulently/negligently/innocently?
 - iv) Did any such misrepresentation(s) induce Mr Davies purchase?
 - v) Was there any breach of contract?

vi) Loss and causation?

vii) Did Mr Davies fail to mitigate his losses?

32. In reaching the conclusion that I have reached on the issues set out above, I heard evidence from the parties themselves. Mr Davies's witnesses were Mrs Pimbley, Mr Murphy and Mr Meade, and Mrs Metcalf's were Mrs Coburn and Peter Pimbley (Mr Pimbley), Mrs Pimbley's estranged husband. I considered those documents to which my attention was drawn during the course of the hearing and to which I refer in this judgement. I remind myself that I decide the case on the balance of probabilities and that the burden of proof rests with the party making the allegation.
33. Before addressing the issues making any findings of fact on them, I need to assess the reliability of the witnesses whose evidence I received.
34. One of the main criticisms levelled against Mr Davies is the fact that he sees conspiracy and fraud in even the most innocuous of situations. He was prone to accuse and criticise, even where criticism was not apt and had an arrogant style when he put pen to paper. Examples of these are the way he sought to criticise the proposed sale of Lester to him, or his attempts to suggest that certain of the copy texts produced in evidence were not authentic. Whilst I have taken this criticism into account, it does not undermine Mr Davies's evidence. I can well understand how in the circumstances he felt that he had been cheated, and therefore why his approach was highly emotively charged. Whilst I will later explain why in certain respects, where there has been a conflict of evidence I have not preferred what Mr Davies told me, looking at his evidence in the round, I have no reason to doubt what he told me.
35. Mr Murphy and Mr Meade were both honest witnesses, and I have no reason to doubt what they told me. In reaching that conclusion I have taken into account the commercial arrangements they have with Mr Davies, and the fact that certain of the language in their witness statements was not theirs but Mr Davies's authorship. Neither of those factors however should lead me to conclude that I should not accept what they say. Equally Mrs Pimbley appeared to me to be an honest and reliable witness. I have no reason to doubt what she told me even though there may be some animosity towards Mrs Metcalf connected to the breakdown in her marriage with Mr Pimbley, and the fact that he may now be in a relationship with Mrs Metcalf. Nor do I doubt what she told me because of one error which she made in her evidence to which I will refer below.
36. To the extent that Mr Davies's claim against Mrs Metcalf arises primarily out of representations made by Mrs Coburn it is perhaps unnecessary for me to assess the reliability of Mrs Metcalf's evidence. I will do so nevertheless. I found her particularly unimpressive. She had a tendency to make speeches rather than answer questions. Some of the things she told me undermined her evidence. By way of illustrative example, in no order of importance are these;
 - i) although in her witness statement Mrs Metcalf stated that she decided to sell Maisie after 8 months (she acquired Maisie in October/November 2013) she had no adequate answer when it was suggested to her that the decision was made much earlier, namely in March 2014, when presented with a copy of Maisie's British Dressage competition record, printed from the internet on 18 March 2014;

- ii) she suggested when cross-examined that she had discussed the contents of the sales memorandum which was provided to TTM with Mrs Pimbley; she could not explain why this was not mentioned in her witness statement;
 - iii) her explanation as to the only circumstances in which a horse could be measured were frankly far-fetched;
 - iv) her explanation of her failure to answer correspondence from Mr Davies being due to her ill-health was unconvincing; even ignoring the lack of medical evidence to support what she had to say, her illness did not, for example, prevent her from going to see a solicitor friend of hers, discussing the case with that solicitor, resulting in her finally responding to Mr Davies in a letter dated 19 April 2015;
 - v) her suggestion in cross examination that she perceived the letter written by Mr Davies to her on 6 March 2015 as being "*nasty and threatening and almost blackmail*" was an exaggeration.
37. As for Mrs Coburn, she gave evidence honestly and straightforwardly. She made a number of concessions which perhaps she did not realise might have assisted Mr Davies's case. There are matters in her evidence which I did not accept, as I will explain. Mr Pimbley came over as an honest and reliable witness, and albeit there was one matter which struck me as being elaboration, I have no reason to doubt what he told me.

Did Mrs Metcalf sell Maisie "in the course of a business" for the purposes of section 14 Sale of Goods Act 1979?

38. The determination of this issue will assist in resolving the question of whether or not the principle of caveat emptor applies and also whether or not there was an implied term that Maisie would be of satisfactory quality, by reason of the provisions of **section 14 (2) of the Sale of Goods Act 1979**. No such term is implied where the sale is not in the course of a business. Where I refer to this Act in this judgment I will refer to it as the **1979 Act**.
39. The provisions of **section 14 (5) of the 1979 Act** are relevant to the determination of this issue. That sub-section provides as follows:
- 14(5) The preceding provisions of this section apply to a sale by a person who in the course of a business is acting as agent for another as they apply to a sale by a principal in the course of a business, except where that other is not selling in the course of a business and either the buyer knows that fact or reasonable steps are taken to bring it to the notice of the buyer before the contract is made.*
40. There is no dispute that Mrs Metcalf was a private seller; there is no dispute that TTM's business included the sale of horses. Accordingly there would be no implied term if Mr Davies knew, or reasonable steps were taken to bring to Mr Davies's notice, that Mrs. Metcalf was not selling in the course of business before the agreement with her was made.
41. I am satisfied and find as a fact that TTM sold Maisie in the course of their business as agent for Mrs Metcalf and Mr Davies did not know that Mrs Metcalf was not selling in the course of a business, and no reasonable steps were taken to bring that fact to his

notice before the agreement was made. My reasons for reaching that conclusion are as follows: –

