

1988 April 22

(STYLIANIDES, PIKIS & KOURRIS, JJ.)

SAVVAS LEVENTIS AND ANOTHER,

Appellants-Plaintiffs,

v.

ELIZABETH N. STYLIANIDES AND ANOTHER,

Respondents-Defendants.

(Civil Appeal No. 7025)

*Estate agency—Commission—When payable—Principles applicable—
Need of a definite mandate, the performance of which is the efficient
cause (causa causans) of the act of sale.*

The facts of this case appear sufficiently in the Judgment of the
Court.

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Appeal dismissed with costs.

Cases referred to:

Kokkinomilos v. Kalisperas (1967) 1 C.L.R. 276;

J.F. Aho Et Fils etc. v. Photos Photiades and Co. (1968) 1 C.L.R. 477;

Kalisperas v. Papadopoulos (1969) 1 C.L.R. 480;

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HjiAntoni v. Theocharis (1969) 1 C.L.R. 512;

Kalisperas v. Kababe (1971) 1 C.L.R. 296;

Schiza v. Pamboulos (1979) 1 C.L.R. 373.

Appeal.

Appeal by plaintiffs against the judgment of the District Court of
Nicosia (Laoutas, D.J.) dated the 26th June, 1985 (Action No.
3269/84) whereby his claim for £1,770 as commission for the sale
of land was dismissed.

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Ch. Loizou, for the appellant.

G. Pelayias, for the respondent.

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STYLIANIDES J.: The Judgment of the Court will be delivered by Mr. Justice Kourris.

5 KOURRIS J.: This is an appeal against the Judgment of a Judge of the District Court of Nicosia by which he dismissed the plaintiffs' claim for £1,770 as commission for the sale of the defendants' house.

10 The plaintiffs are estate agents in Nicosia and in their statement of claim they alleged that they were authorised by the defendants, the owners of a house situate at 5 Papanicoli Street, Ayii Omoloyitae to sell it.

15 The defendants, by their statement of claim denied that they have authorised the defendants to effect the sale of their house. They alleged that the transaction of the sale of their house was effected between the defendants themselves and the purchasers of the house.

The house was sold to the football club «Omonia» for £59,000 and the plaintiffs claim reasonable remuneration of 3 per cent of the purchase price which makes a total of £1,770.

20 The trial Judge, having listened to the evidence, accepted the evidence of the defendants and the evidence of the Plaintiffs' own witness, a certain Antonopoulos and having considered the question whether the acts of the plaintiffs were the effect of the acts of the sale of the house, decided against it.

25 The plaintiffs appealed against the Judgment of the District Court and the grounds of appeal may be summarized as follows:-

1. The Court failed to appraise and evaluate the evidence; 2. The conclusions and inferences of the trial Judge from the evidence were unwarranted; and 3. The trial Judge misinterpreted paragraph C of the statement of claim.

30 We have considered carefully the arguments of both counsel and we have reached the conclusion that at its highest, the case for the plaintiff has disclosed a nebular arrangement whereby one of the plaintiffs would mediate to persuade prospective purchasers with whom the owner was locked in negotiations to offer an acceptable price to the owner. There has been no agreement as to
35 the rate of the commission or the circumstances under which the commission would be earned.

The trial Court properly directed itself as to the principles relevant to the earning of an agent's commission which are to the effect that there must be a definite mandate, the performance of which is the efficient cause (*causa causans*) of the production of the authority. See *Ioannis Kokkinomilos v. Costas Kalisperas* (1967) 1 C.L.R. 276, *J.F. Aho Et Fils etc. v. Photos Photiades & Co* (1968) 1 C.L.R. 477; *Costas Kalisperas v. Victor Papadopoulos* (1969) 1 C.L.R. 480; *Costas HjiAntoni v. Georghios Theocharis* (1969) 1 C.L.R. 512; *Costas Kalisperas v. Gerald Th. Kababe* (1971) 1 C.L.R. 296 and *Schiza v. Pamboulos* (1979) 1 C.L.R. 373.)

Thereafter, the trial Judge assessed the evidence noting in the process that not only there was no evidence that the buyers acted on the mediation or persuasion of the plaintiffs, but on the contrary, the plaintiffs' witness who testified about the circumstances of the completion of the said sale, namely - Antonopoulos, a member of the committee of Omonia Club - purchasers' club, testified to the contrary. According to his evidence, the transaction was concluded with direct negotiations with the owners of the house.

This evidence coming from the plaintiff was vital for their case whereas their evidence as to the existence of the mandate was indefinite and inconclusive.

With regard to paragraph 6 of the amended statement of claim, this was, in itself, vague as to the nature of the mandate and the reference in the Judgment that the price would be raised from £55,000 to £60,000 was inconsequential to the outcome of the case.

For the reasons we have stated, we are of the view that we should affirm the judgment of the trial Court and dismiss the appeal with costs.

Appeal dismissed with costs.