

1967
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[JOSEPHIDES, LOIZOU AND HADJIANASTASSIOU JJ.]

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IOANNIS
KOKKINOMILOS
v.
COSTAS
KALISPERAS

IOANNIS KOKKINOMILOS,

Appellant-Defendant.

v.

COSTAS KALISPERAS,

Respondent-Plaintiff.

(Civil Appeal No. 4617).

Estate agent—Commission—Contract authorizing sale of building plot—Terms—Duration of mandate—Release—Parties' letters—Conclusion of sale after alleged termination of contract—Agent's letter to owner—Construction—Clerical mistake—Whether agent's commission payable.

Contract—Termination—Release—See under Estate agent above.

Commission—Estate agent: —See under Estate agent above.

The present litigation concerns a claim of £70 being commission by virtue of a contract entered into between the parties whereby a mandate was given to respondent plaintiff, a land agent, to sell a building side, the property of appellant-defendant.

It was provided in the contract that the duration of the mandate would be from the 25th June, 1965, until the 25th July, 1966 and that thereafter the mandate could be terminated by a fifteen-day notice in writing.

Two months after the signing of the aforesaid contract appellant-defendant having changed his mind and wishing to cancel the agreement sent, on the 24th August, 1965, a letter to this effect to the respondent—plaintiff.

Respondent in his reply dated 26th August, 1965, stated that the mandate was in force until the 17th November, 1965 and that it could be terminated only after that date. He further, by referring to the original mandate, stated that if the owner wished to be released earlier from the mandate he should pay the commission in accordance with the contract.

It was mainly argued on behalf of the appellant-defendant on appeal that by stating the express date of the 17th November,

1965, in his letter of the 26th August, 1965, the respondent, in fact terminated the agreement as from that date and that the appellant was consequently released.

The Supreme Court having stated that the appeal turned on the construction of the aforesaid letter of the 26th August, 1965, dismissed the appeal and.

Held, (1) we have reached the conclusion—not without some hesitation—that the date of the termination of the agreement, *viz.* the 17th November, 1965, stated in that letter is obviously a clerical mistake. We are strengthened in that view from the concluding paragraph of the letter which refers to the original mandate to sell and states clearly that if the owner wishes to be released earlier from the mandate he should pay the commission in accordance with the contract.

(2) Moreover, we think that if the respondent was really acceding to the request of the appellant to release him earlier, he would have phrased his letter much differently. Although the wording may be somewhat elaborate we are of the view that this letter does not amount to a release prior to the expiry of the original contract which was the 25th July, 1966.

(3) For these reasons the appeal must be dismissed with costs.

Appeal dismissed with costs.

Appeal.

Appeal against the judgment of the District Court of Nicosia (Demetriou Ag. D.J.) dated the 18.1.67 (Action No. 1682/66) whereby the defendant was adjudged to pay the amount of £70 to the plaintiff as commission by virtue of a contract entered into between the parties.

G. Platritis, for the appellant.

C. Myrianthis, for the respondent.

The Judgment of the Court was delivered by :

JOSEPHIDES, J.: The plaintiff's claim in this case was for £70.—commission by virtue of a contract entered into between the parties. The main ground of defence was that the said contract was terminated and that the defendant was released of the obligation to pay commission prior to the sale of the property. Judgment was given in favour of plaintiff and the defendant now appeals against that Judgment.

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The facts are mostly common ground especially as regards the documents produced in this case. A contract was signed between the parties on the 25th June, 1965, whereby the defendant-appellant authorized plaintiff-respondent, who is a land agent, to sell a building plot situate at Ayios Dhometios. In clause 3 of the contract it was provided that the duration of the mandate would be from the 25th June, 1965 until the 25th July, 1966 and that thereafter the mandate could be terminated by a fifteen-day notice in writing. The original is in Greek and reads as follows:

«Η παρούσα έντολή θά άρχιζη άπό τής 25ης Ίουνίου, 1965 και θά συνεχίζη μέχρι τής τερματισεώς της διά δεκαπενθημέρου γραπτής είδοποίησεως άλλά έν ουδεμιᾷ περιπτώσει ένωρίτερον τής 25ης Ίουλίου, 1966»

It was further provided by clause 5 that 5% commission would be paid on the first £500 and 2½% on the balance.

Clause 7, which is really a draconian provision, provides that, even if the owner of the property (appellant) sold it during the currency of the agreement, independently and without the help of the land agent (respondent), he would still be bound to pay the agreed commission, and clause 8 further provides that, even if the property was sold after the expiration of the mandate, the owner (appellant) would still be bound to pay the commission if the person who eventually bought the property had been brought into contact with him by the land agent (respondent).