- i) Prior to the visit on 31 October 2014, Mrs Coburn sent a text to Mr Davies; *“hi Danny been out all day but will have passports and print out of all her results ready for u too c tomorrow look forward to meeting u x”*; given Mr Davies’s professional training and/or background, it is probable that he would have wanted to see these documents at some stage, certainly before finalising any agreement with Mrs Coburn.
- ii) There is a conflict of evidence between Mrs Coburn and Mr Davies as to what documents Mr Davies saw on 31 October 2014, and when he saw them; Mrs Coburn told me that when she met Mr Davies on 31 October 2014 she gave to Mr Davies, during their initial discussions and before any ride the Documents. She stated that this was her standard practice. She claims Mr Davies looked through the papers. Mr Davies told me he was only shown the front of Maisie’s passport after the ride.
- iii) Given that Mrs Coburn told me that it was her standard practice to provide this type of documentation to a prospective purchaser I think it probable that the Documents were available to Mr Davies. Equally I think it is more probable that having been promised the documents the previous day, Mr Davies would have wanted to see them. I am not at all convinced by Mr Davies’s answers to questions in cross examination that *“I went to see a horse and not to read papers. If I did not like the horse I would not have looked at any papers”* and *“Mrs Coburn held out the passport. I was not shown the results of Maisie. I did not ask for them as Mrs Coburn said she did not have them”*.
- iv) However, it would not in my judgement make any difference because Mr Davies would not have known from the Documents, that Mrs Metcalf was not selling Maisie in the course of a business. Nor was the provision of the Documents a reasonable step taken by Mrs Coburn to bring to Mr Davies’s attention Mrs Metcalf’s identity or status as seller.
- v) The breeder is recorded in Maisie’s passport as Mrs Pimbley. None of the Documents identify Mrs Metcalf. Even if he did know that Mrs Metcalf was the owner of Maisie, he could have not have known that she was selling in a private capacity.
- vi) When Mrs Coburn spoke to Mr Davies on 18 November 2014 in relation to the question of attending to the dental problems which Mr Thomason had identified, Mrs Coburn told Mr Davies that she had spoken to *“the owner”* in relation to such dental problems. However that does not satisfy the statutory test at **section 14(5) of the 1979 Act**. There is no evidence that Mrs Metcalf was identified by name. It follows that Mr Davies could not have known of her status.
- vii) Although there was some excitement and cross examination of Mrs Coburn in relation to documents produced by Mr Thomason, namely his certificate of examination dated 18 November 2014, and the consent form permitting Mr Thomason to take a blood sample from Maisie, also dated 18 November 2014 which identifies Mrs Coburn variously as the owner or seller of Maisie, those documents have not assisted me in determining this issue.

Does the principle caveat emptor apply?

42. Animals are goods and chattels and the ordinary law of sale of goods applies to them. The starting point as regards quality in the sale of goods is caveat emptor. Except as otherwise provided by statute there is no implied term about the quality or fitness for any particular purpose of goods supplied under a contract of sale. (See for example *Benjamin 11-024*).
43. However this maxim has no application given my ruling above that given my ruling above that Mrs Metcalf sold through an agent and it was not brought to the notice of Mr Davies that she was not selling in the course of a business so that the provisions of *section 14 of the 1979 Act* apply.

Did Mrs Metcalf, through TTM, make actionable misrepresentations concerning Maisie? If so were any such representations made fraudulently/negligently/innocently?

44. An analysis of Mr Davies's claim in misrepresentation requires a determination of other questions as follows;
- i) are any of the alleged misrepresentations actionable at all;
 - ii) what representations were in fact made;
 - iii) if representations were made, were they in fact false;
 - iv) in the case of false representations did TTM/Mrs Coburn have reasonable grounds to believe and in fact did it/she believe up to the time the agreement was made that the facts represented were true;
45. I should add for the sake of completeness, that an issue was raised in the skeleton arguments regarding the extent to which TTM were authorised to make representations, but this is an issue which is no longer pursued by Mrs Metcalf.
46. Mr Davies has an action against Mrs Metcalf in tort if a misrepresentation was fraudulent and in contract if the misrepresentation became a term of the contract. To succeed in relation to a claim based on a fraudulent misrepresentation, Mr Davies must prove that it was made knowingly or without belief in its truth, or made recklessly or carelessly as to whether it was true or false (see *Derry v Peek (1889) 14 App Cass 337*).
47. Mr Davies will also have a claim under *section 2(1) of the Misrepresentation Act 1967*, even if the misrepresentation was not fraudulent, unless TTM/Mrs Coburn can prove that the misrepresentation was truly innocent i.e. that she had reasonable grounds to believe and did believe up to the time the contract was made that the facts represented were true. This is commonly known as a negligent misrepresentation. However, if the representation became a term of the contract, innocence on the part of TTM/Mrs Coburn would not be a bar to a contractual claim.
48. To constitute an effective misrepresentation, the misrepresentation must be a false statement of fact, past or present. Conversely, a statement of intention, a commendatory statement or a mere "puff", cannot amount to an effective misrepresentation. A statement of opinion may be a misrepresentation if the maker does not in fact hold the opinion or could not, as a reasonable man having his knowledge of the facts, honestly have held it.

