

1986 November 13

[A. LOIZOU, DEMETRIADES, LORIS, JJ.]

ALEXANDRA P. GEORGHIADOU NEE GAVRIELIDOU
AND OTHERS,

Appellants-Defendants,

v.

VASANDE ESTATES LIMITED.

Respondents-Plaintiffs.

(Civil Appeal No. 6673).

Appeal—Credibility of witnesses—Principles governing interference by the appellate Court.

Evidence —Witness —Cross-examination —Object of—Discretion of trial Court as to how far it may go or how long it will continue.

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Contract—Offer and acceptance—Contract concluded through telegrams—Offer for purchase of immovable property at £185,000—Unqualified and absolute acceptance by telegram in reply—Agreement later reduced into writing—In the circumstances and merely by reason of such a fact the validity of the binding contract concluded through the telegrams was not affected.

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Construction of documents—Contract of sale of land—Term that “all remunerations (αμοιβαι) ... in relation to the contract” shall be paid by purchaser—In the circumstances the term did not include “commission” payable to the estate agent.

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Appeal—New point raised for the first time before the appellate Court—Approach of such Court.

The trial Court adjudged the three appellants to pay to the respondent £4,000, being an agreed commission due in accordance with an oral contract to the effect that the appellants would be paying to the respondents the said

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sum, if the latter would find a purchaser for appellants' property at Evagorou Ave., No. 23 in Nicosia and a contract of sale at the price of £175,000 or more was concluded between the appellants and the proposed by the
5 respondent purchaser. The said contract as regards the commission was concluded between appellants' attorney Lefkos Georghiades and the Director of the respondents Andreas Demetriou.

As a result Demetriou introduced to Georghiades
10 Katsaris, a wealthy Cypriot, whom, having sold part of his property abroad, wanted to invest money in Cyprus. As, however, Georghiades left for England there followed between himself and Demetriou an exchange of telegrams. Exh. 3 is a telegram containing an offer by Katsaris to
15 buy the property at £175,000. Exhibit 4 is a telegram by Georghiades containing an offer for £190,000. Exhibit 5 is a new offer by Katsaris for £185,000 and exhibit 6 is a telegram containing acceptance by Georghiades of the last offer.

20 Thereupon Katsaris and Demetriou went to England, where a written agreement of sale was drafted and signed by Katsaris and appellant 3. Georghiades did not sign, because a term of it amounted to a receipt of payment of £22,000 payable upon signing the contract. Thereafter,
25 Georghiades and Katsaris went to Geneva where Katsaris withdrew from his bank the £185,000 and issued 3 cheques in the name of each appellant according to their respective shares in the property. The cheques would have been given to Georghiades upon their return to Cyprus.

30 When, however, they returned to Cyprus it was observed that the construction of the building at 23, Evagorou Avenue was not proceeding with the necessary speed. As the contract of sale provided for the transfer in the name of Katsaris of a complete building and Katsaris wanted immediate registration he proposed to
35 Georghiades that the amount needed for the completion of the building be deducted from the price. Georghiades accepted the proposal. It was agreed that such an amount would be determined by Architect Theodossiades and
40 that such determination would be binding on the parties.

Theodossiades determined the figure at £22,000. Georghiades then demanded that the commission of £4,000 be paid by Katsaris. The latter refused.

The above is a synopsis of the facts as found by the trial Judge. It should be mentioned that in their defence the defendants denied the agreement as to the commission, and alleged that the contract of sale was not performed by the purchaser thereof and that Georghiades had ceased as from January, 1978 to represent appellant 3. These defences were not accepted by the trial Court.

Most of the grounds of this appeal attack the findings of fact based on the view taken by the trial Court as to the credibility of witnesses and the inferences drawn from such facts. Ground 4 is a complaint that the trial Judge wrongly interfered *ex proprio motu* and disallowed a question in the course of cross-examination of Theodossiades to the effect that his assessment of £22,000 was wrong. Ground 5 is a complaint that the trial Judge failed to interpret correctly term 6 of the contract of sale, providing that the purchaser "undertakes to pay all expenses, remunerations and fees (τέλη) in relation to this contract". Counsel for the appellants submitted in this respect that term 6 should be interpreted as including the "commission" as well.

