

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL No. 19/73

BEFORE: The Hon. Mr. Justice Leacroft Robinson, P.
The Hon. Mr. Justice Swaby
The Hon. Mr. Justice Watkins (Ag.)

BETWEEN - LLOYD ALBERT LINDO - PLAINTIFF/APPELLANT
AND - KENNETH COLLINGS - DEFENDANT/RESPONDENT

Mrs. A. Hudson-Phillips for the plaintiff/appellant.

Mr. A.C. Ellington for the defendant/respondent.

July 7, 23, 1976

ROBINSON, P.:

This is an appeal from the judgment of Wilkie, J., delivered on the 16th March, 1973, dismissing the claim of the plaintiff/appellant for commission allegedly due on the sale of land to a purchaser who the plaintiff/appellant contended had been introduced by him to the defendant/respondent, pursuant to an agreement entered into between the plaintiff/appellant and the defendant/respondent on the 26th June, 1968.

The exact terms of the agreement were contained in a letter of that date which reads as follows:

" Dear Sirs,

This confirms that I have entrusted the sale of my property known as 64 acres at Cooper's Hill to you for a period of 2 months.

The property is not to be sold for less than £50,000 but you are authorised to submit offers.

Should you introduce someone ready and willing to buy at the above price or at a price acceptable to me or should the property be sold at anytime during the period of 2 months mentioned above or to a purchaser introduced by you I agree to pay you a commission of 5% per centum of the sale price.

" The particulars of the property are as follows:

Should the property be sold for over the abovementioned price, I will give you a further 1/3 of the difference.

I agree that you should advertise the property.

Yours truly,

(Sgd.) K. Collings

Dated 26-6-68."

The plaintiff testified that pursuant to the said agreement, and well within the 2 month period stipulated in the contract, he took to the defendant's office and showed to the defendant, a letter dated 16th August, 1968, addressed to him by Mr. Abraham Shoucair, Chairman of Clinton Development Ltd. containing an offer from that company to purchase the property for £30,000, that the defendant did not accept the offer but that subsequently Clinton Development Limited increased its offer, after soliciting the plaintiff's advice, and in due course became the purchasers of the property, the purchase price being £65,000.

The defence was a denial that it was the plaintiff who had introduced the purchaser to the defendant. The defendant admitted that the property was sold to Clinton Development Limited for the sum of £65,000 pursuant to an agreement entered into in September 1969, but said that it was one Gordon Haye who sometime in August or September 1969 had introduced Mr. Abraham Shoucair to him as being a likely purchaser, he discovering afterwards that Mr. Shoucair was acting on behalf of Clinton Development Limited. He denied that the plaintiff had ever at anytime introduced Mr. Shoucair or Clinton Development Limited to him, his story being that the plaintiff did tell him during the currency of the contract of 26th June, 1968 that he had had an offer of £30,000 for the property, but that he did not show him the letter containing

the offer nor did he disclose the name of the person who had made it or on whose behalf.

After considering all the evidence in the case, the learned trial judge found the following facts:

- (1) That the plaintiff and the defendant did enter into the agreement as set out in the letter of 26th June, 1968.
- (2) That Mr. Gordon Haye was present when that agreement was settled and signed, and knew the terms thereof.
- (3) That in the pursuance of that agreement, the plaintiff took Mr. Abraham Shoucair of Clinton Development Limited to inspect the land.
- (4) That Clinton Development Limited subsequently made an offer contained in a letter dated 16th August, 1968, (signed by Mr. Shoucair as Chairman) to the plaintiff for the purchase of the land.
- (5) That this offer was made within the two-month period stipulated in the contract of 26th June, 1968.
- (6) That the plaintiff did convey the terms of this offer to the defendant by attending on him and showing him the letter of 16th August, 1968 containing the offer and that that was done some four to five days before the 25th of August, 1968, when the contract of 26th June, 1968, between the plaintiff and the defendant expired.
- (7) That this offer, which was to purchase the property for £30,000, was rejected by the defendant.
- (8) That thereafter the plaintiff did nothing and about one year later, sometime in August/September 1969 Mr. Gordon Haye revived the interest of Clinton Development Ltd. and contacted the defendant whereby a meeting was arranged between Mr. Shoucair, Mr. Gordon Haye and the defendant which resulted in the agreement by Clinton Development Ltd. to purchase the property.
- (9) That a letter from the plaintiff to the defendant dated 12/12/69 asking for due consideration in relation to the commission to be paid was written after Clinton Development Ltd. had exercised its option to purchase the property.

It appears from the above findings that it was the plaintiff and the plaintiff alone who had brought Mr. Abraham Shoucair and his Company, Clinton Development Limited into relation with the defendant as an intending purchaser, and that the plaintiff had

done so during the 2 months before the expiry of the Agreement of 26th June, 1968. Indeed the learned judge was at pains to illustrate the vital role played by the plaintiff in this regard. In his reasons for judgment, he emphasised his finding that Mr. Gordon Haye did nothing new by way of introducing a purchaser. Mr. Gordon Haye merely arranged the pursuit of further negotiations between the defendant and the purchaser who had already been introduced to the defendant by the plaintiff. As the learned judge himself put it --

"I have no doubt in my mind that the true position is substantially that put by the defence that Gordon Haye knew the property and knew it was for sale. That he knew that Plaintiff had a likely buyer for the said property; of course Plaintiff never disclosed the identity of that prospective buyer/buyers. Consequently Gordon Haye took Plaintiff to Defendant; and Plaintiff agreed with Gordon Haye to split the commission if a sale resulted. That Plaintiff got the offer from Clinton Development Limited and showed it to Defendant. This offer was rejected by the Defendant; but now the Defendant and Gordon Haye knew the identity of the prospective buyer Plaintiff had had in mind." (*Italics mine*).

