

PAMBOS ANTONIADES,

*Appellant-Defendant.*

PAMBOS  
ANTONIADES

v

PANICOS KOUSSOULOS,

*Respondent-Plaintiff*

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KOUSSOULOS

*(Civil Appeal No. 4548).*

*Contract -Estate agent- Commission Whether payable -The case turns on the particular terms of the contract -In the instant case contract found to be that the agent (plaintiff) should find a purchaser for the land of the vendor (defendant) and business should result- Transaction of sale of land concluded- But transfer of land not effected as agreed owing to the defendant's fault, the purchaser then withdrawing- Plaintiff agent performed in toto his part of the agreement - And as the transaction went off through the vendor's (defendant's) fault, the latter is bound to pay the agreed commission.*

*Practice Appeal -Findings of fact by the trial Court Ours on the appellant to persuade the Appellate Court that the said findings were not open to the trial Court on the evidence before it.*

The plaintiff's claim in this case was for £50 commission which he alleged he was entitled to receive for finding a purchaser of land for the defendant-appellant, on the strength of an agreement between them. The trial Judge found for this plaintiff and gave judgment in his favour. The defendant now appeals against that judgment.

On the strength of an oral agreement between the parties, the plaintiff-respondent found a purchaser in the person of one T.N., whom he took to the defendant-appellant who agreed to sell to the purchaser the whole of a property of 20 donums for the sum of £2,500. The declaration forms necessary for the transfer of the property were then filled in, the purchaser handed over to the vendor (defendant-appellant) his cheque for the agreed sum of £2,500 and the parties, together with the purchaser, then proceeded to the Land Registry Office for the declaration of sale and transfer of the property. There the Land Registry Clerk in charge

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accepted the declaration of sale in respect of the 12 $\frac{1}{4}$  donums owned by the defendant-appellant, and the declaration of sale in respect of the defendant's brother in England for 3 $\frac{1}{4}$  donums, but he did not accept the declaration of sale in respect of the brother in Congo for the remaining 3 $\frac{1}{4}$  donums, on the ground that the signature of the owner on the relevant power of attorney held by the defendant-appellant was not duly legalised before the Cyprus Consul in that country. The result was that although the purchaser handed over a cheque for £ 2,500 to the defendant at the time as aforesaid, when the latter proceeded to the Bank on the following day to have it cashed he discovered that the purchaser had countermanded it, presumably on the ground that he had agreed to buy the whole property of 20 donums, and that he was not prepared to wait for another power of attorney to come from Congo in respect of the remaining 3 $\frac{1}{4}$  donums which the defendant-appellant was unable to transfer to him on that day.

In dismissing the appeal the Supreme Court -

*Held* (1) (a) the case turns on the question what was the contract between the parties, and what was the finding of the trial Court

(b) The trial Judge, having heard the evidence on both sides, found that, "What was agreed between the parties was that the plaintiff should find a purchaser for the sale of this land and business should result. In other words I believe that there was no agreement that the plaintiff should be paid only when the defendant should have received his money in cash." And further down "In this case I find no such agreement but find that the plaintiff has actually done what he was employed to do and business resulted. Now, if this transaction has fallen through, through no fault of the plaintiff, I am of the opinion that the work of the plaintiff was finished when the agreement for the sale was reached."

(c) The onus is on the appellant to persuade this Court that these findings made by the trial judge were not open to him on the evidence before him. Having heard counsel's address, we are not persuaded that the trial Judge was wrong in making the findings he did make, that is to say, that the plaintiff-respondent undertook to find a purchaser which he did, and that he did what he had undertaken to do.

(2) Having regard to the facts of this case, we are of the view that the plaintiff-respondent performed his part of the agreement because he found a person who was willing to buy, who concluded the agreement with the vendor (defendant-appellant), handed over to him a cheque for the agreed price of £2,500 for the whole property of 20 donums and when he discovered that the whole property of 20 donums could not be transferred to him he withdrew from the transaction.

(3) Under the circumstances we are of opinion that the transaction went off owing to the appellant's fault who was not ready to have the transfer of the whole property concluded at the Land Registry in accordance with his agreement with the purchaser.

(4) For these reasons the appeal is dismissed with costs.

*Appeal dismissed with costs.*

Cases referred to :

*Boots v. E. Christopher and Co.*, [1951] 2 All E.R. 1045 ; and at pp. 1047 and 1049, *per* Somervell L.J. and Stable J., respectively :

*Dennis Reed Ltd. v. Goody*, [1950] 1 All E.R. 919, at p. 923, *per* Denning L.J.