Finally and though the point was neither raised in the Court below nor included in the grounds of appeal counsel argued that the commission was not payable as the purchase price was never paid.

Held, dismissing the appeal: (1) The principles applicable to appeals directed against findings as to the credibility of witnesses are well settled and have been summarised in *Kyriacou v. Kortas and Sons* (1981) 1 C.L.R. 551 at 553. In this case this Court has not been persuaded to interfere with such findings. Moreover, the inferences drawn by the trial Judge from primary facts are fully endorsed by this Court.

(2) A binding contract of sale was concluded by exh. 6; and the fact that the parties merely at some subsequent

stage reduced it in writing in the circumstances found by the trial Judge did not affect its validity as a binding contract concluded by an absolute and unqualified acceptance (exhibit 6).

5 (3) The object of cross-examination is twofold: (a) to test the accuracy, truthfulness and in general the reliability of the testimony of a witness and (b) to confront the witness with the version of the other side (A passage from *Loizou and Piki's Criminal Procedure in Cyprus* at p.105
10 cited with approval). The trial Court, however, has always a discretion as to how far it may go or how long it will continue (*Vassiliades v. Vassiliades and Another*,
18 C.L.R. 10 at p. 22 and *Zacharia v. The Republic*,
15 1962 C.L.R. 52 at p. 66 cited with approval). In this case the trial Judge did not exercise his discretion wrongly, when he disallowed the question put to witness Theodossiades. In any event, even assuming that the question had been wrongly disallowed, no substantial injustice was caused thereby.

20 (4) This Court is in agreement with the trial Judge that the word "remuneration" (αμοιβή) in term 6 could not be construed in the circumstances as including agreed commission.

25 (5) The approach of an appellate Court to a situation that arises when a point, not taken at the trial, is raised for the first time before it was laid down by Lord Herchell in *The Tasmania* [1890] 15 A. C. 223 at 225. It is clear from this authority that in this case the Court cannot entertain the new point raised by counsel; a
30 fortiori so, because such point was not included in the grounds of appeal.

Appeal dismissed with costs.

Cases referred to:

- Kyriacou v. Kortas and Sons* (1981) 1 C.L.R. 551;
35 *Vassiliades v. Vassiliades and Another*, 18 C.L.R. 10;
Zacharia v. The Republic, 1962 C.L.R. 52;

The Tasmania [1890] 15 A.C. 223;

Antoniades v. Koussoulos (1966) 1 C.L.R. 37.

Appeal.

Appeal by defendants against the judgment of the District Court of Nicosia (Artemides, Ag. P.D.C.) dated the 8th December, 1983) (Action No. 4357/78) whereby they were adjudged to pay to the plaintiffs the sum of £4,000.- agreed commission in respect of a concluded contract for the sale of plaintiffs property in Nicosia. 5

A. Markides, for the appellant. 10

A. Ladas, for the respondent.

Cur. adv. vult.

A. LOIZOU J.: The judgment of the Court will be delivered by Loris, J.

LORIS J.: The present appeal is directed against the judgment of the District Court of Nicosia (Chr. Artemides Ag. P.D.C., as he then was) in action No. 4357/78, whereby the appellants-defendants were adjudged to pay to the respondent-plaintiff the sum of £4,000.—agreed commission in respect of a concluded contract for the sale of appellants' immovable property situated at Nicosia, to a certain Katsaris, which went off owing to appellants' fault. 15
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The respondent is and was at all material times a company of limited liability, registered under the provisions of Cap. 113 dealing in state agency business; one of its directors is Andreas Demetriou, who was the only person that took part, on behalf of the company aforesaid, to the transaction which has led to the present litigation. 25

