

STELIOS P ORPHANIDES.

*Appellant-Plaintiff*

1.

STELIOS P  
ORPHANIDES

1.

VYRON K. MICHAELIDES

*Respondent-Defendant*

VYRON K  
MICHAELIDES

(Civil Appeal No. 4618)

*Estate Agent—Contract of agency—Implied contract creating agency for the sale of land—Introduction of prospective purchaser—“Efficient cause” or “causa causans” of the sale—Commission due—Implied contract whereby the appellant was constituted the agent of the respondent with a view to finding a ready and willing purchaser of the latter’s land and who would enter into a binding agreement with the respondent-owner—Reasonable commission payable—Section 70 of the Contract Law Cap 149—Failure of the negotiations for the sale of the land in question to the company introduced through its local manager by the appellant to the respondent—Subsequent sale of the land to other buyers one of whom was to the knowledge of the respondent the said local manager now acting in his personal capacity—Such sale brought about without the appellant taking any part in the further negotiations which resulted in the said sale—In the circumstances of the present case, however the sale was really brought about by the act of the appellant i.e. inter alia by the original introduction of the said local manager to the respondent—Thus the appellant-agent’s act was in law the operative factor the “efficient cause” or the “causa causans” of the said sale—The agent-appellant is therefore entitled to a reasonable commission*

*Agency—Estate agent—Commission—Introduction of prospective purchaser—“Efficient cause” etc etc —See above under Estate Agent*

*Contract—Implied contract—Implied contract creating agency—See above under Estate Agent*

*Implied contract—Agency—See above under Estate Agent*

*Commission—Estate agent—When commission earned—See above under Estate Agent*

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This is an appeal by the plaintiff against a judgment of the District Court of Limassol dismissing his claim for an amount of £720, alleged to be due to him as agent's commission on the sale of the respondent-defendant's land at Yermasoyia Village.

The facts are shortly as follows : The appellant, an estate agent, visited the shop of the respondent in February, 1966, and enquired whether he was willing to sell his said property. The respondent, who was acquainted with the appellant, replied that he was willing to sell his land at the price of £30,000. Nothing was said during that meeting about a commission to be paid to the appellant, and no express contract, either oral or in writing, was made appointing the appellant to be the agent of the respondent for the purpose of effecting the said sale. After that meeting, the appellant introduced to the respondent one Mr. Hji Arabis in the latter's office at Limassol as a prospective purchaser. Mr. Hji Arabis, the local manager of the firm Cybarco in Limassol, then visited the land of the respondent and after protracted negotiations lasting for about a month, offered to the respondent, in the presence of the appellant, to buy the land in question at the price of £26,000 on certain conditions. The respondent agreed to consider the offer but eventually he rejected the offer. Thus the negotiations between them ceased, in so far as the firm Cybarco was concerned. But Mr. Hji Arabis then told this appellant that he was interested personally to purchase the property, in partnership with another person. He then approached one Mr. Michael Drakos and spoke to him about the purchase of this property. Mr. Drakos assured him (Hji Arabis) that he knew the father-in-law of the owner and persuaded him to leave the matter to him. Questioned by Drakos as to the person who introduced this business to him, Mr. Hji Arabis replied it was the appellant.

5 On about March 15, 1966, Drakos and the respondent met at the office of the former's father-in-law and after some bargaining the respondent finally agreed to sell his said land for the price of £24,000. When the agreement was concluded, Drakos in the presence of the respondent, rang up Hji Arabis, who had contacted him earlier, and agreed to purchase in partnership the land of the respondent; as stated, Drakos was told by him that the appellant was the middle-man for the sale of this property. On March 18, 1966, a contract of sale was signed by the respondent as seller and Messrs. Michael Drakos and Co. Ltd., Mr. Hji Arabis and two others as purchasers, transfer of the property to be effected forthwith on prepayment of the

sum of £8,000, the balance of £16,000 with 6% interest per annum, to be paid within five years by equal annual instalments on the security of a mortgage of the land in favour of the respondent-seller. On the same day, the appellant asked for his commission. The respondent replied that he had sold the property privately, as the deal with Cybarco failed, and without the services of any estate agent. Therefore, the respondent refused to pay any commission to the appellant.

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On the above facts the trial Court held that :

(1) By necessary implication the plaintiff (now appellant) was constituted as agent of the defendant with a view to finding a ready and willing purchaser who would enter into a binding contract with the defendant (now respondent); construing section 70 of the Contract Law, Cap. 149 in favour of the plaintiff he would be entitled to be paid reasonable commission (which on the evidence is 2%) on the sale price.

