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[VASSILIADES, P., JOSEPHIDES AND HADJIANASTASSIOU, JJ.]

COSTAS
KALISPERAS
v.
VICTOR
PAPADOPOULLOS

COSTAS KALISPERAS,

Appellant-Plaintiff,

v.

VICTOR PAPADOPOULLOS,

Respondent-Defendant,

(Civil Appeal No. 4783).

Contract—Estate agent—Commission—Damages—Contract between estate agent and client for sale of land on payment of agreed commission—Contract wrongfully repudiated by client who, acting in breach of an express provision in the said contract, sold himself the land in question to a buyer found by him—Meaning and effect of clause 7 of the aforesaid contract whereby it was stipulated that during the currency of the contract the client should not approach prospective buyers—And that should he (the client), acting in breach of this, term, sell the property to such buyer, then the agent would be entitled to be paid the whole agreed commission i.e. 5% on the actual sale price—This clause does not entitle the agent to any commission at all—Said clause amounts to agreed damages and is, therefore governed by the provisions of section 74(1) of the Contract Law, Cap. 149—It follows that the agent in this case is not entitled to claim the said sum (amounting to £1,200) as agreed commission but solely as agreed damages for breach of contract—In which latter case the Court is not bound to award to him the whole said amount—The Court being empowered under said section 74(1) to award such lesser amount as it may think reasonable in the circumstances—And the trial Court having thus, awarded only £750 as reasonable compensation acted rather generously—Appeal by the agent dismissed.

Estate agent—Commission—Claim for commission—Principles applicable—When does a claim for commission—as distinct from damages—arise—Matter governed by the ordinary law of contract—See also hereabove.

Commission—Claim for commission as distinct from claim for damages for breach of contract—See hereabove.

Estate agent—Commission—Damages—See above.

Words and Phrases—“Commission”—“Προμήθεια”.

By a contract in writing dated November 24, 1965, the client (respondent) gave exclusive authority to the agent (appellant) to find during the validity of the contract a buyer for a property of the former of considerable value. The duration of the contract was fixed at one year commencing on the date of the contract (24 November, 1965), after the lapse of which the client (respondent) would be entitled to terminate the contract by a fortnight's notice in writing to the agent. Clause 5 of the contract provided that the agent's remuneration shall be 5% on the actual sale price. Clause 7 provided that during the validity of the contract the client would abstain from approaching prospective buyers and that, should the client in breach of this term sell the property, then the whole commission at 5% on the actual sale price would become payable by the client as provided in clause 5 hereabove. In June 1966, the client, having apparently found a buyer, communicated to the agent his decision to terminate the contract; and in fact soon after that repudiation, the property in question was sold for £24,000 to the buyer found by the client. When the agent came to know of the sale, he claimed from the client (respondent) the payment of the agreed commission on the actual sale price of £24,000 at the contract rate of 5% amounting thus to £1,200. The client declined liability; and the agent filed the present action in the District Court claiming the said sum of £1,200 as agreed commission and/or as damages.

The trial Court took the view that in the circumstances the agent (plaintiff-appellant) was not-entitled to any commission; but he was entitled to damages for breach of contract, the client (defendant-respondent) having broken the contract by repudiation during the period of its agreed validity; and having sold the property in contravention of the contract. The trial Court then relying on section 74(1) of the Contract Law, Cap. 149 (*infra*) assessed the reasonable compensation to which the agent (plaintiff-appellant) was entitled in the circumstances of the case to £750 and awarded to the agent damages accordingly. Section 74(1) of the Contract Law, Cap. 149 provides:

“(1) When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such

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breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.....”

The agent-plaintiff now appeals against the said judgment of the District Court. Counsel for the appellant argued that appellant-agent was entitled to commission under clause 7 of the contract (*supra*) i.e. to £1,200 (at 5% on the actual sale price of £24,000 *supra*) and not to compensation by way of damages for breach of contract as decided by the trial Court.

The Supreme Court affirming the judgment of the trial Court and dismissing the appeal:-

Held, (1). It is clear to us that the submission on behalf of the appellant rests on a completely wrong interpretation of the contract between the parties. The position is undoubtedly governed by the relevant statutory provisions in our Contract Law Cap. 149 which have been considered in this Court, in connection with similar claims in a number of cases. We may refer to two recent ones: *Orphanides v. Michaelides* (1967) 1 C.L.R. 309; and *J. F. Aho and Fils and Another v. Photiades* (1968) 1 C.L.R. 477 where the case of *Luxor (Eastbourne), Ltd. v. Cooper* [1941] A.C. 108 was considered, this Court adopting the view that the law applicable to this type of claims (for agent's commission or remuneration) is the ordinary law of contract; and where referring to *Orphanides's* case (*supra*) the Court quoted from Pollock and Mulla's Indian Contract and Specific Relief Acts (8th ed. at p. 679) the statement that “to establish a claim for commission, the agent must show that the transaction in respect of which the claim is made, was a direct result of his agency”. (See *Aho and Fils* case (*supra*) at p. 494).