Appellants 1, 2 and 3 are, the mother, sister and daughter respectively, of their attorney, namely Lefkos Georghiades, through whom they were sued and defended in the action which culminated in the judgment under consideration in the present appeal. 30

The plaintiffs' claim in this case was for £4,000.—
agreed commission by virtue of an oral contract allegedly
entered into between Andreas Demetriou, the said director
of respondent company on behalf of the company on the
5 one hand and Lefkos Georghiades, the said attorney of
all three appellants, acting on their behalf, on the other;
according to the terms of the said alleged contract the ap-
pellants would be paying to the respondent the sum of
£4,000 if the latter would find a purchaser for their pro-
10 perty situated at Evagoras Avenue, 23, Nicosia, and a
contract for the sale thereof (at the price of £175,000 or
more) between the appellants and the proposed purchaser
by the respondent, would be concluded.

15 It is the allegation of the respondent that such a pur-
chaser was found and a contract of sale was concluded
which was not however performed through the fault of
the appellants.

20 The appellants in their defence deny the alleged con-
tract for the payment of commission and maintain inter
alia the following:

25 (a) Lefkos Georghiades although representing all three
appellants initially, ceased to represent his daughter, i.e.
defendant No. 3 as from January, 1978, and was not,
therefore, representing her at the material time of this
action.

(b) No agreement was ever made between Andreas De-
metriou and Lefkos Georghiades for the payment of com-
mission by the appellants.

30 (c) The contract for the sale of the aforesaid property
of the appellants was not performed by the purchaser
thereof, namely Katsaris, the appellants being in no fault
whatever for its non-performance.

The salient facts of this case are, as briefly as possible,
the following:

35 Katsaris a wealthy Cypriot, who had sold part of his
property in French Cameroon, wanted to invest in Cy-
prus, and for this purpose he contacted A. Demetriou, the

said Director of the respondent company. Demetriou proceeded to advertise in a number of Cyprus dailies an invitation of his client to purchase immovable property.

Georghiades who lives in England but comes regularly to Cyprus, had also advertised on behalf of the appellants for the sale of their property, consisting of buildings, the construction of which had not been completed, situate at Evagoras Avenue 23, Nicosia. 5

Following the said advertisements, Demetriou visited, in August, 1978, Georghiades at the hotel where latter was staying, and told him that he had a prospective purchaser for the aforesaid property. Thereafter, another meeting was arranged between those two and the prospective purchaser Katsaris; at the latter meeting the property was viewed and sale prices were referred to; there followed negotiations between Georghiades and the prospective purchaser through Demetriou who was always acting as a middleman. 10 15

It is the allegation of Demetriou that at the latter meeting as aforesaid, after the mentioning of figures for the proposed sale, Georghiades as the attorney for the appellants, agreed to pay £4,000 as a commission to the respondent if a contract for the sale—at the price of £175,000 or more—of the property in question between the appellants and the proposed purchaser by the respondent, would be concluded. 20 25

During these negotiations through Demetriou, Georghiades named the amount the appellants would accept and as he was leaving for England asked Demetriou to cable to him to England, giving to him his address in England for this purpose, if the proposed purchaser would be ready to accept. 30

Georghiades left for England and there followed between Demetriou and himself an exchange of telegrams; Ex. 3 is a telegram containing an offer by the proposed purchaser to buy the property at £175,000.-; Exh. 4 contains a counter-offer by Georghiades for £190,000; Exh. 5 is a new offer to the counter-offer of Georghiades for 35

£185,000. Exhibit 6, dated 3.10.1978 is an acceptance of the latter offer by Georghiades.

Following the above acceptance Demetriou and Katsaris flew to London where they met Georghiades at the home of his daughter, appellant 3. A written agreement of sale was drafted, exhibit 13, which was signed by Katsaris and appellant 3. Georghiades did not sign this document because a term in it amounts to an acknowledgement of receipt, on signing the contract of a sum of £20,000.-. Katsaris did not have on him at the time the money and so the contract was kept in the possession of Georghiades.