49. Against that background, I look at the specific allegations of misrepresentation made by Mrs Coburn. In that context it is important to bear in mind precisely how Mr Davies puts his case. His case is that the representations were made during the pre-contract discussions, before and during the two trial rides on 31 October 2014 on 10 November 2014, with Mrs Coburn. Before dealing with the specific allegations I make one overarching point. Maisie was advertised on TTM's website. The advertisement was published after Mrs Coburn spoke to Mr Davies. I infer from those facts that it is probable that in the discussions which Mrs Coburn had with Mr Davies she would have had in mind the contents of the advertisement. I bear in mind that this was not a point specifically put to Mrs Coburn during the course of cross examination, but I think that it is a sensible inference to draw; the contents of the advertisement would effectively be her sales script and the type of information that she would provide to prospective purchasers like Mr Davies.

[Maisie] stood (only) 17 hands high at the wither;

50. I am satisfied and find as a fact that Maisie was 17.2 hands high at the wither. I am satisfied and find as a fact that Mrs Coburn told Mr Davies that Maisie stood only 17 hands high at the wither. I am satisfied and find as a fact that this amounted to a misrepresentation in that it was a false statement of fact. The representation was fraudulent or at least negligent. In telling Mr Davies that Maisie measured 17 hands high, without having measured Maisie (see my comments below), Mrs Coburn either made it recklessly or carelessly or had no reasonable grounds to believe nor could she have believed it to be true. I have reached that conclusion for the following reasons;
- i) Mrs Coburn admitted in cross examination that Maisie would be suitable to meet certain needs to which Mr Davies referred during their initial telephone conversation; one of those needs was that Mr Davies required a horse which could be transported in his two horse boxes, which could not carry horses which were higher than 17 hands at the wither;
 - ii) the height of Maisie was an important consideration for Mr Davies; it is therefore probable that he would have brought this fact to Mrs Coburn's attention; that appears to be consistent with what Mrs Coburn told me during cross examination that she told Mr Davies that Maisie was approximately 17 hands high; why would she have said that if Mr Davies had not asked? This is more probable than what she suggests in her written witness statement, namely that Mr Davies "*never mentioned that any horse that he was going to buy had to be no more than 17 hands high to be able to travel in his horseboxes*";
 - iii) it is probable that Mrs Coburn only guessed Maisie's height given that she admitted that she did the same thing when it came to describing Merlin in the advertisement that she placed on Facebook. Given that Merlin was described as 17 hands high, it is understandable that Mr Davies would only be interested in horses of that height;
 - iv) Mrs Metcalf's suggestion as to the only circumstances in which a horse can be measured, namely that it is a legal requirement that measuring can only be undertaken by a vet, was frankly far-fetched. Mrs Coburn also went some way to suggest that. I am not persuaded by it. Even without the admission from Miss Plant (see below), I could infer that Maisie was not measured by either Mrs Metcalf Mrs Coburn;

- v) Nor am I persuaded by what Mr Pimbley told me (albeit that I had no other reason to doubt his evidence). He suggested that he was able to comfortably fit Maisie in his trailer, and how he has had taller horses travel in smaller trailers than Mr Davies owns. That evidence came out during re-examination; it seems to be a classic piece of witness box elaboration, not contained in Mr Pimbley's witness statement, which I do not accept;
- vi) In any event in her Amended Defence, Mrs Metcalf claims that her understanding was that Maisie was 17 hands high. There is no positive case advanced by her regarding Maisie's height other than the unconvincing suggestion that there is no material difference between 17 hands and 17.2 hands;
- vii) The sales memorandum, being a document prepared during the course of the telephone call between Mrs Bowen and Mrs Pimbley, which memorandum formed the basis of the instruction given by Mrs Metcalf to TTM, refers to Maisie's height as 17 hands high.
- viii) Mr Murphy's witness statement confirms he measured Maisie in Mr Davies presence; *"I put a measuring stick on her which showed her actually 17.2 hands"*. I have no reason to doubt Mr Murphy.
- ix) In the telephone conversation between Mr Davies and Miss Plant, Mr Davies stated that Miss Plant had admitted that TTM had not measured Maisie; I have no reason to doubt Mr Davies, particularly as Miss Plant neither made a witness statement nor attended at trial.

[Maisie] was a "schoolmistress"

51. Mrs Coburn admitted during cross examination that she told Mr Davies that Maisie was a schoolmistress. In my judgement this statement does not amount to a representation. It is either, a commendatory statement or a mere "puff". My reasons for reaching that conclusion are as follows;
- i) Mrs Pimbley describes what a schoolmistress is in her witness statement in the following terms; *"a seasoned/accomplished performer that trained and competed competently to a level usually well ahead of where the learning rider might be. Thus such a horse comfortably finds it easy to teach/help the rider to improve rather than the other way round"*.
 - ii) To put that in a different way, from the evidence that I have heard, a schoolmistress is a horse of a certain standard which will assist a rider of a certain standard being able to improve their riding or other equestrian skills, provided that horse and rider are compatible; much I suspect would depend upon the temperament of both the rider and the horse, the rider's ability, and style of riding.
 - iii) Such a statement could only be either a "mere puff", or a commendatory statement. It may be a term of art in the equestrian world, but could only be a statement of opinion. There are no objective criteria against which to determine such a description.