#### **Appeal.**

Appeal against the judgment of the District Court of Limassol (Papadopoulos D. J.) dated the 22nd September, 1965, (Action No. 2015/64) whereby the defendant was adjudged to pay to the plaintiff the amount of £50.- by way of commission.

*S. G. McBride*, for the appellant.

*R. Michaelides*, for the respondent.

The facts sufficiently appear in the judgment of the Court.

VASSILIADES, J. Having heard Counsel for the appellant in his detailed address and the extensive argument, we are all of the opinion that we need not call on the respondent. Mr. Justice Josephides will deliver the judgment of the Court.

JOSEPHIDES, J. : The plaintiff's claim in this case was for £50 commission which he alleged he was entitled to receive.

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ve for finding a purchaser for the defendant-appellant, on the strength of an agreement between them. The trial Judge found for the plaintiff and gave judgment in his favour. The defendant now appeals against that judgment.

The appellant's main argument is that the plaintiff (respondent) failed to do what he was employed to do, or what he had undertaken to do, that is to say (a) to find a purchaser able and willing and ready to buy, and (b) to see to it that proper and valid powers of attorney were available at the Land Registry in respect of the co-owners of the property, one of whom was in England and the other in the Congo.

The plaintiff by his statement of claim contended that the defendant had asked him to find a purchaser in respect of a property of about 20 donums in extent. That property was owned as to 12½ donums by the defendant, 3¼ donums by defendant's brother in England and as to the remaining 3¼ donums by another brother in the Congo. The plaintiff further alleged that he found a purchaser for the defendant, a certain Theofilos Nicolades, who was willing to buy and that an agreement was concluded between the defendant and the purchaser for the sale of the whole property of 20 donums for the agreed price of £2,500, and that the defendant agreed to pay to the plaintiff the sum of £50 as commission. After the forms for the declaration of transfer were signed by the defendant and the purchaser, the latter handed a cheque for £2,500 to the defendant and they proceeded to the Land Registry for the declaration of the transfer of the property (paragraph 6 of the statement of claim). As one of the powers of attorney in the possession of the defendant was not in accordance with the law, the Land Registry Officer accepted the declaration of sale in respect of the 12½ donums of the defendant, and the declaration in respect of the brother in England, a total of 16¼ donums, but the Land Registry Officer refused to accept the declaration of sale in respect of the brother in the Congo. On the strength of the above the plaintiff pleaded that he claimed payment of his commission of £50 but the defendant failed to pay it.

By his defence the defendant pleaded in paragraph 2 as follows:

"2. Defendant says that it was an express and/or implied term of the agreement between plaintiff and defendant that plaintiff would have been entitled to the payment of commission and/or remuneration only in case the tran-

saction would have been completed and the defendant would have transferred the property in the name of the purchaser and would have collected the whole purchase value from him”.

The defendant further contended that the transaction was never completed, that the defendant did not collect from the purchaser the purchase money because although the purchaser issued a cheque in favour of the defendant it was countermanded by the purchaser before it was cashed by the defendant. Defendant finally pleaded that “he was always ready to perform the agreement and complete the transaction but same failed through the fault of the purchaser. Consequently defendant says that plaintiff is not entitled to any remuneration from the defendant”.

It will thus be seen that the case turns on a very narrow point, that is to say, whether the agreement was that the plaintiff-estate agent would be entitled to receive his commission after the defendant-vendor had collected the purchase price of the property, or, whether he would be entitled to receive his commission after the conclusion of the agreement of sale. As is usual in this kind of case, the case turns on the particular terms of the contract between the parties. Learned Counsel for the appellant today argued that the trial Judge was in error in finding as he did for the plaintiff. The undisputed facts were the following

The plaintiff after the agreement to find a purchaser for the defendant—to which we shall revert later—found a purchaser in the person of one Theofilos Nicolaides, whom he took to the defendant who agreed to sell to the purchaser the whole property of 20 donums for the sum of £2 500. The declaration forms necessary for the transfer of the property were then filled in, and the parties, together with the purchaser, then proceeded to the Land Registry Office for the declaration of sale. There the Land Registry Clerk in charge of declarations accepted the declaration of sale in respect of the 12½ donums of the defendant, and the declaration of sale in respect of the defendant's brother in England for 3 / donums, but he did not accept the declaration of sale in respect of the brother in the Congo for the remaining 3¼ donums, on the ground that the signature of the owner was not duly legalised before the Cyprus Consul in that country. The result was that although the purchaser handed a cheque for £2,500 to the defendant at the time of the declaration of trans-