Georghiades and Katsaris proceeded by plane to Geneva where Katsaris withdrew from his bank the total amount of money stipulated in the agreement i.e. £185,000.-. On the instructions of Georghiades three cheques were issued in the name of each appellant, for the amount due to each one of them in proportion to their respective shares in the property. The cheques would have been paid to Georghiades in Cyprus upon the registration of the property in the name of the purchaser.

When they returned to Cyprus it was observed that the works on the incomplete buildings were not proceeding with the necessary speed and as the contract of sale provided for the transfer in Katsaris name of complete buildings at the sale price of £185,000, and as Katsaris wanted the registration of the property to proceed as soon as possible he proposed to Georghiades that an estimate of the amount, which was required for the completion of the buildings be made and be deducted from the agreed price of £185,000.- thus enabling the speedy registration of the property in his name. Georghiades accepted this and it was agreed that the architect for the building, namely Theodossiades, would estimate these costs. A meeting was arranged for this purpose attended to by Georghiades, Demetriou, Katsaris and the contractor Genethlis. Theodossiades proceeded and made the estimate and arrived at the figure of £22,000.-.

From this point onwards the allegations of the two sides are highly controversial.

It is the allegation of the respondents that Georghiades had undertaken to abide by the estimate of Theodossiades with which, he, in any event, agreed; respondents allege further that after such agreement Georghiades insisted, in spite of his agreement with Demetriou, that Katsaris should pay the commission to the respondent something which Katsaris had never undertaken and which he was expected to refuse, as he did; when Katsaris rejected the demand of Georghiades to pay the commission the sale fell through, since appellants would not proceed with the registration in Katsaris' name. 5
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Georghiades on the other hand contends that he did not agree with the estimate of Theodossiades and thus no binding agreement between the appellants and Katsaris was concluded for the sale of the immovable property in question. 15

At the trial four witnesses were called by plaintiffs-respondents; the main witness for the defendants-appellants was Lefkos Georghiades; also several documents, including telegrams, were produced by both sides (vide exhibits 1-16 at the trial). 20

The learned trial Judge in the first instance who had the opportunity of hearing the witnesses and watching their demeanour in the witness box, accepted the evidence adduced by plaintiffs-respondents and rejected the evidence of the single witness on the gist of the case, adduced by defendants-appellants, giving his reasons for so doing. 25

On the evidence as he has accepted it, he proceeded to make his findings of fact and draw his own inferences from the primary facts as he had accepted them. 30

In connection with the issue whether Lefkos Georghiades was representing at all material times all three defendants-appellants, the learned trial Judge had this to say in his elaborate judgment:

“...Another point made by Georghiades is that he did not represent defendant 3 but only defendants 1 and 2 and therefore since no binding agreement has been entered with defendant 3 the whole transaction 35

fell through. There is no merit at all in this allegation either. Georghiades was the only person who took part in the transaction that led to this case and he himself presented the case on behalf of all defendants. The writ of summons was served on him in Cyprus and he did not take any steps to set it aside with regard to defendant 3. He was signing the telegrams which are before the Court and which contain the conclusion of the agreement. He went with Katsaris to Geneva and at his instructions three cheques were issued in the name of each defendant for the sum to which they were entitled according to their share in the property. When all these facts were presented to Georghiades during his evidence he was obliged to say that it was a family matter and defendant 3 only wanted to receive the sum he had agreed to, i.e. £50,000.- from the sale and Georghiades would see that she was satisfied in this respect. Consequently he had explicit authority to act for defendant 3. There is, therefore, no doubt, and so much Georghiades had admitted in his evidence. that he was acting for all three defendants....”.