(2) But the plaintiff did not act in any way as a middle-man between the defendant and the said Drakos in bringing about the agreement in question, because the bargain that materialized was the one struck with Drakos and in the bargain neither the plaintiff (appellant) nor the said Hji Arabis took any part whatsoever. Therefore, the action must be dismissed.

The main argument of counsel for the appellant both before the trial Court and the Supreme Court on appeal, was that, the appellant having introduced Mr. Hji Arabis to the respondent, his introduction was the effective cause of the subsequent sale; and that, therefore, he was entitled to earn his commission amounting to £480 at the rate of 2% on the sale price of the land in question. On the other hand, it was argued by counsel for the respondent that the arrangement between the appellant-plaintiff and the respondent-defendant came to an end when the Cybarco deal fell through.

Section 70 of the Contract Law, Cap. 149 reads as follows :

“70. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered”.

In allowing the appeal the Court :

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*Held*, (1) from the totality of the evidence we are satisfied that it was reasonably open to the trial Court to reach its conclusion to the effect that by necessary implication the appellant-plaintiff was constituted an agent of the defendant with a view to finding a ready and willing purchaser who would enter into a binding contract with the respondent-defendant, and that under section 70 of the Contract Law, Cap. 149, the appellant would be paid reasonable commission on the sale price (*i.e.* 2% on the evidence) Counsel for the respondent did not seek to disturb that finding, indeed, he could not successfully have done so, but he argued that the arrangement came to an end when the Cybarco deal fell through

(2) (a) But we find ourselves in disagreement with the finding and reasoning of the trial Court to the effect that the appellant-plaintiff did not act in any way as a middle-man between the respondent-defendant and the said Drakos in bringing about the sale in question, and that the bargain that materialized was the one struck with Drakos and in this bargain neither the appellant-plaintiff nor the said Hji Arabis took any part whatsoever

(b) There is ample evidence on record to show that the appellant introduced the said Hji Arabis to the respondent and, although the negotiations for the sale of the land to Cybarco through Hji Arabis had ceased the effect of the introduction remained and it was really the operating factor in the sale of the land thereafter. It was Hji Arabis who informed Drakos that the land of the respondent was offered for sale and he, Hji Arabis, was, to the knowledge of the respondent, one of the buyers. Thus, the subsequent sale to Hji Arabis and the others although not negotiated by the appellant, but by Drakos, was really brought about by the introduction of Hji Arabis to the respondent, which was effected by the appellant.

(3) (a) Now with regard to the law applicable, we would like to quote from the judgment of Lord Atkinson in the case of *James F Burchell v Gowrie and Blockhouse Collieries Ltd* [1910] A C 614 at p. 624 the reasoning of which we adopt and apply to the case in hand

It was admitted that, in the words of Erle C J in *Green v Bartlett*, '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' Or in the words of the later authorities, the plaintiff must show

that some act of his was the *causa causans* of the sale (*Tribe v. Taylor*) or was an *efficient* cause of the sale (*Millar v. Radford*)”

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(b) The same principle was adopted and followed in the case *Jack Windle Ltd. v. Brierley* [1952] 1 All E.R. 398, although that case was differently decided on its particular facts. See, also, *Coles v. Enoch* [1939] 3 All E.R. 327, at p. 328, adopting once again the test of the “*efficient cause*”.

(c) In the present case, the appellant has done the most effective part of his work by introducing to the respondent the said Hji Arabis. We are, therefore, of the opinion that the appellant’s act remained the *efficient cause* of the sale taking place; it follows that he is entitled to reasonable commission at the rate of 2% on the sale price of £24,000 in accordance with the evidence on record and the finding of the trial Court in this respect.

(4) For these reasons, we would allow the appeal; the judgment of the trial Court is set aside and there shall be a judgment in favour of the appellant for the sum of £480, with costs here and in the Court below.

*Appeal allowed; judgment of the trial Court set aside; judgment entered in favour of the appellant with costs as mentioned above.*

Cases referred to:

*James T. Burchell v. Gowrie and Blockhouse Collieries Ltd.*  
[1910] A.C 614 P.C., at p. 624 per Lord Atkinson, adopted and applied;

*Jack Windle Ltd. v. Brierly*, [1952] 1 All E.R. 398;

*Coles v. Enoch* [1939] 3 All E.R. 327, at p. 328 per Scott L.J., reasoning adopted.

**Appeal.**

Appeal against the judgment of the District Court of Limassol (Malachos P.D.C. & Loris D.J.) dated the 23rd February, 1967 (Action No. 838/66) whereby plaintiff’s claim for £720, alleged to be due to him as agent’s commission on the sale of respondent-defendant’s land was dismissed.

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

*Sir P. Cacoyannis*, for the respondent.

*Cur. adv. vult.*

TRIANTAFYLLIDES, J. : The Judgment of the Court will be delivered by Mr. Justice HadjiAnastassiou.

