

~~GATE 612~~
UNIVERSITY OF LONDON
V.C.1
20 FEB 1957
ADVANCED
LEGAL STUDIES

35,1956

No. 47 of 1955.

16069 In the Privy Council.

**ON APPEAL FROM THE COURT OF APPEAL
OF SINGAPORE.**

BETWEEN :

HOTEL DE L'EUROPE LIMITED

Appellants,

AND

WILLIAM DUDLEY CURRIE-FRYER and

SYLVIA MARY MARTIN (Married Woman) *Respondents.*

Case for the Appellants.

RECORD.

1. This is an appeal from a judgment, dated the 1st July, 1955, p. 40.
of the Court of Appeal of Singapore (Taylor, Storr and Knight, JJ.), p. 20.
dismissing an appeal from a judgment, dated the 17th May, 1955, of
the High Court of Singapore (Murray Aynsley, C.J.), awarding the
Respondents £250 arrears of salary under a contract for the
Respondents to give cabaret performances in the Appellants' hotel
in Singapore.

2. The contract was negotiated entirely by letters and cables
passing between the Respondents, who were then in India, and the
10 Appellants in Singapore. The Appellants had no previous knowledge
of either of the Respondents. The issue is whether the Respondents
made fraudulent misstatements which induced the Appellants to enter
into the contract.

3. The negotiations began with the following letter dated the p. 42.
18th February, 1954, written by the Respondents from the Ritz Hotel,
Bombay, and addressed to The Manager, The Cockpit, Hotel de
l'Europe, Singapore :—

Dear Sir,

20 We have been advised to get in touch with you, as we are
told you have the best venue for our act in Singapore.

We work under the name of SILVIA MARTIN and BILL CURRIE and are top flight cabaret in Europe, etc., this being our first trip East.

Our engagements in London include every top spot such as the Berkeley Hotel, Cafe de Paris, Grosvenor House, Dorchester, Ciro's, Embassy, Bagatelle, Colony, Astor, etc.; in Paris, the Lido and Newaille Eve; New York, Blue Angel, Astor Roof, Hollywood, Ciro's, etc. We are Radio and T.V. Stars of many years standing, both writing and acting.

We find we have to leave India during the first week in March 10 to avoid very heavy Income Tax charges, and therefore offer ourselves for your immediate consideration.

We work with only the services of a pianist if necessary, though a band is useful.

Please cable us right away if you can use us or not as we are delaying our bookings to the U.K.

Yours truly,

pp. SYLVIA MARTIN & BILL CURRIE,

(Sgd.) BILL CURRIE.

p. 6, l. 22.

p. 7, ll. 1-18.

4. In fact the Respondents, while claiming that they had 20 "appeared either together or individually or individually with others at the places named", admitted that they had appeared together at none of the places named save that they had appeared together at two private parties in London, one of which was held at Grosvenor House and one at the Dorchester. At these parties it was not the hotels who engaged the Respondents.

pp. 43-44.

p. 43, ll. 17-21.

p. 44, ll. 2-6.

p. 10, ll. 21-29.

p. 45.

p. 46.

5. There followed cables between the parties and eventually the Appellants offered £250 monthly for two months' engagement, April and May, free of income tax plus board and lodging. The Respondents accepted this offer on the 27th February, 1954, and in their cable 30 accepting it said "letter following". No such letter was ever received by the Appellants. According to the second Respondent, this letter contained details of the individual activities of the two Respondents, but had arrived in Singapore after them, and the first Respondent destroyed it. The first Respondent wrote again to the Appellants from Bombay on the 12th March, 1954, saying that he and the second Respondent were husband and wife and giving particulars of their passports. On the 22nd March, 1954, the Appellants wrote a letter confirming the terms of the engagement. The Respondents were to

receive £250 a month or the equivalent in Straits dollars, plus free board and lodging, income tax to be paid by the Appellants but travelling expenses by the Respondents; the Respondents were to perform nightly except Sundays; they were to receive special terms for drinks and meals in the hotel.

