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In the Royal Court of Jersey (Inferior Number)

Before: Sir Frank Ereaut, Bailiff  
Jurat L.V. Bailhache.  
Jurat G.N. Simon.

BETWEEN

Gardencraft Limited Plaintiff

AND

William Clifford Davies Defendant

Advocate M. St.J. Birt for the Plaintiff  
Advocate B.A.C. Yandell for the Defendant

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The Plaintiff claims that on the 20th May, 1980, the Defendant orally agreed to buy one Penguin swimming pool kit to instal on his property, Antibes, Les Champs Estate, Mont Cochon, subject only to consent being given by the Island Development Committee (which consent was later given). The Defendant subsequently withdrew from the Agreement and the Plaintiff now claims damages of £789, being his loss of profit on the sale.

The Defendant denies that he ever agreed to buy any such pool kit from the Plaintiff. He agrees that in May 1980 he was interested in buying such a kit, but claims that he made it clear to Mr. Ransom that he only had £4,000 to spend, which sum had to cover not only the cost of the kit but also the expense of excavation for the pool. In view of the possible rocky nature of the sub-soil and the obvious difficulty of access to the site, he had no intention of placing a firm order until he could be sure that he could afford not only the cost of the kit but also the cost of excavation, and he did not do so. He later decided not to buy.

We heard the following evidence.

The Plaintiff is an agent for Penguin Swimming Pools, and designs and constructs swimming pools and supplies swimming pool kits. Mr. Ransom is a part owner of the Plaintiff. Mr. Ransom's evidence was as follows. In 1979 the Defendant asked Mr. Ransom for a quotation to build a pool at the Defendant's home, Antibes. Mr. Ransom visited the property. The only access to the garden in front of the house where the pool was to be built is a 3/4 foot path.

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The Defendant asked Mr. Ransom if access was a problem. He said it was not, although it would mean that the soil excavated would have to be removed by barrows, and it would not be possible to bring in a machine to do the digging, thus making the work more expensive. The Defendant also said that he thought that the sub-soil of the site of the pool was shale. Mr. Ransom said that the shale could be dug out, but that the cost would increase if there was rock. Mr. Ransom did not test the soil. Mr. Ransom later submitted a quotation of £5,700 to supply and build a pool. The Defendant did not accept the quotation.

In May 1980, the Defendant telephoned Mr. Ransom to say he wanted to buy a kit, and he would excavate the ground himself. Mr. Ransom visited the site again, repeated that access was no problem and showed the Defendant some brochures, from which he chose a kit. The nature of the sub-soil was not discussed. According to Mr. Ransom, the Defendant then placed a firm order for a kit at a cost of £2,711.

Mr. Ransom agreed to make the necessary application to the Island Development Committee, on the basis that there would be no charge for Mr. Ransom's time and expenses if consent was granted. Mr. Ransom claimed that he would not have made application to the Committee unless he had received a firm order.

The terms of payment were discussed and agreed, these being 50% on approval by the Island Development Committee, and the rest on delivery of the kit.

Island Development Committee consent was given on the 26th June, 1980, and on receipt of the consent Mr. Ransom telephoned the Defendant to tell him, and at his request called on him at his place of work to give him the plan approved by the Committee. He told him that he had sufficient stock in Jersey to enable the Defendant to build up to the floor. He had ordered the rest of the equipment before the Island Development Committee consent was received to save expense because he had other equipment coming.

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He also gave the Defendant an account for £2,711 and told him that 50% of the cost was now due. The Defendant said he had no cheque on him but would pay a few days later.

The Defendant said he hoped to start work soon and knew men would dig out the site of the pool.

A few days later the Defendant asked Mr. Ransom to check his marking out of the pool - which he did as part of his service, but that he had received a firm order. As he finished, the Defendant arrived and said he would send the 50% of the money in a few days. A few days later the Defendant telephoned Mr. Ransom, said his name and let him down and asked Mr. Ransom to recommend a contractor, which Mr. Ransom did. Several weeks later the Defendant said that he had changed his mind and did not want the kit. When Mr. Ransom protested that the Defendant had given him a firm order, the Defendant said that Mr. Ransom could not prove anything as there was nothing in writing.

In evidence, the Defendant agreed that in 1979 he had asked Mr. Ransom for a quotation to build a pool, which at £5,700 was far more than he could afford, so he did not proceed with the project. He admitted, however, that there was any discussion then about access or about sub-soil at the site of the pool.

He also agreed that in May 1980 he asked Mr. Ransom to quote for supplying a kit, and Mr. Ransom came out to discuss it. He made it clear to Mr. Ransom that he had only £4,000 available for the whole job and so he could not commit himself to buy the kit until he knew what the excavation would cost. At this stage, therefore, he was only expressing an interest, and he wanted a quotation in order to be able to consider whether to go further into the matter. The question of sub-soil was mentioned - the Defendant suspected it might be hard to dig and also thought the restricted access might cause a problem.

Having received the quotation, he authorised Mr. Ransom to put it in an application to the Island Development Committee, as there was no point in getting contractors to look at the site until the Island Development Committee had given their consent. When signing the

Island Development Committee application form, he specifically asked Mr. Ransom if it bound him to buy the kit, and Mr. Ransom assured that it did not.

The Defendant understood that he would have to pay Mr. Ransom his time in putting in the Island Development Committee application plan - the nominal sum of £25 was quoted.

As regards Mr. Ransom's claim that he had to order equipment specially for his pool, the Defendant said that Mr. Ransom told that he would not, as he had almost everything in stock.

When the Island Development Committee gave their consent, Mr. Ransom did come to see him at his place of work, but there was no mention of payment by either side, and Mr. Ransom did not give him an account.