- iv) To the extent that it was a statement of Mrs Coburn's opinion, it was not suggested that she did not in fact hold that opinion or could not, as a reasonable person having her knowledge of the facts, honestly have held it. She made her assessment based upon what she had seen of Maisie and whilst riding her.

had had no problems qualifying for "the Regionals"

52. Before dealing with the specific allegation, some explanation is required as to what Mr Davies believed the term "*the Regionals*" meant. He maintains that a reference to "*the Regionals*" was to the regional competition run by the BD in national championships of which, by example, the Northern championship is the competition for the Northern Region. The competitions take place twice a year, summer and winter. I infer from what Mr Davies says that Maisie qualified on more than one occasion.
53. In her witness statement, Mrs Coburn stated that "*I did not say the regionals were British dressage competitions merely that they were (sic) Regional and Maisie did win the NDG regional 4-year-old championship*". In cross examination she admitted that she told Mr Davies that Maisie had had no problems qualifying for the regionals but had meant this to be the regional northern championship. However I think it is more probable that when she referred to the regionals in her discussion with Mr Davies she was referring to the BD Regionals. I say that because this is how she describes Maisie in the advertisement on the TTM website. Indeed the advertisement refers to the fact that Maisie qualified for the Regionals "*many times*".
54. Accordingly I am satisfied and find as a fact that Mrs Coburn informed Mr Davies that Maisie had had no problems qualifying for the Regionals. Mrs Coburn would have known that reference to the Regionals was a reference to those competitions run by BD; given that she had Maisie's records she would have known the extent of Maisie's competitive success. The statement amounted to a representation in that it was a false statement of fact. The representation was fraudulent or at least negligent. Mrs Coburn made the statement either recklessly or carelessly. Alternatively she had no reasonable grounds to believe nor could she have believed it to be true. In reaching the conclusion that I have reached I have taken into account Maisie's achievements in past competitions. I have taken into account the fact that when Mrs Pimbley said in her witness statement that Maisie had never qualified for the Regionals, Mrs Pimbley was wrong given that Maisie did so on one occasion when ridden by Mrs Pimbley.

had easily passed its (KWPN) IBOP qualification with flying colours

55. I have referred earlier to the acronym KWPN. IBOP is a suitability performance test for horses. There is no dispute that the maximum score is 100 points, and that a minimum of 75 points is required for the IBOP certificate. Equally there is no dispute that Maisie obtained the minimum 75 points.
56. Mrs Coburn denies that she told Mr Davies that Maisie passed with flying colours. I think that it is probable that she did so, given the fact that in the TTM's Facebook advertisement Maisie is described as having "*got one of the highest grade a mare can get in the IBOP test*". That text bears comparison with Mrs Metcalf's advertisement; the HorseQuest advertisement describes Maisie simply as having "*passed the IBOP*"; the Horse and Hound advertisement describes Maisie as having "*passed the IBOP with a very high grade*". Given Mrs Coburn's admission in cross examination that she "*writes adverts in a way to make people look*", it is probable that she described Maisie in a way which made Mr Davies listen. Her admission is consistent with describing

Maisie in a way which would make her more saleable; saying she passed with flying colours when she only achieved a minimum pass mark would make Maisie more attractive to a prospective purchaser in Mr Davies position.

57. Accordingly I find as a fact that Mrs Coburn informed Mr Davies that Maisie had passed its IBOP qualification with flying colours. I am satisfied and find as a fact that this amounted to a misrepresentation in that it was a false statement of fact. The representation was fraudulent or at least negligent. Given that Mrs Coburn knew that Maisie had only achieved the minimum level of 75 points, Mrs Coburn either made the representation recklessly or carelessly or had no reasonable grounds to believe nor could she have believed it to be true.

would teach Mr Davies and take him from Novice level dressage to the Medium levels in that discipline

58. Mr Davies's pleaded case is inconsistent with what he said in his witness statement; in his witness statement he explained how Mrs Coburn allegedly told him that "*she was a schoolmistress who would easily teach me and take me through the mediums to advanced*". When he was cross examined he maintained, unconvincingly, that there was no inconsistency with these two statements. Moreover he even provided a third version of events namely that "*Maisie would take me all the way through*". Eventually he stated that he would "*stick with his witness statement*".

59. Whilst otherwise I have accepted Mr Davies's evidence as reliable, there are too many inconsistencies to this aspect of his evidence, for me to decide what he was probably told. Additionally, neither of those statements amount to representations of fact. They could amount to either a statement of Mrs Coburn's opinion, or a statement as to what might happen in the future.

60. Mrs Coburn admits that she told Mr Davies that Maisie had competed at Novice/Elementary level dressage and would to assist him improve. The latter would be Mrs Coburn's opinion.