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fer, when the latter proceeded to the Bank on the following day to have it cashed he discovered that the purchaser had countermanded it, presumably on the ground that he had agreed to buy the whole property of 20 donums, and that he was not prepared to wait for another power of attorney to come from the Congo in respect of the remaining 3 1/2 donums which the defendant was unable to transfer to him on that day

The trial Judge, having heard evidence on both sides, found that "what was agreed between the parties was that the plaintiff should find a purchaser for the sale of this land and business should result. In other words I believe that there was no agreement that plaintiff should be paid only when the defendant should have received his money in cash." And, further down, "In this particular case I find no such agreement but find that the plaintiff has actually done what he was employed to do and business resulted. Now if this transaction has fallen through, through no fault of the plaintiff, I am of the opinion that the work of the plaintiff was finished when the agreement for the sale was reached."

When the learned judge says "I find no such agreement", he refers to the case of *Boots v. E. Christopher & Co.*, [1951] 2 All E.R. 1045. In that case, it was expressly agreed that commission should be paid only when the purchase price was received by the seller. It would, I think, be convenient to quote what Denning L.J., as he then was, said in *Dennis Reed Ltd v. Goody* [1950] 1 All E.R. 919, at page 923:

"Some confusion has arisen because of the undoubted fact that, once there is a binding contract for sale, the vendor cannot withdraw from it except at the risk of having to pay the agent his commission. This has led some people to suppose that commission is payable as soon as a contract is signed, and I said so myself in *McCallum v. Hicks* [1950] 1 All E.R. 864, at page 866. This, however, is not correct. The reason why the vendor is liable in such a case is because, once he repudiates the contract, the purchaser is no longer bound to do any more towards completion, and the vendor cannot rely on the non-completion in order to avoid payment of commission, because it is due to his own fault."

Somervell, J., in *Boots v. E. Christopher & Co.* (*supra*), had this to say regarding a vendor's wrongful act or fault (at page 1047):

“ Put in its strongest form it is that if one party, by a wrongful act, prevents the fulfilment of a condition which would entitle the other party to reward, the party who has prevented the fulfilment of that condition cannot rely on its non-fulfilment as an answer to a claim for the reward ”.

Finally, I think that the following extract from the judgment of Stable J. in the *Boots* case (at page 1049) is also helpful in considering this case :

“ All I have to decide is, having regard to the matters set out in the three letters that I have read and having regard to the course the negotiations took and to the written agreement which was made, aye or no, have the agents rendered those services which entitled them to receive the remuneration at the amount agreed ? In my opinion they have ”

As I have already said, the case turns on the question what was the contract; and what was the finding of the trial Court. The appellant's counsel today has contended that the respondent failed to do what he was employed to do on two grounds: (a) that he undertook to find a purchaser and that he has failed to do so, and (b) that he undertook to see to the preparation of valid powers of attorney which he has failed to do. So, counsel said, respondent was at fault and he was not entitled to his Commission.

Pausing there, I think that we have to look again at the defence to see what was really pleaded in this case. This was (a) that the commission was payable after the collection of the purchase money by the vendor and (b) that such money was not collected and the transaction went off through the fault of the purchaser. This was the stand taken by the defendant in his pleading and the case was argued on that basis. The trial judge made the findings, which I have stated earlier, and the onus was on the appellant to persuade this Court that the findings which the trial judge made were not open to him on the evidence before him. Having heard counsel's address, we are not persuaded that the trial judge was wrong in making the findings which he did make, that is to say, that the plaintiff undertook to find a purchaser which he did, and that he did what he had undertaken to do.

The final argument of learned counsel for appellant was that it was the duty of plaintiff to find a purchaser who in fact purchased. Having regard to the facts of this case, we

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are of the view that the respondent performed his part of the agreement because he found a person who was willing to buy, who concluded the agreement with the defendant, handed his cheque for £2,500 for the whole property of 20 donums and when he discovered that the whole property of 20 donums could not be transferred to him he withdrew from the transaction. Under the circumstances we are of opinion that the transaction went off owing to the appellant's fault who was not ready to have the transfer of the whole property concluded at the Land Registry in accordance with his agreement with the purchaser.

For these reasons the appeal is dismissed with costs.

*Appeal dismissed  
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