On the issue whether there was an agreement between Andreas Demetriou, one of the Directors of plaintiff-respondent Co., and Lefkos Georghiades as the attorney of all three defendants-apellants, for the payment of an agreed amount of £4,000.- as commission, the Court of first instance held the following:

“... I have already commented on the credibility of the witnesses who have testified before me. The evidence of Demetriou is fully supported by that of Katsaris and Theodossiades whose testimony I believe in toto. I believe that Demetriou and Georghiades agreed orally and a contract was therefore entered between them, that the defendants would pay the agent the sum of £4,000.- as agreed commission if the agent had found a purchaser who would enter into a contract of sale with the defendants. From the facts which I have set hereinabove such a contract was concluded between Katsaris and the defendants

but the latter failed to perform it because they did not want to pay the commission as agreed....”

The present appeal is directed mainly against the findings of the trial Judge which were based to a great extent on his view regarding (a) the credibility of the witnesses who gave evidence before him and (b) on inferences drawn by him from primary facts. 5

Most of the grounds of the present appeal are impugning these findings of the trial Judge and we intend dealing with most of these grounds together. We shall have the opportunity later on in the present judgment to deal specifically with complaint under ground 4, namely the complaint about the interruption of the cross-examination of witness Theodossiades by the Court as well as with the complaint under ground 5 in connection with the construction placed by the trial Judge on paragraph 6(b) of exhibit 13. 10 15

The principles upon which this Court decides appeals directed against the credibility of witnesses are well-settled and we need not go into them in detail. As I had the opportunity of summarising them in *Kyriakou v. Kostas & Sons*, (1981) 1 C.L.R. 551 at p. 553 “It must be shown that the trial Judge was wrong in evaluating the evidence and the onus is on the appellant to persuade the Court that this is so. Matters relating to credibility of witnesses fall within the province of the trial Judge who has the opportunity to see and hear the witnesses. If on the evidence before him it was reasonably open to him to make the findings to which he arrived at, then this Court will not interfere unless the inferences drawn therefrom are not warranted by the findings whereupon this Court can draw its own conclusions.” 20 25 30

Having considered carefully the forceful argument advanced by learned counsel appearing for the appellants and having examined the record with utmost care we must say that we were not persuaded that the trial Judge was wrong in evaluating the evidence. Furthermore, we are satisfied that the inferences drawn by him from the primary facts were reasonably open to him; in fact we may go further and say that this Court, which is in as good a 35 40

position as the Court of first instance to draw its own inferences from primary facts, fully indorses the inferences drawn by the trial Judge.

5 We hold the view that the absolute and unqualified acceptance by Georghiades, acting at all material times as the attorney of all three appellants, concluded a binding contract for the sale of the immovable property in question to the proposed by the respondent purchaser, namely Katsaris, for the sum of £185,000.-; and the fact that the parties merely reduced the aforesaid agreement, at some
10 subsequent time, in England, into writing (exh. 13) under the circumstances found by the trial Judge, did not in any way affect the validity of the binding contract concluded by virtue of the absolute and unqualified acceptance expressed in the telegram of Georghiades, exh. 6.
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Coming now to the fourth ground of appeal: It is the complaint of the appellants that the trial Judge interfered, acting *ex proprio motu*, and disallowed a question put by counsel to witness Theodossiades (P.W. 4) in cross-examination.
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The issue before the trial Judge was whether or not Theodossiades had given the amount of £22,000.- in his calculations, an amount which ought to have been deducted from the sale price of the property in question, as
25 per agreement between Georghiades and Katsaris, and further whether such an amount was accepted by Georghiades. Learned counsel appearing for the appellants sought to cross-examine Theodossiades in order to show that his assessment of £22,000.- was wrong. The learned
30 trial Judge intervened and disallowed the question. It was submitted by learned counsel for the appellants that this question was relevant and furthermore that even if not relevant to the issue, was intended to discredit the witness.