61. As for Mrs Coburn's opinion, it was not suggested that Mrs Coburn did not hold such opinion. I have no reason to doubt what was set out in her witness statement (and upon which she was not challenged) namely "*Maisie had the right movement, trainability and talent to go further with the right rider and the right training. Furthermore that Maisie would suit an amateur wanting to learn which was my honest held opinion*"

62. As to a statement for the future, it is axiomatic that a statement as to what might happen in the future does not amount to an actionable misrepresentation. Moreover much would depend upon the ability of Mr Davies and Maisie, and how their relationship as horse man and horse developed or gelled. There are far too many uncertainties in relation to those specific matters.

was safe, sensible and reliable to hack alone and in company; did not rear or buck

63. Although these are allegations which are separately pleaded, it is convenient to take them together.

64. Mrs Coburn admits that this is what she told Mr Davies. I make a finding accordingly. Does that admission necessarily give rise to a claim in misrepresentation? Were the statements made innocently?

65. If I were to ignore the evidence of Mrs Metcalf, given Mr Davies's criticisms of it, the only evidence in relation to Maisie's behaviour and/or character prior to the agreement between Mr Davies and Mrs Metcalf being concluded comes from Mrs Coburn and Mr Pimbley. The evidence of Mr Meade and Mr Murphy cannot assist me. Prior to the agreement between Mr Davies and Mrs Metcalf being concluded, their evidence is limited to what they saw in the various videos with Mr Davies. They may have been able to pass an opinion on what they saw, but no more than that.
66. In my judgement the representations were innocent; Mrs Coburn had reasonable grounds to believe and did believe up to the time she made the agreement with Mr Davies that what she said was true. I have reached that conclusion for the following reasons;
- i) I have no reason to doubt Mr Pimbley when he describes Maisie in the following way; *"when we hacked Maisie out on our local moss we would canter and jump... Mrs Metcalf hacked out with us 2 to 3 times a week on Maisie after Mrs Metcalf and Mrs Bowen bought her up until the time they sold her..... I have seen Maisie ridden by many people including staff, students, Mrs Metcalf, Mrs Bowen and many more over the years we owned her. I have never seen her behave in the manner described by Mr Davies"*.
 - ii) Mr Pimbley's cross examination was directed to the circumstances in connection with the sale of Maisie rather than in relation to her temperament. However he did describe her as being *"lovely and well mannered"*, and in that context he was upset when she was sold.
 - iii) Mrs Coburn was not challenged when she described Maisie in the following way *"Maisie had excellent flat work and was amazing to hack out. One of our girls, Laura who is 17 and built like a twig let rode her and loved her because she was safe and could do all her lateral work"*.
 - iv) Mrs Coburn told me that she hacked out Maisie in heavy traffic; I have no reason to disbelieve her.
 - v) Mr Pimbley's evidence is consistent with Mrs Coburn's. What Mr Pimbley and Mrs Coburn told me is also consistent with the evidence Mr Davies gave to the effect that he hacked out Maisie during the first month, the hack lasted an hour and was uneventful.
 - vi) No evidence was adduced to demonstrate that prior to the sale to Mrs Metcalf being concluded, and whilst Maisie was in TTM's possession, she had reared or bucked. To the extent that Mr Davies's claim is based on the fact Mrs Coburn's representations might have included a representation that, post-sale, Maisie would not rear or buck, such a statement would amount to a statement as to what might happen in the future and could not amount to a representation; alternatively it was an opinion honestly held by Mrs Coburn which she reasonably believed to be true, given her experience and the experience of others in riding Maisie.

was most suitable to meet Mr Davies's express needs (as set out in an earlier paragraph in the re-amended particulars of claim) and much superior in this respect than a horse Mr Davies had actually come, but ought not, to see;

67. The express needs are as follows;
- i) had competed at Novice/Elementary level dressage and sought a horse to assist him improve and advance in that discipline;
 - ii) required a horse that was also safe and sensible to hack out;
 - iii) required a horse that could be transported in his two VW LT50 horse boxes, which could not carry horses which were higher than 17 hands high at the wither.
68. Mrs Coburn admits that she told Mr Davies that Maisie had competed at Novice/Elementary level dressage and would to assist him improve. However, there is no basis for a claim in misrepresentation in respect of this statement. I have reached that conclusion for the following reasons;
- i) the allegation is premised on the basis that what Mrs Coburn told Mr Davies was that Maisie would be suitable for these specific needs;
 - ii) based upon her past level of performance in competition, Mr Davies wanted to know that Maisie could assist him and improve him in dressage; it seems to me that this need is no more than the suggestion that Maisie was a schoolmistress but perhaps put in a slightly different way; that the representation that Maisie was a schoolmistress could not amount to a misrepresentation, nor could this;
 - iii) moreover the question of suitability, in the context of these specific needs, is not a statement of fact; if anything it is a statement of Mrs Coburn's opinion, which she honestly held.
69. Mrs Coburn also admits that Maisie was also safe and sensible to hack. For the reasons given at paragraph [66], there is no basis for a claim in misrepresentation.
70. Given my finding at paragraph [50], I am satisfied and find as a fact that Mrs Coburn told Mr Davies that Maisie could be transported in his two VW LT50 horse boxes. For the reasons which I have previously given this was a statement of fact, and amounted to either a fraudulent or negligent misrepresentation.

Did any such misrepresentation(s) induce Mr Davies purchase?