(2) The very meaning of the word “commission” and the corresponding word in Greek “Προμήθεια” denote the agent's remuneration for supplying or providing something. No question of commission arises where the agent has not brought about the sale or has not found and introduced the buyer to his client in performance of a contract (express or implied in the ordinary course of the agent's business).

(3)(a) Clause 7 of the contract (*supra*) can only be construed as providing for damages payable to the agent by the client in case of the breach therein described. Reading clause 7 in its context we can have no doubt that this is what the parties intended; and that this is its true meaning and effect, as decided by the District Court. The agent is only entitled to damages for the breach of the contract by the client in contacting directly, during the validity of the contract, the prospective buyer; and in eventually selling the property in contravention of the contract.

(b) It follows that the trial Court rightly held that the agent (appellant-plaintiff) was entitled to his alternative claim of damages for breach of contract; and found the reasonable compensation to which he was entitled under section 74(1) of the Contract Law Cap. 149 (*supra*) at £750. We see no reason for interfering with the amount so found by increasing it. In fact, to some of us it may appear to be rather a generous assessment.

Appeal dismissed with costs.

Cases referred to:

Luxor (Eastbourne), Ltd. v. Cooper [1941] A.C. 108;

E. P. Nelson and Co. v. Rolfe [1950] 1 K.B. 139;

Midgley Estates, Ltd. v. Hand [1952] 1 All E.R. 1394;

Orphanides v. Michaelides (1967) 1 C.L.R. 309;

J. F. Aho and Fils and Another v. Photiades (1968) 1 C.L.R. 477.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Mavrommatis & Stylianides D.JJ.) dated the 27th November, 1968 (Action No. 409/68) whereby he was awarded a sum of £750.— as damages for breach of contract to sell land on payment of an agreed commission.

E. Efsthathiou, for the appellant.

A. Emilianides, for the respondent.

The judgment of the Court was delivered by:

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VASSILIADES, P.: This appeal turns on the true meaning and effect of the terms used to express in writing, an agreement between an estate agent (the plaintiff-appellant herein) and his client (the defendant-respondent) a person interested in the sale of certain immovable property of considerable value.

The contract was produced at the trial by the appellant, to whom we shall hereafter refer as the "agent"; and it was admitted by the respondent, to whom we shall refer as the "client". It is *exhibit 1* on the record.

The object of the contract was to give exclusive authority to the agent to find during the validity of the contract, a buyer for the property, at a certain price. The duration of the contract was fixed at one year commencing on November 24, 1965 (the date of the contract) after the lapse of which, the client would be entitled to terminate the contract by a fortnight's notice in writing to the agent. The sale price was fixed at £32,000, which we take to mean the lowest limit authorised by the contract; and the agent's commission at 5% on the actual sale price. The contract also provided in clause 7 that during the validity of the contract, the client would abstain from approaching prospective buyers, as the agent's authority to negotiate a sale during such period, was to be exclusive; and the clause (cl. 7) went on to provide that:-

“ Εἰς περίπτωσιν δὲ καθ’ ἣν κατὰ παράβασιν τοῦ παρόντος ἔρου, τὸ κτῆμα ἤθελε πωληθῆ εἴτε ἀπ’ εὐθείας ὑπὸ τοῦ ‘Ἰδιοκτῆτου-ἐντολέως’ εἴτε μέσῳ τρίτου προσώπου, ὀλόκληρος ἢ προμήθεια ἐπὶ τοῦ ὡς ἄνω καθοριζομένου τιμήματος καθίσταται πληρωτέα ὑπὸ τοῦ ‘Ἰδιοκτῆτου-ἐντολέως’ ὡς ἐν τῇ παραγράφῳ 5 ἀνωτέρῳ ”.

Clause 5 provided that the agent's remuneration shall be 5% on the actual sale price. And clause 8, following immediately after the above quoted provision in cl. 7, provided that in case of sale of the property after expiry of the contract, to any person whom the agent brought into contact with the client, even at a price lower than the price fixed in the contract (£32,000) the agent shall be entitled to remuneration by way of commission at the rate provided in the contract.

Within the year period in the contract, namely in the month of June, 1966, the client, having apparently found a buyer, communicated to the agent his decision to terminate the validity

of the contract; and in fact soon after that repudiation, the property was sold for £24,000 to the buyer found by the client.