6. The Respondents arrived in Singapore and started performing in the Appellants' hotel on the 24th March. On the 12th May, 1954, pp. 47-48. the Appellants' solicitors wrote to the Respondents. They said that the Appellants regarded paragraphs 2 and 3 of the Respondents' letter
10 of the 18th February, 1954, as meaning that the Respondents were a top flight cabaret act in Europe, and as such had been engaged by the hotels and other establishments mentioned in the letter. The Appellants had made inquiries, because the standard of the cabaret was mediocre, to say the least. As a result of these inquiries the Appellants were satisfied that paragraph 3 of the Respondents' letter was untrue, at least in part. Accordingly, the Appellants, having paid the Respondents £250 for the first month of their contract, were not prepared to pay them any more, and regarded the contract as being at an end. The Respondents wrote back on the 13th May denying that p. 49.
20 there was any misrepresentation in their letter of the 18th February and saying that they had had engagements at all the establishments mentioned, though they had not been employed by all the hotels mentioned.

7. The Respondents issued a Writ on the 19th May, 1954, claiming pp. 1-2. arrears of salary and damages for breach of contract. In their Statement of Claim, dated the 21st May, 1954, the Respondents recited the p. 3. contract in writing signed by the Appellants' managing director on the 22nd March, 1954, and said they had received their salary for the first month (though they alleged that a sum of about £3 was in fact
30 still owing for that month) and alleged that by their letter of 14th May the Appellants wrongfully determined the contract. The Respondents said they had been unable to obtain other employment between the 14th May and 23rd May and claimed damages.

8. By their Defence and Counterclaim, dated the 3rd June, 1954, pp. 11-13. the Appellants alleged that they had been induced to enter into the contract by the Respondents' letter of the 18th February. The Appellants set out the first three paragraphs of that letter and alleged that the letter meant that the Respondents working together were top flight cabaret in Europe and as such cabaret had been engaged by the
40 various establishments named in the letter. These representations p. 12, ll. 11-24. were untrue, because :

(a) the Respondents had only appeared in cabaret together on three nights and had never appeared together as a top flight cabaret act,

(b) they had never appeared together in cabaret in any of the establishments mentioned except the Dorchester and Grosvenor House, in each of which they had appeared once, and

(c) these two appearances, one at the Dorchester and one at Grosvenor House, had both been at private parties and the Respondents had not been engaged by the hotels.

The Appellants had entered into the contract on the faith of the Respondents' letter of the 18th February, and the Respondents had written that letter falsely and fraudulently intending that the Appellants should act on it. Directly the Appellants had discovered that the representations were false they had, by the letter of the 12th May, 1954, repudiated the contract. The Appellants counter-claimed rescission and damages.

9. The evidence of the Respondents was taken before an examiner on the 22nd May, 1954. The first Respondent said he had appeared as a comedian, a compere, a vocalist and in cabaret acts in first-class theatres in England, other European countries and South America. The second Respondent had become his permanent partner in May, 1953, and they had appeared together at Grosvenor House, the Dorchester and Wingfield House in London. They had performed nightly in Singapore from the 24th March till the middle of the seventh week of their contract. On the 11th May he had been told by a representative of the management of the hotel that they were not prepared to pay him any money for the last month of the contract, but would have no objection to his finishing the contract if he accepted the first month's salary as complete payment. Two directors of the hotel had expressed approval on the Respondents' opening night. In the letter of the 12th March, 1954, the part referring to Mr. and Mrs. Currie was untrue. He said that the words "our engagements" in the letter of the 18th February meant that the two Respondents had appeared at the places named either together or individually or with others. His evidence of his appearances at the places mentioned was as follows :—

p. 4, ll. 13-15. on the 22nd May, 1954. The first Respondent said he had appeared as a comedian, a compere, a vocalist and in cabaret acts in first-class theatres in England, other European countries and South America. 20

p. 4, ll. 15-19. The second Respondent had become his permanent partner in May, 1953, and they had appeared together at Grosvenor House, the

p. 4, l. 40-p. 5, l. 3. Dorchester and Wingfield House in London. They had performed nightly in Singapore from the 24th March till the middle of the seventh week of their contract. On the 11th May he had been told by a representative of the management of the hotel that they were not prepared to pay him any money for the last month of the contract, but would have no objection to his finishing the contract if he accepted the first month's salary as complete payment. Two directors of the hotel had expressed approval on the Respondents' opening night. In 30

p. 5, ll. 8-11. the letter of the 12th March, 1954, the part referring to Mr. and Mrs. Currie was untrue. He said that the words "our engagements" in the letter of the 18th February meant that the two Respondents had appeared at the places named either together or individually or with others. His evidence of his appearances at the places mentioned was as follows :—

p. 6, l. 6.