HADJIANASTASSIOU, J. : In this case the appellant-plaintiff claimed the payment of an amount of £720, alleged to be due to him as agent's commission on the sale of respondent-defendant's land. The Full District Court of Limassol dismissed the action with costs, and the plaintiff now appeals against that Judgment.

The appeal was argued on behalf of the appellant on one ground only : That on the evidence adduced the sale was made by or through Mr. Hji Arabis, whom the appellant introduced to the respondent; the relation between the buyer and seller, in the circumstances of this case, has been created by the appellant; the fact that Mr. Hji Arabis joined with others as to the purchase of the land of the respondent does not affect the right of the appellant to collect his commission, because his introduction was the effective cause of the subsequent sale.

The facts in brief are as follows :

The appellant, Stelios P. Orphanides, an estate agent, visited the shop of the respondent in February, 1966, and enquired whether he was willing to sell his property situated at "halomata" locality within the area of Yermasoyia; this property is of an area of 37½ donums in extent. The respondent, who was acquainted with the appellant, replied that he was willing to sell his land provided that he would get a good price, of an amount of £30,000.

Nothing was said during that meeting about a commission being paid to the appellant, and no contract was signed appointing the appellant to be the agent of the respondent for the purpose of effecting a sale of his land at a price of £30,000. But the appellant, after that meeting, introduced to the respondent one Mr. Hji Arabis in the office of the latter in Limassol as a prospective purchaser.

Mr. Hji Arabis, the local manager of the firm of Cybarco in Limassol, then visited the land of the respondent and, after

some negotiations as to the price of such land, he offered a price of £25,000; but the respondent did not accept; he added that he would be willing to sell his land for the sum of £26,000. These negotiations did not result to an agreement between them, and they were protracted for about a month; finally, Mr. Hji Arabis offered the respondent, in the presence of the appellant, the sum of £26,000, on the basis that the respondent would have agreed to buy a block of flats belonging to Cybarco company at the price of £16,000, and that the balance be paid to him in cash. The respondent agreed to consider the offer and the three of them visited the flats in question; apparently the respondent was not satisfied from the flats, and as he rejected the offer of Mr. Hji Arabis, the negotiations between them ceased, in so far as Cybarco was concerned.

According to the version of Mr. Hji Arabis, he told the appellant that he was interested personally to purchase the property, in partnership with another person. He then approached Mr. Michael Drakos and spoke to him about the purchase of this property; Mr. Drakos assured him that he knew the father-in-law of the owner and convinced him to leave the matter to him. Questioned by Mr. Drakos as to the person who introduced this business to him, he replied that there was a middle-man called Stelios Orphanos.

On about March 15, 1966, the respondent, received a telephone message and visited the office of his father-in-law; there, he met the said Michael Drakos and Mr. G. Nicolaides. Mr. Drakos enquired whether the respondent would have been willing to sell his property at Yermasoyia; his reply was that he was ready to sell his property for the price of £26,000; Mr. Drakos offered the sum of £24,000, and after some further bargaining the respondent finally accepted to sell his land for the price of £24,000. When the whole agreement was concluded, Mr. Drakos in the presence of the respondent, rang up Mr. Hji Arabis who had contacted him earlier and agreed to purchase in partnership the land of the respondent; as stated, Mr. Drakos was told by him that the appellant was the middle-man for the sale of this property.

On March 18, 1966, a contract of sale was signed by the respondent and Messrs. Michalakis Drakos & Co. Ltd., Yiannis Hji Arabis and two others. In this contract, *exhibit 3*, the respondent accepted, after the payment of £8,000, to permit the balance of £16,000, with 6% interest per annum as from the date of transfer, to remain unpaid on the security of a

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mortgage in favour of the respondent, payable in five equal yearly instalments of £3,200 each; the transfer of the land was to take place immediately on the payment of the sum of £8,000.

On the same day, the appellant who was apparently informed of the sale, visited the respondent and asked for his commission. The respondent told the appellant that he had sold the property privately, as the deal with Cybarco failed, and without the services of any commission agent.

With regard to the question of a contract of agency the trial Court had this to say in their Judgment, about the initial arrangement between appellant and respondent :

“Although we are very reluctant in formulating a contract for the parties, we are ready to hold that by necessary implication the plaintiff was constituted an agent of the defendant with a view to finding a ready and willing purchaser who would enter into a binding contract with the defendant; construing s. 70 of our Contract Law (Cap. 149) in favour of the plaintiff we may even assume further that the plaintiff would be paid reasonable commission (which according to P.W.2 is 2% on the sale price ‘if it is big business £15,000 to £20,000’ ) on the sale price”.