71. To succeed in his claim, Mr Davies still needs to establish two other matters; firstly that he would not have entered into the agreement with Mrs Metcalf but for the misrepresentation; secondly that the misrepresentation was material. Whether or not a misrepresentation is material depends upon whether or not a reasonable man would have been influenced by it in deciding whether to enter into the contract. In the case of a fraudulent misrepresentation, materiality is not a matter which Mr Davies requires to prove.
72. I am satisfied and find as a fact that Maisie's height at 17 hands was a misrepresentation which induced Mr Davies to enter into the contract with Mrs Metcalf. To the extent that this was a fraudulent misrepresentation, I do not need to decide if it was material. To the extent that it was a negligent misrepresentation I am satisfied that it was material. I am satisfied and find as a fact that the representations made by Mrs Coburn to the effect that Maisie had had no problems qualifying for the Regionals and had passed the IBOP qualification with flying colours also induced Mr Davies to enter into the contract with

Mrs Metcalf. To the extent that these were fraudulent misrepresentations, I do not need to decide if they were material. To the extent that they were negligent misrepresentations I am satisfied that they were material. I have reached those conclusions for the following reasons;

- i) Mr Davies sought information from Mrs Coburn before the agreement was concluded; one of the pieces of information related to Maisie's height given the limited height of Mr Davies's horse boxes; there is no dispute that there was a discussion regarding Maisie's height, and I have preferred Mr Davies's version of events.
- ii) It is difficult to see how Maisie's height was not important in the circumstances. Given that Mr Davies would need to transport Maisie in a horse box, and given that he explained to Mrs Coburn why he needed a horse of a particular size, it is probable that Mrs Coburn knew that Mr Davies would be influenced by being told how tall Maisie was in the circumstances.
- iii) That is borne out by Mr Davies's reaction after Maisie was delivered to him and when it was brought to his attention by Mr Murphy that in fact Maisie was taller than 17 hands. He describes that information as being "*a blow*". Nevertheless, although he appears to have known that he was entitled to reject Maisie because she was too tall, he was prepared to make do if she performed as he had hoped.
- iv) That Maisie had had no problems qualifying for the Regionals, and had passed her IBOP test with flying colours, were benchmarks against which Mr Davies could decide if he should buy Maisie. Again it is difficult to see how Mrs Coburn could not know that this information was important information to Mr Davies to enable him to decide whether or not to go ahead and buy Maisie.
- v) In reaching the conclusion that I have reached, I have taken into account the following;
 - a) the contribution which Mr Murphy and Mr Meade made in the discussions which Mr Davies had with them prior to his purchase of Maisie. Mr Davies acknowledged that he sought their advice, but only to obtain their opinion on whether or not, from what they had seen on the videos, they would be able to train Mr Davies on Maisie. That in my judgement does not mean that Mr Davies was not induced to enter into the agreement with Mrs Metcalf because of the representation made by Mrs Coburn. Height was not a matter connected with training; Maisie's competition record and IBOP qualification are matters which go to the question of whether or not Maisie could be trained.
 - b) The fact that after Maisie had been delivered to Mr Murphy, Mr Davies was given Maisie's documentation and the only document which was important to Mr Davies was Maisie's passport; that is the only document which he admits to have studied, and only then to realise that Maisie had not been properly vaccinated. However that does not seem to me to dilute the importance to Mr Davies of Maisie's competition record and IBOP qualification.

Was there any breach of contract?

73. In deciding whether or not there has been a breach of contract, I firstly need to decide what the contractual terms were. I will then only be able to decide the extent to which there has been a breach thereof.
74. Mr Davies's claim for breach of contract is twofold; firstly that the representations made by Mrs Coburn became terms of the contract; secondly that certain terms were implied by reason of the provisions of the 1979 Act.
75. A pre-contract representation may be considered to be a contractual term giving rise to a claim for damages in the event of breach. This is a question which is fact sensitive, looking at the totality of the evidence. (See Chitty on Contracts 32nd edition 13 – 003).
76. As for the implied terms, Mr Davies relies upon sections 13 and 14 of the 1979 Act. The relevant provisions are as follows;

13 Sale by description

- (1) *Where there is a contract for the sale of goods by description, there is an implied term that the goods will correspond with the description.*
- (1A) *As regards England and Wales and Northern Ireland, the term implied by subsection (1) above is a condition.*
- (2) *If the sale is by sample as well as by description it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.*
- (3) *A sale of goods is not prevented from being a sale by description by reason only that, being exposed for sale or hire, they are selected by the buyer.*

14 Implied terms about quality or fitness

- (1) *Except as provided by this section and section 15 below and subject to any other enactment, there is no implied term about the quality or fitness for any particular purpose of goods supplied under a contract of sale.*
- (2) *Where the seller sells goods in the course of a business, there is an implied term that the goods supplied under the contract are of satisfactory quality.*
- (2A) *For the purposes of this Act, goods are of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking account of any description of the goods, the price (if relevant) and all the other relevant circumstances.*
- (2B) *For the purposes of this Act, the quality of goods includes their state and condition and the following (among others) are in appropriate cases aspects of the quality of goods—*
- (a) *fitness for all the purposes for which goods of the kind in question are commonly supplied,*
- (b) *appearance and finish,*
- (c) *freedom from minor defects,*
- (d) *safety, and*
- (e) *durability.*
- (2C) *The term implied by subsection (2) above does not extend to any matter making the quality of goods unsatisfactory—*