The implication here is clear. But for the introduction of Clinton Development Limited by the plaintiff to the defendant, Clinton Development Limited might never have known that this property was for sale, the defendant might never have known that Clinton Development Limited was interested in purchasing it, and the sale to Clinton Development Limited might never have taken place.

Indeed the learned trial judge saw fit to describe the conduct of Gordon Haye and Shoucair in pursuing further negotiations with the defendant behind the back of the plaintiff as being "unscrupulous conduct" which "leaves one aghast." Notwithstanding this excellent analysis of the situation, however, the learned trial judge held that "The Plaintiff to succeed must show that the service he rendered was not merely an introduction; he must show that this introduction was the efficient cause of his bringing about the sale." Then he continued, "Taking all these things into consideration, I find on the plaintiff's evidence that such an inference could not reasonably be drawn."

It is here, I think, that the learned trial judge fell into error.

A proper reading of the contract between the plaintiff and the defendant indicates that the plaintiff would be entitled to his commission on the happening of any one of three separate events. Firstly, if during the period of 2 months from 26th June, 1968, he had introduced to the defendant someone ready and willing to purchase the property at a price of £50,000 or at some other price acceptable to the defendant, he would have been entitled to his commission. This was not the case here. Secondly, if the property had in fact been sold at any time during the aforementioned period of 2 months, no matter at what price and even if the plaintiff had played no part whatever in bringing about the sale, he would nevertheless have been entitled to his commission. This, too, was not the case here. Thirdly, if during the aforementioned period of 2 months the plaintiff had introduced a purchaser to the defendant then, should the property be sold to that purchaser, the plaintiff would be entitled to his commission. This was certainly the case here. Clinton Development Limited were the purchasers of the property. They had been introduced to the defendant by the plaintiff and that introduction had taken place during the 2 month period of the life of the contract.

In the circumstances of this case, and having regard to the terms of the contract, it seems immaterial to consider whether the introduction by the plaintiff was the efficient cause of the sale, though on the facts as found by the learned trial judge, it would certainly appear to be so. There are two decided cases which seem to put the matter beyond doubt.

In Green v. Bartlett (1863) 14 C.B. (N.S.) 681, the plaintiff, an auctioneer, was authorised to sell an estate under an agreement by which he was to receive a commission of 2½% "if the estate should be sold." He put up the estate to auction but failed to sell it. However, a person who had

attended the auction in consequence of the auctioneer's advertisements, but who had not bid, obtained from the auctioneer the name of the owner, i.e. the defendant, put himself in communication with the defendant, and ultimately bought the bought the property for £2,500. In the meantime and before the conclusion of the sale, the defendant had written to the plaintiff withdrawing his authority to sell.

It was held, however, that although the estate had not been sold by the plaintiff, it having been sold, albeit privately, by the defendant to a person who had been introduced to him by the plaintiff, the plaintiff was entitled to his commission because, in the words of Erle, C.J., "If the relation of buyer and seller is really brought about by the act of the agent, he is entitled to commission although the actual sale has not been effected by him."

Similarly, in Burchell v. Gowrie and Blockhouse Collieries, Limited (1910) A.C. 614, where the appellant was authorised to sell a mining property on terms that he would receive a commission, related to the purchase price, if he should "manage to find a buyer," the Privy Council held that the appellant having brought the vendors into relation with the actual purchaser, was entitled to recover his commission, although the vendors had sold behind his back on terms which he had advised them not to accept. In that case, Lord Atkinson, in delivering the judgment of the Privy Council, had this to say, at p. 625:

"..... if an agent brings a person into relation with his principal as an intending purchaser, the agent has done the most effective, and possibly, the most laborious and expensive, part of his work, and if the principal takes advantage of that work, and, behind the back of the agent and unknown to him, sells to the purchaser thus brought into touch with him on terms which the agent theretofore advised the principal not to accept, the agent's act may still well be the effective cause of the sale."

He had earlier quoted with approval the words of Erle, C.J. in Green v. Bartlett which I too have already quoted above.

In the result, this appeal is allowed. The judgment of the Court below is set aside. Judgment is to be entered for the plaintiff/appellant for the sum of \$15,000, being the amount claimed, with interest at 8% per annum from the filing of the Writ herein to the date hereof, and with costs both here and in the Court below, to be taxed or agreed.

I may add that it seems to me, on a proper construction of the contract, that the correct amount which the plaintiff was entitled to recover was \$16,500, arrived at as follows:

5% of the sale price of \$130,000 =	\$ 6,500
Difference between \$130,000 and \$100,000 =	\$30,000
1/3 of \$30,000 = \$10,000
Total	<u>\$16,500</u>

However, as the plaintiff has only claimed \$15,000, so be it.

SWABY, J.A.:

I agree.

WATKINS, J.A. (Ag.):

I also agree.