p. 6, ll. 17-23.

p. 6, ll. 29-31. Berkeley Hotel ... Appeared there since the war with a partner not the second Respondent;

Cafe de Paris	...	Appeared there before the war;	p. 6, l. 32.
Grosvenor House	...	Appeared with the second Respondent in cabaret for one night at a private party;	p. 6, l. 33- p. 7, l. 2.
Dorchester	Appeared in cabaret with second Respondent at one private function.	p. 7, ll. 3-4.

He had appeared at Ciro's, the Embassy, the Bagatelle and the Colony, and the Astor without the second Respondent, and had not appeared at all at any of the other places mentioned in the letter. At the Dorchester and Grosvenor House he had not been engaged by
10 the hotels.

10. The second Respondent said she had appeared as a dancer, a singer, a cabaret artist and a film artist. She had appeared with the first Respondent at the Dorchester, Grosvenor House, Wingfield House and in India. She had appeared at Grosvenor House and the Dorchester with and without the first Respondent. She had not appeared at the Berkeley, the Cafe de Paris, the Embassy, the Bagatelle, the Colony or the Astor. She had appeared at the other places mentioned, and had done radio but not television. The only continuous cabaret work she had done with the first Respondent had
20 been in India and Pakistan.

11. The evidence of Pierre Allix, the manager of the hotel, was taken before an examiner on the 25th August, 1954. He said he had seen the Respondents' letter of application, they appeared to have worked in first-class cabarets in London and the Continent. Their performances in the hotel had been disappointing. The act was far from being first class, and it was obvious that the second Respondent in particular had never appeared in a first-class act. Their repertoire was extremely poor. The audiences were small and showed no interest.

12. The action came on for trial before Murray-Aynsley, C.J., on
30 the 19th April, 1955. The evidence of the Respondents and Allix was put in. Evidence for the Appellants was also given by Chi Chye Fong, a director of the Company. He said he had discussed the letter of the 18th February, 1954, with Mrs. Hilborne (another director). They thought the Respondents should be artists of standing, so offered them engagements.

p. 19.
p. 19, ll. 10-21.
p. 19, ll. 22-25.
p. 19, ll. 26-28.

13. The learned Chief Justice delivered his reserved judgment on the 17th May, 1955. He set out the third paragraph of the Respondents letter of the 18th February, 1954, and said that, though one or other of the Respondents had appeared at all the places named, in almost all cases they had not appeared together and both had not appeared at all the places. He held that the construction put upon that passage by the Respondents was a possible construction, and thought that consequently the charge of fraud was not established. He therefore gave judgment for the Respondents for £250 (one month's salary) and costs.

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pp. 21-22.

14. The Appellants appealed to the Court of Appeal of Singapore. Their grounds of appeal, dated the 13th June, 1955, amounted to the following:—

1. The learned Chief Justice should have considered the whole letter of the 18th February, 1954, and not just one paragraph.

2. He was wrong in accepting the Respondents' construction of the paragraph of the letter which he did consider.

3. If he had found, as he should have found, that the letter contained misrepresentations of fact, he should have held that the misrepresentations amounted to fraud.

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4. If, contrary to the Appellants' contention, the letter contained no actual misstatement of fact, the learned Chief Justice ought to have held that it suggested matters which were false.

p. 24, ll. 5-9;
p. 29, ll. 32-36.
p. 37.
p. 38, ll. 9-13.
p. 38, ll. 14-16.
p. 38, ll. 23-31.

15. The appeal came on before Taylor, Storr and Knight, JJ., on the 22nd June, 1955. At the hearing of the appeal it was common ground that, if the Court found the letter to be a fraudulent misrepresentation, the Appellants should succeed in their Defence and their Counterclaim, and there should be an enquiry as to damages. Judgment was reserved, and was given on the 1st July, 1955. Taylor, J. set out the whole of the letter of the 18th February, 1954, and said the Respondents plainly represented themselves as top flight cabaret performers, which was a matter of opinion, and as a team of two who had appeared as such at the places named, which was substantially false. He did not accept the Appellants' contention that the letter meant that the Respondents had been engaged by the managements of the hotels mentioned. If the Respondents had appeared together at all the places named at private parties, the words used, in the learned Judge's view, would have been literally true. The falsity was

