

IN THE PRIVY COUNCIL

No.3 of 1972

O N A P P E A L  
FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N

KIRPALANI'S LIMITED (Defendants) Appellants

AND

GERALD ECKEL (Plaintiff) Respondent

CASE FOR THE APPELLANTS

RECORD

1. This is an appeal from a judgment of the Court of Appeal of Trinidad and Tobago (Sir Arthur McShine Chief Justice (President) Phillips and de la Bastide JJ) dated the 4th June 1971 allowing an appeal from a judgment of the High Court of Justice for Trinidad and Tobago (The Honourable Mr Justice McMillan) whereby the Plaintiff's claim had been dismissed.

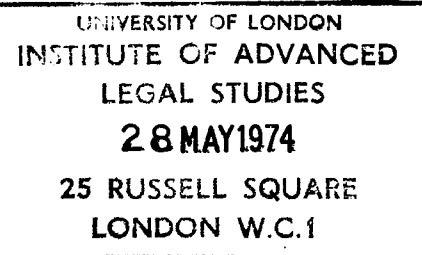
2. The action was brought by the Respondent as Plaintiff in the High Court of Justice to recover commission allegedly due to him in respect of the purchase by the Appellants of the business and premises of a firm known as London Fashion at 21 Frederick Street and 18 Chason Street, Port of Spain in the Island of Trinidad.

3. The principal questions arising in the appeal are:

(a) Whether a Real Estate Agent acting for a Purchaser of property and/or a business is entitled to commission otherwise than upon full performance of the conditions of the express contract under which his right of commission (if any) arises.

30 (b) Whether a Purchaser of property and/or a business is bound to pay commission to a Real Estate Agent authorised by him to negotiate therefor up to a stated price if, in the event, he purchases himself or through another agent at a higher price.

4. On or about the 19th March 1964 the Appellants



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engaged the Respondent to negotiate on their behalf for the purchase of Millers Stores Limited upon terms set out in a letter of that date written by the Respondent to the Appellants confirming his said engagement, namely

(i) that the Appellants identity was to be kept secret during any negotiation.

(ii) that no offer should be made by the Respondent to Millers Stores Limited unless and until the same should have been reduced to writing signed by the Appellants and copies made and retained one by the Respondent and the other by the Appellants. 10

(iii) that upon acceptance of an offer so made by Millers Stores Limited the Respondent would be entitled to a Realtors Commission.

5. In or about the month of June 1964 the Appellants were approached by one Joseph Gabe on behalf of London Fashion who enquired whether the Appellants might be interested in purchasing the premises and/or business of London Fashions. 20

6. On an occasion early in the month of June 1964 the Appellants by one Ram Kirpalani orally engaged the Respondent to negotiate on their behalf for the purchase of London Fashion upon the same terms as were applicable to his engagement to negotiate for Millers Stores Limited.

7. In both cases the Appellants made known to the Respondent that they were only interested in acquiring the shop properties in and on which the businesses of Millers Stores Limited and London Fashion were carried on and would consider purchasing the businesses themselves only if it were essential to do so in order to acquire the said premises. Save as hereinafter mentioned the Appellants authority to negotiate was throughout limited to negotiating for the premises alone. 30

8. On or about the 7th November 1964 and by a letter so dated the Respondent informed the Appellants that their offer for the premises of Millers Stores Limited had been rejected but that an offer for the whole of 40

Millers Stores Limited's business and undertaking (including the premises) might meet with a favourable response.

10 9. On or about the 18th November 1964 in the course of a meeting between the Respondent and the said Ram Kirpalani at the Appellant's offices the Appellants authorised the Respondent to submit an offer to Millers Stores Limited for the purchase of their premises and stock. The said Kirpalani informed the Respondent that it was his intention in the event of that offer being rejected or not accepted by mid-day on the 21st November to resume negotiations personally with London Fashion through their agent the said Gabe on the following day.

20 10. On the 21st November 1964 the Plaintiff informed the Appellants by telephone that no reply had been received from Millers Stores Limited to the offer submitted to them by the Respondent on the 22nd November 1964 the Appellants entered into a contract with London Fashion for the purchase of their premises for the sum of \$570,000. Furniture and fixtures at a price to be agreed and stocks at market price or costs whichever should be the lower through the agency of the said Gabe.

