

[REDACTED]

contract price of \$30 per acre for land worth \$200 per acre was "so grossly inadequate as to shock the conscience of the court," that the defendant was recently widowed and emotionally weakened at the time of the contract and that she was without legal advice. It was also found that the plaintiff, an attorney, had entered into a very personal relationship with the defendant and had performed legal service for her without charge.

The court denied specific performance, relying upon *Gregoire v. Paradis*, 100 N.H. 21, 117 A.2d 328 (1955) for the proposition that specific performance is a discretionary remedy, depending upon the facts of each case, and is not to be decreed as a matter of right. Because the evidence supports the trial court's findings, they will not be disturbed. *Laconia Clinic, Inc. v. Cullen*, 119 N.H. 804, 408 A.2d 412 (1979). The discretionary denial of specific performance was proper. *Gulf Oil Co. v. Rybicki*, 102 N.H. 51, 149 A.2d 877 (1959); see *American Home Improvement Co. v. MacIver*, 105 N.H. 435, 201 A.2d 886 (1964).

Affirmed.

[REDACTED]

Hillsborough
No. 79-455

JOYCE GELINAS DAWE

v.

AMERICAN UNIVERSAL INSURANCE COMPANY

June 18, 1980

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

the plaintiff testified that she believed that she was only entitled to recover for property damage, lost wages and medical expenses, and that she was unaware that she might be entitled to compensation for damages such as pain and suffering. She testified that when she asked Sell whether the settlement would release the defendant of liability for further medical expenses, he answered no. She further stated that Sell explained the additional \$1,000 as a "surprise" and that she believed that the defendant was offering it out of the goodness of its heart.

In an order dated April 27, 1979, the Trial Court (*King, J.*) found, *inter alia*, that there was no evidence that Sell informed the plaintiff of her additional rights under the uninsured motorist provision. Although the release signed by the plaintiff recited that it was in full and final settlement for all injuries arising out of the accident, the court found that Sell had advised the plaintiff to the contrary, assuring her that it released no rights for future medical expenses.

■ ■ The court found that Sell's explanation of the release constituted misrepresentation which, together with his failure to fully disclose to the plaintiff her other rights, resulted in an unconscionable settlement. Accordingly, the court rescinded the release, contingent, however, upon the plaintiff's reimbursing the defendant in the sum of \$1,000. The defendant's exceptions were transferred to this court.

The defendant seeks to overturn the determination below on the primary ground that the adjuster's failure to fully disclose the plaintiff's rights under the policy is not sufficient to void the release. It points to an absence of a confidential relationship between the insured and her insurer. However, it was her own insurance company with which she was dealing and not that of an adversary. We conclude that there was sufficient evidence to support the trial court's finding that the plaintiff was misled by the defendant's agent into executing the release.

There was evidence that Sell told the plaintiff that the release did not apply to future medical expenses, and that he informed her that the release was necessary to enable the defendant to proceed against the operator of the other vehicle. There was evidence that Sell characterized the additional \$1,000 as a "surprise."

■ ■ We recently held that every agreement executed in this State contains an implied covenant of good faith and fair dealing. *Bursey v. Clement*, 118 N.H. 412, 387 A.2d 346 (1978); *Seaward*

Constr. Co. v. City of Rochester, 118 N.H. 129, 383 A.2d 707 (1978). Moreover, partial disclosure may give rise to a duty to fully disclose when the partial disclosure, standing alone, is deceptive. W. PROSSER, HANDBOOK OF THE LAW OF TORTS, p. 696 (4th ed. 1971); *Smith v. Pope*, 103 N.H. 555, 176 A.2d 321 (1962). Finally, there was evidence before the trial court that the plaintiff relied on Sell's statements. Under the circumstances of this case, we hold that rescinding the release was appropriate. See *Graham v. Weber*, 79 N.H. 393, 109 A. 717 (1920); 66 AM. JUR. 2d *Release* §§ 21-22 (1973); D. DOBBS, HANDBOOK OF THE LAW OF REMEDIES § 9.4 (1973).

Affirmed.

KING, J., did not sit.

Original
No. 79-469

In re PETITION OF ELLEN MCHALE
(New Hampshire Board of Claims)

June 18, 1980

Hall, Morse, Gallagher & Anderson, of Concord (G. Wells Anderson, by brief), for the plaintiff.

Gregory H. Smith, acting attorney general (Edward W. Stewart, Jr., assistant attorney general, by brief), for the defendant.

MEMORANDUM OPINION

This is a petition for original jurisdiction under Supreme Court Rule 11 regarding the granting of a motion to dismiss a claim pending before the State Board of Claims.