- (a) *which is specifically drawn to the buyer's attention before the contract is made,*
- (b) *where the buyer examines the goods before the contract is made, which that examination ought to reveal, or*
- (c) *in the case of a contract for sale by sample, which would have been apparent on a reasonable examination of the sample.*
- (3) *Where the seller sells goods in the course of a business and the buyer, expressly or by implication, makes known—*
 - (a) *to the seller, or*
 - (b) *where the purchase price or part of it is payable by instalments and the goods were previously sold by a credit-broker to the seller, to that credit-broker*
- any particular purpose for which the goods are being bought, there is an implied term that the goods supplied under the contract are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied, except where the circumstances show that the buyer does not rely, or that it is unreasonable for him to rely, on the skill or judgment of the seller or credit-broker.*
- (4) *An implied term about quality or fitness for a particular purpose may be annexed to a contract of sale by usage.*
- (5) *The preceding provisions of this section apply to a sale by a person who in the course of a business is acting as agent for another as they apply to a sale by a principal in the course of a business, except where that other is not selling in the course of a business and either the buyer knows that fact or reasonable steps are taken to bring it to the notice of the buyer before the contract is made.*

77. The issue of what were the contractual terms is subject to an overarching point in relation to contractual provisions, namely that to be enforceable a contractual term has to be certain. If it is so vague or ambiguous so as to have no precise or definite meaning, it is incapable of amounting to a contractual term.

Sale by description

78. There is no dispute that a horse can amount to goods within the meaning of the **1979 Act**. Equally there is no dispute that if the agreement between Mr Davies and Mrs Metcalf was an agreement whereby Maisie was sold by description, there would be an implied term that Maisie would correspond with such description. The real issue is what term was in fact implied. Mr Davies maintains that the following terms were implied; (i) that Maisie stood only 17 hands high at the wither, and (ii) Maisie was a “schoolmistress”.
79. I have found as a fact that in the discussions between Mr Davies and Mrs Coburn before the agreement was concluded, that Mrs Coburn told Mr Davies that Maisie was 17 hands high. Even though Mr Davies saw Maisie before the agreement with Mrs Metcalf was concluded, Maisie was sold to him as corresponding with the description given by Mrs Coburn to him as to her height, namely 17 hands (see **Benjamin’s sale of goods 9th edition 11 – 008**). Given that I am satisfied that Maisie was 17.2 hands, Mrs Metcalf is in breach of the term implied by **section 13 of the 1979 Act**.
80. Mrs Coburn does not dispute that she told Mr Davies that Maisie was a schoolmistress. The description of Maisie as a schoolmistress could not be a term implied into the agreement with Mrs Metcalf given that it is vague, uncertain and/or ambiguous.

Fitness for purpose

81. Mr Davies maintains claims that Maisie was not fit for purpose in the following respects;
- i) that she would assist him improve in, and advance from, competing at dressage at the Novice/Elementary level;
 - ii) that she was safe and sensible to hack out;
 - iii) that she could be transported in his two VW LT50 horseboxes.
82. In respect of (i) and (ii) above given my rulings at paragraphs [68] and [69] there would appear to be no basis for such claims. I am not sure there is any need to add to what I have said.
83. In respect of (iii) above, I am satisfied and find as a fact that Maisie was not fit the purpose of being capable of being transported in Mr Davies's horse boxes. This conclusion necessarily flows from the finding that I made that Maisie was higher than 17 hands.

Satisfactory quality

84. Given my finding at paragraph [41], I am satisfied and find as a fact that there was an implied term in the agreement between Mr Davies and Mrs Metcalf that Maisie would be of satisfactory quality. But was Maisie satisfactory or not?
85. It is unnecessary for me to dwell on this issue in any detail. I have not been encouraged to do so by Mr Mills's submission that his primary case was the claim in misrepresentation, but because there is no or no sufficient evidence for me to conclude on the balance of probabilities that Maisie was not of satisfactory quality.
86. Ordinarily one would expect a claim of this nature to be supported by expert evidence which explained why, on the facts of this case, Maisie was not of satisfactory quality. There is no such evidence. Nor can I elevate the evidence of Mr Murphy and Mr Meade, who came to court as witnesses of fact, to the status of expert evidence, not least because the framework within which that evidence is adduced does not have the relevant safeguards provided by CPR part 35.
87. In the absence of expert evidence, there is no objective evidence against which to test this allegation. The facts advanced by Mr Davies do not adequately address this issue. By way of observation, I ask rhetorically how, in the absence of expert evidence, am I to carry out the type of enquiry identified in section 14 (2B) of the 1979 Act. It is virtually impossible.
88. In reaching this conclusion I have taken into account what happened on 10 November 2014, when Maisie pulled up abruptly whilst being ridden by Mr Davies; that alone is not sufficient for me to conclude that Maisie was not of satisfactory quality.

Misrepresentation as a contractual term

89. In order to determine whether or not the statements made by Mrs Coburn to Mr Davies became contractual terms, I have to look at the intention of the parties, attempting to find that intention by either their behaviour or what was said. There are a number factors

which guide me in that quest. These include, by way of example the amount of time which elapsed between making the statement(s) and the contract being made, whether or not Mrs Coburn knew that any of the particular representations were so important to Mr Davies that he would not enter into the agreement without them, whether or not Mrs Coburn was stating facts within her own knowledge, of which Mr Davies was ignorant.

