

Before: Mr. P.L. Grill, Deputy Bailiff,
Jurat R.F. le Brocq,
Jurat J.H. Vint.

Between

Wilfred Geoffrey Parrish Plaintiff

and

Channel Hotels and Properties Limited Defendant

Advocate L.M. Gould for the plaintiff

Advocate F.C. Hamon for the defendant

On the 20th July, 1973, the plaintiff was appointed the agent for the defendant company to dispose of what the Court of Appeal of Jersey, in its Judgment of the 11th December, 1975, called 'The Victor Hugo Complex' and which is a convenient title to give to the three freehold properties and the one leasehold property which comprised that complex. At that time, a car park on the north side of St. Clement's Coast Road, opposite the Victor Hugo Hotel, was not included. There appears to be little dispute as to the facts and neither Counsel have urged that, in the Royal Court or the Court of Appeal, the facts as found by both Courts should be reviewed by us, even if we felt able to do so. It is, therefore, unnecessary to repeat them, nor the principles of law referred to by the two Courts, which have guided us in the consideration of the evidence in this case.

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The plaintiff has succeeded, by means of the two judgments, in obtaining commission on the sale of the freehold land. In this action he claims commission on the sale of the leasehold land and the car park which was to be effected by means of the transfer of the share capital in Victor Hugo Holdings Ltd. a subsidiary of the defendant company, which owned the leasehold land and the car park, to a company, Hernani Ltd., one of the many companies owned by a Mr. Ernest Brauch the de facto purchaser with whom the plaintiff had dealt. Completion of this transaction should have taken place on the 7th December, 1973. Had it been effected, Mr. Hamon, counsel for the defendant company, admitted that commission would have been payable. Thus, up to that date, the defendant company has admitted that the plaintiff was the effective cause of that transaction. On that same day, however, the advocates for the purchaser and the defendant company, Mr. Hamon and Mr. Day, exchanged letters that recorded the collapse of the negotiations and put an end to the sale. Thereafter, Mr. Hamon says, any further dealings were carried out by the parties, and the chain or link between the original introduction by the plaintiff of the purchaser up to the final sale of the shares on the 25th March, 1974, had been broken. He submitted also that even if it had not been, the transaction on the 25th March, 1974, was incomplete, and that, therefore, the plaintiff cannot claim commission on an uncompleted sale.

Mr. Gould, for the plaintiff, submitted that, on the contrary, the dealings that followed after the 7th December, 1973, should be viewed as part of global negotiations between the purchaser (or one of his subsidiary companies) and the defendant company (or one of its subsidiary companies), that continued and flowed, from the original introduction of the purchaser to the

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defendant company, until the final completion of the leasehold property share-vending agreement in March, 1974. As regards the second head of the defence, Mr. Gould said that the transaction was complete on the 25th March, 1974. The total consideration had been agreed and had flowed from the purchaser to the vendor, made up as to £93,000 in cash and an unregistered note of hand, coupled with an undertaking not to develop a complex until the amount in the note of hand of £117,000 had been discharged. It was admitted by the plaintiff that the defendant company had been unable to recover the £117,000. The increase in the consideration from £207,500 to £210,000 was accounted for, as found by the Court of Appeal, by interest. There is no question but that after the 7th December, 1973, the negotiations to obtain financial assistance for the purchaser's nominee company to enable it to complete were protracted. We feel justified in describing them in the words of the President of the Court of Appeal in the Jersey judgment, to which we have previously referred, as " long, difficult and complicated "

It is to be noted that the learned President was referring to a period of time between the 19th October, 1973, and the 21st and 22nd October, of the same year. In the present case, however, a much longer period of time elapsed between the concluding of the negotiations, the subsequent failure of the purchaser, or his company, to complete on the 7th December, 1973, and the eventual completion of the vending agreement - if completion it was - in March, 1974. It is true that on the 3rd December, Mr. Robin Lapidus, a Director of the defendant company, in the absence of Mr. Harry Lapidus through illness who, hitherto, had conducted all the negotiations, wrote to Mr. Brauch, putting forward, for the

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first time, the suggestion of a deferred payment for the purchase of the leasehold property and the car park. Substantially, those terms were included in the vending agreement affected in March, 1974. Nevertheless on the 7th December the defendant company was entitled to repudiate the transaction, which it did, on the same day. The plaintiff admitted that he had played no part in the transaction after the 7th December, 1973, although it appears that an agent does not have to complete or even take part in the transaction (See Bowstead on Agency, 14th Edition, page 185). Therefore, unless what followed can be related back to the plaintiff's original introduction of Mr. Brauch to the defendant company, he must fail. On the 13th December Mr. Day sent a bond for £100,000 to Mr. Brauch for execution on behalf of Hegrani Developments Ltd. It was identical, save in one respect regarding the payment of the interest, as that sent to Mr. Brauch on the 30th November. The share vending agreement which was dated the 22nd October and which should have been completed on the 7th December, made no mention of any loan or arrangement but was for £207,500 "payable in cash".

Between the 7th and 13th December, Mr. Harry Lapidus, on behalf of the defendant company, asked Mr. Lovell to act as the agent for the sale of the leasehold land and the car park. Mr. Parrish was not, however, notified verbally that his agency had been terminated, although there is some conflict of evidence as to this, but it is clear that he did not accept such termination, if it was made. During the same period of time, Mr. Hamon wrote to the Housing Committee and to the Island Development Committee. In the latter letter he asked the Committee to note that the defendant company would take the greatest exception, at that stage, if planning permission were to be issued to Mr. Brauch, or to his nominee company, for the whole area of the land, when, in fact, only part of it was owned by him - that, of course, being the freehold part.

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We were not told why Mr. Day sent the undated bond to Mr. Brauch on the 13th December, but it was presumably because he thought that in spite of the exchange of letters between Mr. Hamon and him on the 7th December the agreement was still alive. It was not and could not, in our opinion, be re-opened in this way so as to restore the link which had been severed on the 7th December by mutual agreement between the parties' legal advisers. Even if it was we are satisfied that, after examining the correspondence and documents, the effective cause of the sale of the leasehold land and the car park, on the 25th March, 1974, was the financial assistance afforded to Mr. Brauch, or his nominee companies, by the defendant company, and not the original introduction by Mr. Parrish.

Because we have found that the effective cause of the transaction was not the plaintiff it is unnecessary for us to decide Mr. Hamon's second point whether, in law, the share vending agreement was completed on the 24th March, 1974.

Accordingly, the action is dismissed with costs.