It seems that some two months after the signing of the agreement the appellant changed his mind and wanted to cancel the agreement. In fact, after sending his son-in-law to the respondent to sound him about this, he sent on the 24th August, 1965, the following letter to the respondent:

«Παρακαλώ όπως το Συμβόλαιον πωλήσεως οικόπεδου είς Άγιον Δομέτιον, ύπ' άρ τεμ 851 μπλόκ "B" του σχεδίου XXI/45 2, ύπό ήμερομηνίαν 25ης Ίουνίου, 1965 άκυρωθῆ».

The respondent replied by a letter dated 26th August, 1965, (Exhibit 4) which reads as follows:

«Οικόπεδον ύπ' άρ τεμ 851 μπλόκ "B" του σχεδίου XXI/45 ω 2

Ἐλήφθη ἐπιστολή σας ἡμερ. 24.8.65 τὸ περιεχόμενον
τῆς ὁποίας καὶ ἐσημειώθη δεόντως.

Ἐπιθυμοῦμεν νὰ σᾶς ὑπευθυμίσωμεν ὅτι ἡ ἐντολή σας
ἰσχύει μέχρι τῆς 17ης Νοεμβρίου, 1965 καὶ δύναται νὰ τερμα-
τισθῆ ἴσως μόνον μετὰ τὴν ἐν λόγῳ ἡμερομηνίαν.

Ἐπομένως διὰ νὰ ἀποδεσμευθῆτε ἐνωρίτερον ἀπὸ τὴν
ἐντολὴν πωλήσεως τοῦ ὡς ἄνω οἰκοπέδου πρέπει νὰ πλη-
ρώσετε τὴν προμήθειαν συμφώνως τοῦ ἐν λόγῳ συμβολαίου».

Nothing presumably happened for a period of about seven months when in March, 1966, the appellant agreed to sell his plot to one Pavis for the sum of £2,600. The trial Judge found as a fact that this purchaser (Pavis) first heard about the site being on sale, and the name of the appellant, from the respondent or his servants in July, 1965.

The respondent wrote a letter to the appellant on the 17th March, 1966, informing him that there was a prospective purchaser for the sum of £2,500.— and stating for the first time that the date mentioned in exhibit 4 (the letter of the 26th August, 1965) concerning the operation of the agreement, *i.e.* the 17th November, 1965, was a mistake and that the contract was valid until the 25th July, 1966. The appellant did not reply to that letter and eventually the respondent instituted the present proceedings.

At the end the trial Judge made the following finding :

“Thus in this case, I find that, since it was the plaintiff who first informed the purchaser about the site to be on sale by defendant (εφερε ἐπ’ ἐμοῦ τὸ κτίμα) at a time when the contract was undisputedly binding *i.e.* in July, 1965, the defendant under the above term of the contract is bound to pay the commission to the plaintiff regardless of the allegation that the sale was finalised after the alleged termination of the contract”.

The main argument put forward on behalf of the appellant today is that, by stating the express date of the 17th November, 1965, in his letter of the 26th August, 1965, the respondent, in fact, terminated the agreement as from that date and that the appellant was consequently released.

There is no doubt in our mind that, apart from the letter of the 26th August, 1965, the respondent would be entitled to receive his commission under the express provisions of the

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contract because the sale was effected in March 1966, prior to the 25th July, 1966, to a person who was brought into contact with the appellant by the respondent. The only question which we have to consider, therefore, is whether the terms of the letter of the 26th August, 1965, alter this position. In brief, this appeal turns on the construction of this letter. Having given our best consideration to this matter, after reading the letter itself as a whole and hearing counsel, we have reached the conclusion—not without some hesitation—that the date of the termination of the agreement, *viz.* the 17th November, 1965, stated in that letter is obviously a clerical mistake. We are strengthened in that view from the concluding paragraph of the letter which refers to the original mandate to sell and states clearly that if the owner wishes to be released earlier from the mandate he should pay the commission in accordance with the contract. Moreover, we think that if the respondent was really acceding to the request of the appellant to release him earlier, he would have phrased his letter much differently. Although the wording may be somewhat elaborate, we are of the view that this letter does not amount to a release prior to the expiry of the original contract which was the 25th July, 1966.

For these reasons the appeal must be dismissed with costs.

Appeal dismissed with costs.