Going through the record very carefully and particularly through the evidence of the respondent, we are satisfied, from the totality of the evidence, that it was reasonably open to the Court to reach such a conclusion; Mr. Cacoyannis did not seek to disturb that finding; indeed, he could not successfully have done so; but he argued that the arrangement came to an end when the Cybarco deal fell through.

The main argument of appellant’s counsel before us, as well as before the trial Court, was that the appellant having introduced Mr. Hji Arabis to the respondent, his introduction was the effective cause of the subsequent sale; and that he was entitled to earn his commission amounting to £480, corresponding to an amount of 2% on the amount of the purchase price of the land.

The learned trial Judges in rejecting the appellant’s contention had this to say :

“So it is evident that the plaintiff did not act in any way



as a middle-man between the defendant and the said Drakos in bringing about the agreement in question”.

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And further down they said :

“We have considered this point very carefully but we find ourselves unable to agree with the learned counsel for the plaintiff; the bargain that materialized was the one struck with Drakos and in this bargain neither the plaintiff nor P.W.2, took any part whatsoever”—P.W.2 is the aforementioned Mr. Hji Arabis.

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With due respect to the learned trial Judges we find ourselves in disagreement with the above reasoning. There is ample evidence on record to show that the appellant introduced Mr. Hji Arabis to the respondent and, although the negotiations for the sale of his land to Cybarco through Mr. Hji Arabis had ceased, the effect of the introduction remained and it was really the operating factor in the sale of the property thereafter. It was Mr. Hji Arabis, who informed Mr. Drakos that the land of the respondent was offered for sale, and he, Mr. Hji Arabis, was, to the knowledge of the respondent, one of the buyers. Thus, the subsequent sale to Mr. Hji Arabis and the others, although not negotiated by the appellant, but by Mr. Drakos, was really brought about by the introduction of Mr. Hji Arabis to the respondent, which was effected by the appellant.

Now with regard to the law applicable, we would like to quote from the judgment of Lord Atkinson in the case of *James T. Burchell v. Gowrie and Blockhouse Collieries Ltd.* [1910] A.C. 614 Privy Council, the reasoning of which we adopt and apply to the case in hand. Lord Atkinson had this to say at p. 624 :

“It was admitted that, in the words of Erle C.J. in *Green v. Bartlett*, ‘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’. Or in the words of the later authorities, the plaintiff must show that some act of his was the *causa causans* of the sale (*Tribe v. Taylor*) or was an efficient cause of the sale (*Millar v. Radford*)”.

The same principle was adopted and followed in *Jack Windle Ltd. v. Brierley* [1952] 1 All E.R. 398, although that case was differently decided on its particular facts.

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We consider it further helpful, in dealing with this case, to refer to the case of *Coles v. Enoch* [1939] 3 All E.R. 327. Scott, L.J. delivering the judgment of the Court of Appeal, had this to say at p. 328, adopting once again the test of the "efficient cause" :

"I think that here the plaintiff did not achieve the result which the commission contract contemplates as the result which must be achieved by him as agent in order to earn commission. He must accept what his sub-agent, Adickes, did just as if he did it himself, and if, instead of Adickes talking to Wilkie, he had said to Wilkie what Adickes said, and deliberately kept back the actual address of the premises and all specific means of identification, because he wanted to keep open for himself the opportunity of taking the shop, the proper inference must necessarily be that he deliberately stopped short of doing that which would entitle him to his commission. He stopped short of being the direct or efficient cause of Wilkie taking that shop. The fact that he did not give the address must be interpreted as a deliberate act falling short of what was essential to bring him within the terms under which he would be entitled to commission under the oral contract.

In these circumstances, I feel compelled to arrive at the conclusion that the plaintiff fell short of finding a tenant for the defendant's shop, and that the letting was due to the act of the tenant himself. In fact, the tenant found this shop for himself".

As, however, in the present case the appellant has, on the contrary, done the most effective part of his work by introducing to the respondent the said Mr. Hji Arabis, we are of the opinion that appellant's act remained the efficient cause of the sale taking place, and, therefore, in our view, this contention of counsel for appellant succeeds.

With regard to the rate of commission, in the absence of any express agreement, a reasonable remuneration is payable; for estimating what is reasonable or usual remuneration evidence is on record, and there is a finding by the trial Court that the amount of 2% is reasonable; this finding has been accepted by counsel for the appellant and, therefore, we need not say anything more.

For the reasons we have given, we would allow the appeal;

and the Judgment of the trial Court is set aside and there shall be Judgment in favour of the appellant for the sum of £480, with costs here, and in the Court below.

*Appeal allowed. Judgment of the trial Court set aside: Judgment entered in favour of the appellant with costs as mentioned above.*

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