As stated in the work of our brethren Loizou and Piki
35 *Criminal Procedure in Cyprus* at p. 105 "The object of cross-examination is mainly twofold: (a) to test the truthfulness, accuracy and, in general the reliability of the testimony of a witness; and (b) to confront the witness with the version of the other side.

The general principle set out above was dealt with the Privy Council in the case of *Aphrodite N. Vassiliades v. Artemis N. Vassiliades and another*, 18 C.L.R. 10, where Lord Wright delivering the judgment of the Privy Council stated (at p. 22) the following:

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“One objection taken was that the District Court stopped the cross-examination of a witness by the appellant’s brother, a barrister who at one stage appeared on her behalf. After it had lasted three hours (it is true through the medium of an interpreter) the Court stopped it as irrelevant. Now cross-examination is one of the most important processes for the elucidation of the facts of a case and all reasonable latitude should be allowed, but the Judge has always a discretion as to how far it may go or how long it may continue. A fair and reasonable exercise of his discretion by the Judge will not generally be questioned by an Appellate Court. As Lord Sankey L.C. said in the *Mechanical and General Inventions* case (1935) A.C. 346, at p. 360, ‘A protracted and irrelevant cross-examination not only adds to the cost of litigation, but is a waste of public time.’ The Lord Chancellor went on to say that such a cross-examination may become indefensible. Before their Lordships the appellant’s counsel did not suggest that any material cross-examination had been prevented. This ground of objection is, in their Lordships’ opinion, illfounded.”

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The observations made in *Vassiliades* case (supra), a civil appeal, have been held to apply with equal force in Criminal cases as well.

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Thus, in the case of *Charalambos Zacharia v. The Republic*, 1962 C.L.R. 52 at p. 66, Josephides, J., stated the following:

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“On the objection taken that the trial Court stopped the cross-examination of prosecution witnesses on the question whether the E.O.K.A. organization may have killed the deceased, and whether this was a fabricated case by the appellant’s enemies, having

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5 read the record of the evidence I am satisfied that the trial was conducted fairly and that all reasonable latitude was allowed in cross-examination of the prosecution witnesses on all material and relevant matters, and in my opinion this ground of objection is not well-founded. As Lord Wright said in the Privy Council case of *Vassiliades v. Vassiliades* (reported in 18 C.L.R. 10 at p. 22): "Cross-examination is one of the most important processes for the elucidation of the facts of a case and all reasonable latitude should be allowed, but the Judge has always a discretion as to how far it may go or how long it may continue. A fair and reasonable exercise of his discretion by the Judge will not generally be questioned by an Appellate Court."

10 With the above principles in mind and having carefully gone through the record of the trial Court we hold the view that the trial Judge exercised his discretion fairly and correctly in disallowing the question as aforesaid in cross-examination.

20 But even assuming that the trial Judge exercised his discretion wrongly, which is not the case, no substantial injustice was thereby occasioned in the trial.

Therefore, ground 4 fails as well.

25 Ground 5 of the present appeal embraces a complaint and a submission: Appellants complain that the trial Judge failed to attach due significance and failed to interpret correctly paragraph 6(b) of exhibit 13 (vide p. 111 of the record).

30 Exhibit 13 is the contract of sale of the immovable property in question reduced into writing in England, and para. 6(b) thereof reads as follows:

"6. TO ΔΕΥΤΕΡΟΝ ΜΕΡΟΣ (that is the purchaser) αναλαμβάνει

35 (α)

(β) Να καταβάλη άπαντα τα έξοδα, αμοιβάς και τέλη αναφορικώς προς την παρούσα συμφωνία.»

("6. THE SECOND PARTY (that is the purchaser) undertakes:

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b. To pay all expenses, remunerations and fees in respect of the present agreement").

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It was submitted in the Court of first instance and the same submission was made before us, that the above-cited paragraph should be interpreted to include payment of any "commission" payable in respect of the sale of the immovable property in question.