90. The representations which induced Mr Davies to enter into the agreement with Mrs Metcalf were those made by Mrs Coburn in relation to Maisie's height, that Maisie had had no problems qualifying for the Regionals and her IBOP pass mark. These representations were made no more than two weeks before the agreement was concluded; Maisie's height, her competition record and qualifications were important considerations for Mr Davies. Mrs Coburn knew or should have known that to be the case. I am satisfied and find as a fact that those representations which Mrs Coburn made became terms of the contract with Mrs Metcalf.

Loss and causation

91. The measure of loss for a claim in fraudulent or negligent misrepresentation is to put Mr Davies in the position that he would have been in if he had never entered into the agreement with Mrs Metcalf. The measure of loss in contract is to put Mr Davies in the position he would have been had the agreement with Mrs Metcalf been performed. Mr Davies claims damages which include damages for loss of amenity, disappointment and inconvenience. He also claims specific losses totaling £14,397.68, the calculation of which is set out at paragraph 32 of the particulars of claim. He limits his claim in total to £30,000.
92. There was no serious challenge to the claim £14,397.68. It was suggested that part of the travel costs of £591.65 namely the costs incurred on 31 October 2014 of £294.30 are irrecoverable because Mr Davies would have had to inspect Maisie even if he had not entered into the agreement with Mrs Metcalf. I disagree. Had he been told by Mrs Coburn that Maisie's height exceeded 17 hands I am satisfied that he would not have undertaken the journey, given that she would not fit into his horse boxes.
93. I am therefore satisfied and find that had the agreement with Mrs Metcalf not been entered into, Mr Davies would not have incurred costs of £14,397.68, and accordingly he is entitled to recover that sum.
94. Mr Davies also maintains claims for disappointment, inconvenience and loss of amenity. There was no serious challenge to Mr Davies's evidence. Horse riding was a hobby of his, which he started at the age of 42; his aim was to improve his standard of horse riding; in 2006 and 2007 Mr Davies had two horses namely Zarla and Judy; his plans to ride these horses competitively were disrupted by litigation involving his firm and the Legal Services Commission; after the conclusion of that litigation and by 2014 he sought replacements for Zarla and Judy and it was in this context that Maisie was purchased. Maisie was acquired so as to improve Mr Davies's equestrian skills and so that he could enjoy riding her. Given what transpired that proved to be, according to Mr Davies, "*a nightmare*", causing him "*grave disappointment*". I have no reason to doubt Mr Davies's description.
95. There is no dispute that in this type of case, where part of the contractual bargain was to provide pleasure to Mr Davies, damages can be awarded if either the fruit of the contract is not provided or if the contrary result is procured (see Watts v Morrow [1991] 1421 per Bingham LJ at 1445). This is a case in which I am satisfied and find that Mr

Davies has had no pleasure in riding Maisie, and the whole episode has left him frustrated. He is entitled to damages accordingly.

96. In determining the amount of damages to which Mr Davies is entitled, I have to bear in mind the following; Maisie was delivered on 20 November 2014; Mr Davies only rode Maisie on one occasion. By the end of January 2015 a decision was taken by Mr Davies that Maisie was not the horse that he had been looking for. This is a point that he made in a letter to Mrs Coburn dated 30 January 2015. Mr Davies acquired a replacement for Maisie, namely Fernando on 21 March 2015, and on 27 March 2015, Mr Davies gave Maisie to Twemlows Stud Farm.
97. Accordingly it seems to me that in quantifying any damages to which Mr Davies is entitled for breach of contract, I consider that I am only concerned with a narrow period of time namely the end of November 2014 to, say the end of March 2015. I choose the latter date because the purchase of Fernando breaks the chain of causation. Fernando was the replacement for Maisie. Had Fernando been suitable for Mr Davies's needs, he would have been able to pursue his hobby, and therefore have the type of enjoyment that he hoped for with Maisie. The fact that Fernando had to be destroyed is not a matter for which Mrs Metcalf is blameworthy.
98. Quantifying damages for this the type of loss is not an exact science. I have taken into account the reason why Mr Davies purchased Maisie, and the number of times he was in the habit of riding on a weekly basis, and this will have been reduced. Doing the best I can, I will award Mr Davies £2200, which I have calculated on the basis of a loss for each month of £500, together with an additional 10% in accordance with *Simmons v Castle [2013] 1 WLR 1329*.

Did Mr Davies fail to mitigate his losses?

99. Mrs Metcalf alleges that Mr Davies failed to mitigate his loss by giving Maisie to Twemlows Stud Farm. Mr Davies was not obliged to mitigate his loss, but in circumstances where he does not do so damages are restricted to those which reasonably could not have been avoided. Accordingly the amount which Mr Davies could reasonably have obtained had he sold Maisie is an amount which could be set against any damages to which he is entitled.
100. I am satisfied that Mr Davies acted reasonably when he gave Maisie to Twemlows Stud Farm in the circumstances in which he describes. To the extent that Maisie had a value when she was given away, the burden is upon Mrs Metcalf to evidence that fact. She has not done so. Mr Davies gave her the opportunity to inspect Maisie on 6 March 2015, but Mrs Metcalf did not avail herself of that opportunity.
101. Accordingly I award to Mr Davies a sum of £16597.68.