When the agent came to know of the sale, he claimed from the client the payment of commission on the sale price at the contract rate of 5%, amounting to £1,200. The client declined liability and refused to make any payment; and the agent filed the present action on a writ with a general indorsement, claiming —

“ συμπεφωνημένην άμοιβήν και/ή άποζημιώσεις δυνάμει έγγραφου συμφωνίας ήμερομηνίας 24.11.65 και/ή άποζημιώσεις δια παράβασιν έγγραφου συμφωνίας και/ή προβλεπόμενα κέρδη και/ή διαφυγήν κέρδους ”.

(agreed remuneration and/or damages under a contract in writing dated 24/11/65 and/or damages for breach of contract and/or loss of profit).

In his pleading, the agent rested his claim mainly on clause 7 of the contract; and fixed the amount at £1,200 i.e. 5% on the sale price of £24,000. The client, on the other hand denied in his pleading, all liability, contending, *inter alia*, that he was under no obligation to pay any commission to the agent, under the contract.

The trial Court took the view that in the circumstances, the property having been sold directly by the client to a buyer who had not been found or introduced by the agent, the latter was not entitled to any commission; but he was entitled to damages for breach of contract, the client having broken the contract by repudiation during the period of its agreed validity; and having sold the property in contravention of the contract.

The trial Court then proceeded to find the amount of reasonable compensation to which the agent was entitled under the contract for the loss caused to him by the client's breach; which the Court found at £750.— awarding to the agent damages accordingly.

Against this judgment, the agent took the present appeal. Counsel on his behalf submitted that the appellant-agent was entitled to commission under clause 7 of the contract; and not to compensation by way of damages for breach of contract, as decided by the trial Court. He relied on three English cases to which he referred: *Luxor (Eastbourne), Ltd. v. Cooper* [1941] A.C. 108; *E. P. Nelson & Co. v. Rolfe* [1950] 1 K.B. 139;

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Midgley Estates, Ltd. v. Hand [1952] 1 All E.R., 1394. Asked whether he had in mind any cases of the same nature, decided on the provisions of our Contract Law (Cap. 149) which undoubtedly govern this case, learned counsel replied that he did have in mind the Cyprus cases but he found that they were distinguishable on their facts; and would be of no help.

After hearing exhaustively counsel for the appellant, we found it unnecessary to call on the respondent; it is clear to us that the submission on behalf of the appellant rests on a completely wrong interpretation of the contract between the parties. The position is undoubtedly governed by the relevant statutory provisions in our Contract Law (Cap. 149) which have been considered in this Court, in connection with similar claims in a number of cases. We may refer to two recent ones: *Stelios Orphanides v. Vyrion Michaelides* (1967) 1 C.L.R. 309, where the agent was held to be entitled to remuneration in the form of a reasonable commission for his services in finding and introducing to the seller, the buyer to whom the property was eventually sold directly by the owner; and *J. F. Aho & Fils and Another v. Photos Photiades* (1968) 1 C.L.R. 477 where *Luxor (Eastbourne), Ltd. v. Cooper (supra)* was considered, this Court adopting the view that the law applicable to this type of claims (for agent's commission or remuneration) is the ordinary law of contract; and where referring to *Orphanides v. Michaelides (supra)* the Court quoted from Pollock and Mulla's Indian Contract and Specific Relief Acts (8th Ed. at p. 679) the statement that "to establish a claim for commission, the agent must show that the transaction in respect of which the claim is made, was a direct result of his agency". (*The Aho & Fils case, supra*, at p. 494).

The very meaning of the word "commission" (see Oxford Universal Dictionary 3rd ed. vol. 1 p. 351 col. 3) denotes the remuneration of the agent for services in connection with the sale or purchase of property (or goods) on a commission basis. The corresponding word in Greek "προμήθεια" (προμηθεύω) likewise denotes the agent's remuneration for supplying or providing something. No question of commission arises where the agent has not brought about the sale or has not found and introduced the buyer to his client in performance of a contract (express or implied) in the ordinary course of the agent's business.

Clause 7 of the contract between the parties herein, can only

be construed as providing for damages payable to the agent by the client in case of the breach therein described. Reading clause 7 of this contract in its context we can have no doubt that this is what the parties intended; and that this is its true meaning and effect, as decided by the District Court. The agent is only entitled to damages for the breach of the contract by the client in contacting directly, during the validity of the contract, the prospective buyer; and in eventually selling the property in contravention of the contract.

Counsel for the appellant, carried by the strong wind of his own argument, went as far as to suggest that his client was not entitled to damages for breach of contract; but we do not think that we should fix counsel on that erroneous position. We must point out, however, that he has taken a very grave risk for his client, by making such a statement.

The trial Court rightly held that the agent was entitled to his alternative claim of damages for breach of contract; and found the reasonable compensation to which he was entitled under section 74(1) of the Contract Law (Cap. 149) at £750.—

We see no reason for interfering with the amount so found by increasing such an amount. In fact, to some of us it may appear to be a rather generous assessment. The appeal fails; and is dismissed with costs.

Appeal dismissed with costs.

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