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the statement that they had appeared together at all those places, but the Appellants, though they had acted on the letter, did not appear to have been influenced at all by the falsity. They had acted on the letter as a whole, and had never alleged that what the learned Judge called "the duet element" had particularly influenced them or been in fact the cause of their loss. Further, it had not been shown that the Respondents had any intention to deceive when they framed the letter. It was impossible to hold that the distortion was intended to deceive, induced the contract or enhanced the loss. Storr and Knight, JJ., agreed with this judgment, and the appeal was dismissed with costs.

p. 38, ll. 41-44.

p. 38, ll. 44-46.

p. 39, ll. 4-6.

p. 33, ll. 10-13.

p. 39, ll. 15-18.

16. The Appellants respectfully submit that the letter of the 18th February, 1954, was fraudulent. The meaning of the letter was this:—

The two of us have a cabaret act, given under the name of Silvia Martin and Bill Currie, which is absolutely first class by the standards of Europe and other places. We have had engagements to present our act at every place in London noted for first-rate cabaret and have also had engagements to present our act at leading establishments in Paris, New York and Hollywood. Among such noted places are the following: (names set out). If you want us to appear for you in Singapore you must book us at once as we must leave India in the first week of March. We should already have booked passages to the United Kingdom but for this offer to you.

The sole purpose of this letter was to induce the Appellants to engage the Respondents to present their act in Singapore; and it was this letter which induced the Appellants to engage them.

17. The Appellants respectfully submit that there is no doubt what the facts are, and the case turns entirely on the interpretation of this letter. The evidence of the Respondents themselves was that they had appeared together in cabaret on only two, possibly three, occasions before going to India; they had between them covered all the establishments mentioned, but each of them had been only to some of these establishments; their appearances, except as mentioned above, had not been together; and at a number of these establishments their engagements had not been in cabaret. The Appellants therefore respectfully submit that the material statements in the letter of the 18th February were false, and must have been false to the knowledge of the Respondents.

18. The Appellants respectfully submit that both the Courts in Singapore made serious mistakes in interpreting that letter. The learned Chief Justice only considered one paragraph of the letter, and that quite out of its context. He held that the Respondents' interpretation of that paragraph was possible, and went on immediately to find that therefore there was no fraud without making any finding that the Respondents either believed their interpretation, or thought that the Appellants would understand the letter in that sense. Taylor, J., and the other learned judges of the Court of Appeal, who agreed with him, found that the letter of the 18th February, 1954, meant that the Respondents had appeared as a team of two at the places named, and also found that this statement was false. They went on to hold that the Appellants were not influenced by this falsity, thus, in the Appellants' respectful submission, entirely overlooking the fact that the letter was offering an act of two persons, the statements in it were made in relation to such an act, and in accepting the offer made by the Respondents the Appellants could only have intended to engage such an act. The Appellants also submit that the plain meaning of the letter was that the Respondents had been engaged by the managements of the establishments mentioned, and the learned Judges in the Court of Appeal were wrong in giving it a different interpretation. 10 20

19. The Appellants respectfully submit that the judgment of the Court of Appeal of Singapore was wrong and should be reversed, and this appeal should be allowed, for the following (amongst other)

REASONS

1. BECAUSE the two Courts in Singapore, while differing in their interpretation of the letter of the 18th February, 1954, both interpreted that letter wrongly.
2. BECAUSE the evidence of the Respondents showed that letter, on its proper interpretation, to be false and fraudulent. 30
3. BECAUSE the Appellants were induced by that letter to enter into a contract with the Respondents and the Respondents consequently were not entitled to enforce that contract.
4. BECAUSE the fraud of the Respondents entitled the Appellants to rescind the said contract and to recover damages.

FRANK GAHAN.

J. G. LE QUESNE.

In the Privy Council.

**ON APPEAL FROM THE COURT OF
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BETWEEN :

HOTEL DE L'EUROPE LIMITED *Appellants,*

AND

WILLIAM DUDLEY CURRIE-

FRYER and SYLVIA MARY

MARTIN (Married Woman) *Respondents.*

Case for the Appellants.

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LONDON, E.C.4.

Solicitors for the Appellants.