11. The Lesrned Judge after reviewing the evidence before him and arguments addressed to him found

- (a) That at all material times the Respondent's Authority was limited to negotiating for the purchase of the premises of London Fashion. P71 L 28
- 30 (b) That on the 22nd November 1964 the Appellants agreed with the said Gabe to purchase the premises of London Fashion for the sum of \$570,000, the furniture and fixtures therein for a sum to be agreed and their stock at the lower of market price or cost P71 L42-51
- (c) That the said agreement was subsequently varied by an agreement between the Appellants and the Partners of London Fashion so as to treat part of the said purchase price as referable to goodwill. P72 L1-10
- 40 (d) That the transaction finally agreed between the Appellants and London Fashion amounted to the purchase and sale of the entire business enterprise of London Fashion. P72 L 18

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(e) That the said transaction was totally different from that which the Respondent had been authorised to effect.

P72 L 23

(f) That the Respondent's efforts were not the direct cause of the transaction being concluded.

(g) That the parties to the said transaction had been brought together as such by the said Gabe.

and held

(1) That the transaction effected was outside the scope of the Respondent's agency. 10

(2) That the transaction was not effected as a result of the Respondent's efforts and accordingly gave judgment for the Appellants with costs.

12. The Respondent appealed to the Court of Appeal for Trinidad and Tobago and on the 4th June 1971 judgment was delivered allowing the said appeal setting aside the order of Mr Justice McMillan and substituting therefor judgment for the Respondent for the sum of \$14,250.00 with interest thereon at the rate of 6% per annum from the month of November 1964 (\$4,275.00) with costs in the Court of Appeal and in the Court below. 20

13. The judgment of the Court of Appeal was given by Sir Arthur McShine C.J. with whose judgment Phillips and de la Bastide J.J. agreed. The Court gave the following among other reasons for their judgment.

P156 I40-42  
P160 L13-14 (i) That the Learned Judge had erred in finding that the Respondent's instructions with regard to London Fashion were limited to negotiating for the acquisition of the premises of London Fashion only. 30

P156 I44-5 (ii) That the Respondent's instructions were to negotiate for the building but failing that for the whole undertaking.

P158(16-19  
and (28-31) (iii) That the enlargement of the Respondent's authority with regard to Millers Stores Limited to include negotiation for their business as well as their premises carried with it a similar enlargement of the Respondent's authority with 40

regard to London Fashion.

(iv) that the intervention of Gabe was not a decisive factor in the concluded transaction for the purchase of London Fashion P160 & 6-7

(v) that the learned Judge had erred in holding that the Respondent's efforts were not the effective cause enabling the Appellants to conclude the purchase of London Fashion.

10 (vi) that they were entitled to and justified in sunstituting their own findings of fact for those found by the Learned Judge as well as drawing different inferences from the facts found by him P160 L 15-16

(vii) that whilst the word "property" as used in the letter of the 19th March 1964 meant premises and business for the purpose of delivering the scope of the Respondent's authority it meant the premises only for the purpose of calculating the amount of commission to which the Court held him entitled P156 L 40  
P160 L 46  
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20 (viii) that it cannot be right for a principal to authorise a maximum price for his agent and then go just beyond this limit himself and so deprive the agent of the commission which in all other respects he had earned. P160 L 13  
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30 14. On the 9th July 1971 the Court of Appeal (Clent Phillips C.J., Frazer and de la Bastide J.J.) granted leave to the Appellants to appeal to Her Majesty in Council against the said judgment subject to conditions On the 5th November 1971 the said Court (Frazer de la Bastide and Georjer J.J.) granted to the Appellants final leave to appeal against the said judgment.

15. The Appellants submit that the judgment of the Court of Appeal should be revised and the action dismissed for the following among other reasons.

R E A S O N S

1. BECAUSE a Real Estate agent in law entitled to commission only when he has done done which his principal engaged him to do.

2. BECAUSE the presence of express terms in the contract of agency excludes the implication of other different terms relating to matters which are the subject of express terms.
3. BECAUSE the Court of Appeal was not justified in substituting its own findings of fact for those of the trial judge.
4. BECAUSE the object of employing the Respondent 10 to negotiate keeping his clients identity secret - namely to obtain the property at a lower price than would otherwise be possible was not, in the event accomplished.
5. BECAUSE such efforts as were made by the Respondent in or towards the purchase by the Appellants of the business and premises of London Fashion made no or no significant contribution to the transaction into which the Defendants eventually entered. 20
6. BECAUSE the Plaintiff did not "acquire" either the premises or the business of London Fashion.
7. FOR the reasons appearing in the judgment of the Honourable Mr. Justice McMillan in the Court of first instances.

MICHAEL HICKMAN

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G.ECKEL Respondent

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APPELLANTS CASE

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