The Defendant later asked Mr. Ransom to come and check the ground out of the pool. He was still only expressing an interest in the pool but he did expect to pay Mr. Ransom for his time for coming out.

The Defendant subsequently asked four contractors to come out and give him a price for the excavation. They all refused to give a price in view of the difficulty of access and the uncertain nature of the sub-soil, and said that they would do the work only on a day-work basis. One of them said that if he were to give a fixed price it could be an amount <sup>of</sup> £1,500 or more.

In view of this uncertainty and the likelihood that the cost of the excavation, plus the cost of the kit, would easily exceed £4,000, he told Mr. Ransom that he would not buy the kit, to which Mr. Ransom protested and claimed that he had given a firm order.

Mrs. Davies corroborated her husband's evidence to the extent that she said that they never gave a firm order and that the Defendant made it clear to Mr. Ransom that they could not decide whether or not to buy a kit until they knew how much the whole cost would be, because they could not afford more than £4,000 ,

Mr. Le Cornu /

Mr. Le Cornu, one of the four contractors called in by the Defendant, confirmed that he was not prepared to give a fixed price for the excavation because he was uncertain of the nature of the sub-soil. He thought that it was probably rock and shale. He would have done the work on a day work basis.

Mr. Rothwell, a chartered engineer, inspected the site. Some of it was hard rock. For that reason and because of the difficult access the cost of excavation would be high. A contractor could have given a contract price, but he would have had to dig trial holes first.

We accept on the evidence that the excavation of the pool site would have been considerably more expensive than was normal, because of the presence of rock and because the restricted access would have prevented bringing in machines to do the digging by mechanical means and would also have resulted in the slow and costly removal of the excavated soil by barrows.

That finding is relevant to the main argument of the Defence, which was that no sensible person with only a specified and limited budget would be likely to have committed himself to buying a pool kit without first checking whether he could afford the cost of excavation, especially when he had good reason to think that such cost would, because of the special conditions obtaining, be more expensive than was normally the case. We agree that there is merit in that argument, and it goes some way towards supporting the evidence of the defendant and his wife. On the other hand, people sometimes act unwisely and the issue before us is whether, unwisely or not, the defendant did give a firm order for the kit.

There was a considerable conflict of evidence between Mr. Ransom, on the one hand, and the Defendant and his wife, on the other, and we have to resolve that conflict partly by our assessment of the veracity of the witnesses. We think that some of the conflict of evidence could not have been due merely to forgetfulness or honest mistake. Having seen the parties in the witness box we have to say that we prefer the evidence of Mr. Ransom. Apart from

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that we have also to say that there are certain improbabilities in the Defendant's version of events.

Having considered these matters we find that the Plaintiff has proved its case. Our reasons are as follows.

First, during the hearing there was an inexplicable and important change in the defence. In the pleadings, the defence was that the Defendant said to Mr. Ransom that he was interested in buying the kit provided that two conditions were fulfilled. Those were that the access to the site permitted the excavation to be done, and that the sub-soil proved suitable for the installation of the pool. Although the factors of access and sub-soil would have made the cost of excavation more expensive, neither would have prevented the work going ahead. Whether it was the realisation of that fact which prompted the change of defence we do not know, but it was only when the Defendant came to give evidence that he put forward what was his main defence, namely, that his budget was limited, that he told Mr. Ransom that he could not afford more than £4,000 for the kit and the excavation, and that he could not, and would not, have committed himself to ordering the kit until he knew whether the total cost would be within that ceiling. As we have said, that defence was not pleaded and was not even put to Mr. Ransom in cross-examination. We allowed the pleadings to be amended, but we believe that this was a change of defence and in our view it adversely affects the credibility of the defendant and his wife.

Secondly, we do not think that Mr. Ransom would have submitted the application to the Island Development Committee unless he had believed that he had received a firm order. He told us that it was not his practice to do so unless he had received a firm order, and we believe that. The Defendant said that at that stage he was merely expressing interest, but we do not think that Mr. Ransom could have mistaken that attitude for a firm order. Furthermore, Mr. Ransom ordered certain items of the kit from England. Again, we do not think that he would have done that unless he thought that he had a firm order.

Thirdly / ...

Thirdly, we refer to Mr. Ransom's evidence that after receiving the Island Development Committee's consent he went to see the Defendant, gave him his account and asked for 50% of the money, to which he received the reply that the Defendant did not have a cheque on him but would send the money in a few days. The account is dated 1st July, and the Committee's consent was dated 26th June. Those dates therefore support Mr. Ransom's evidence that the account was prepared and handed to the Defendant in accordance with the agreement which was that the Defendant had given him a firm order to buy the kit and that 50% of the cost was payable upon the consent of the Committee being issued. The Defendant denied that he ever received an account or that he ever agreed to pay any money. That is not a conflict of evidence which could have resulted from a mistake or from a loss of memory. We have no hesitation in believing the evidence of Mr. Ransom on this point, and this in our view is the strongest evidence that the Defendant had placed a firm order to buy the kit and that he well knew that he had done so.

Fourthly, after the Committee's consent had been received Mr. Ransom went to the property at the Defendant's request to check the marking out of the pool. It is inconceivable to us that he would have done so if the Defendant was still, as he claims, doing no more than expressing an interest in buying a kit. Mr. Ransom's action was consistent only with his belief that the Defendant had given him a firm order and that the Defendant had agreed to pay for the kit, and we are satisfied that the Defendant had indeed done both these things.

For all these reasons we find that there was a binding oral agreement under which the Defendant agreed to buy a kit from the Plaintiff for £2,711, that the Defendant later repudiated that agreement without cause and that the Plaintiff is therefore now entitled to damages for its loss of profit.