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The learned trial Judge decided this point as follows:

"It is alleged in the pleadings and contended by Georghiades that Katsaris had undertaken to pay the commission and that he himself had admitted it to him. I do not believe the evidence of Georghiades on this point either. Katsaris refused flatly that he had ever undertaken such a thing or said anything to this end to Georghiades. It is also alleged that in the contract of sale exhibit 13. a provision is made that the commission is payable by the purchaser. The defendants rely on the following words contained at page 3, paragraph 6(b), «να καταβάλει άπαντα τα έξοδα, αμοιβάς και τέλη αναφορικώς προς την παρούσα συμφωνία».

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It is contended that the word "αμοιβάς" covers the commission of the plaintiff. I do not think that this is so. The agent's commission is not "αμοιβή" i.e. remuneration. but an agreed sum for his services rendered. Furthermore. the words «αναφορικώς προς την παρούσα συμφωνία» should not be ignored. The agreed commission of the agent (respondent) had nothing to do with the sale agreement. It was an entirely separate contract between the agent and the defendants (appellants)."

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We hold the view that the trial Judge gave due consideration to this point by examining it in its proper perspective and attaching to it the significance it deserved. We are in agreement with him that the word "αμοιβή"

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could not be construed in the circumstances to include "agreed commission"; therefore, ground five of the present appeal is doomed to failure as well.

5 Before concluding we intend to deal with a point raised
by learned counsel for appellants before us: Learned
counsel argued that a "commission" is normally payable
out of the purchase price and as commission is only pay-
able once the purchase price has actually been received by
10 the vendor, he maintained that in the present case no com-
mission could have been paid as the agreement for sale
was not performed.

We must say with respect that this point was never
raised in the Court below; furthermore, it was not included
in the grounds of the present appeal.

15 The approach of an Appellate Court to such a situation
was laid down by Lord Herschell in the *Tasmania* (1890)
15 A.C. 223 at p. 225: "My Lords, I think that a point
such as this, not taken at the trial, and presented for the
first time in the Court of Appeal, ought to be most jea-
20 lously scrutinised. The conduct of a cause at the trial is
governed by, and the questions asked of the witnesses are
directed to, the points then suggested. And it is obvious
that no care is exercised in the elucidation of facts not
material to them.

25 It appears to me that under these circumstances a Court
of Appeal ought only to decide in favour of an appellant
on a ground there put forward for the first time, if it be
satisfied beyond doubt, first, that it has before it all the
facts bearing upon the new contention, as completely as
30 would have been the case if the controversy had arisen at
the trial; and next, that no satisfactory explanation could
have been offered by those whose conduct is impugned
if an opportunity for explanation had been afforded them.
when in the witness box.

35 It is clear from the above authority that we cannot
entertain the point raised by learned counsel for appellants
which was never raised in the Court below; and it is a
fortiori so because the point in question was not included
in the grounds of the present appeal.

Concluding we must say that we are in agreement with the learned trial Judge's approach on the general legal aspect of the case. There is nothing peculiar in an agreement for the payment of commission; everything turns on the question what was the contract between the parties. 5

In the present instance it is clear from the judgment of the trial Judge (the relevant part of the judgment was reproduced verbatim earlier on in the present judgment) that Demetriou and Georghiades agreed orally that the appellants would pay to the respondent the sum of £4,000.- as agreed commission if Demetriou would find a purchaser who would enter into a binding contract of sale with appellants in respect of their said immovable property. The trial Court also found that the appellants concluded a binding contract of sale with the purchaser proposed by the respondent namely Katsaris but the appellants failed to perform such contract. And it is clear from the judgment that the sale transaction went off owing to the fault of the appellants. 10 15

In the circumstances the respondent who has performed in toto the "commission" agreement is entitled to the agreed commission (*Antoniades v. Koussoulos*, (1966) 1 C.L.R. 37. 20

For all the above reasons, the present appeal fails and is accordingly dismissed with costs. 25

*Appeal dismissed
with costs.*