

1979 May 3

[STAVRINIDES, HADJIANASTASSIOU AND MALACHTOS, JJ.]

LELLA SOFOCLI SCHIZA,

Appellant-Defendant,

v.

CHARALAMBOS PAMBOULOS,

Respondent-Plaintiff.

(Civil Appeal No. 5480).

Contract—Estate agent—Commission—Principles on which it is payable—Written mandate of limited duration to estate agent to sell land—And oral mandate of unlimited duration upon expiration of the former—Introduction of purchaser but sale not effected
5 *—Land sold subsequently to the same purchaser allegedly through another agent—Though original negotiations had ceased effect of introduction remained which was an operative factor and the effective cause of the sale—Agent entitled to his commission.*

10 The respondent-plaintiff, an estate agent, was authorized by the appellant-defendant, the owner of two plots of land, to find a purchaser for the sale of those plots for a price not less than £120,000. The authority was given in writing and it covered a period from June 5 to June 20, 1971. The respondent alleged that on the expiration of this authority an oral mandate was
15 given to him in the following terms:— “Whichever agent sells—and you are included—will get his commission”. During the period covered by the written mandate the respondent approached one of the directors of a company, which is a well known buyer of land, but the company turned down the
20 purchase, because it had financial problems, and informed the respondent accordingly. The plots in question were ultimately sold to the said company on July 1, 1972. The appellant contended, before the trial Court, that no oral mandate was given to the respondent after the expiration of the written authority; and that the lands in question were sold through another
25 agent who was paid his commission.

The trial Court rejected the appellant’s allegation regarding

payment of commission to the other agent because he did not act as an estate agent but simply as a friend in order to bring the parties into direct contact; and after finding that the employment of the respondent was of a general nature; that the oral mandate was of an unlimited duration; that the respondent introduced the property to the purchasers, urged them to purchase it and continued to pester them; and that the purchasers took seriously this introduction, but they decided not to purchase it at that time for financial reasons, came to the conclusion that the operative effect of the introduction by the respondent did not cease and did not come to an end. The trial Court further concluded that it was the introduction by the respondent, which was so seriously taken by the company, that was the effective cause of the sale; and that the relation between buyer and seller was really brought about by the act of the respondent who was entitled to his commission although the actual sale has not been affected by him.

Upon appeal by the defendant:

Held, dismissing the appeal, (1) that remuneration by an agent can be claimed only on transactions which are the direct consequence of the agency; that it is not necessary that the agent should actually complete the transaction but he must show that it was brought about as the direct result of his intervention; that once the respondent (the agent) had introduced the parties together the principal will not do anything which might prevent his agent from earning his commission once his services were instrumental in bringing about this result; and that though negotiations between the parties had ceased for a while, because the company had put forward financial problems, the effect of the introduction remained and was an operating factor and, indeed, it was the effective cause of this sale.

(2) That once the trial Court came to the conclusion that the other agent received no commission, it rightly found that the introduction by the respondent was the effective cause of that sale; that, therefore, the trial Court rightly found that the respondent was entitled to his commission; and that, accordingly, the appeal must be dismissed.

Appeal dismissed.

Cases referred to:

J.F. Aho Et Fils and Another v. Photos Photiades & Co. (1968) 40
1 C.L.R. 477;

- Kalisperas v. Papadopoulos* (1969) 1 C.L.R. 480;
Luxor (Eastbourne) Ltd., v. Cooper [1941] 1 All E.R. 33 at p. 40;
Jones v. Law [1947] K.B. 73;
Fowler v. Bratt [1950] 2 K.B. 96 at p. 105;
5 *Dennis Reed Ltd. v. Goody* [1950] 1 All E.R. 919 at p. 923;
Toulmin v. Millar [1886–1890] All E.R. Rep. 1782 at pp. 1783–84;
Burchell v. Gowrie and Blockhouse Collieries, Limited, [1910]
A.C. 614 at p. 624;
10 *Bow's Emporium, Limited v. A.R. Brett and Company Limited*
[1927–28] Vol. XLIV T.L.R. 194;
Jack Windle Ltd., v. Brierley [1952] 1 All E.R. 398 at p. 400;
Nightingale v. Parsons [1914] 2 K.B. 621 at p. 624;
Allan v. Leo Lines Ltd. [1957] 1 Lloyd's List Law Reports 127
at pp. 131–133;
15 *Christie Own & Davies Ltd. v. Papacioli* [1974] 2 All E.R. 311;
Orphanides v. Michaelides (1967) 1 C.L.R. 309.

Appeal.

20 Appeal by defendant against the judgment of the District Court of Limassol (Stylianides, P.D.C.) dated the 28th June, 1975 (Action No. 83/73) whereby she was ordered to pay to plaintiff the sum of £1,300.—a, commission under an oral agreement for commission.

E. Emilianides for *A. Emilianides*, for the appellant.

E. Lemonaris for *K. Talarides*, for the respondent.

25 *Cur. adv. vult.*

STAVRINIDES J.: The judgment of the Court will be delivered by Hadjianastassiou, J.

30 HADJIANASTASSIOU J.: This is an appeal by Lella Sofocli Schiza, the defendant, against the judgment of a Judge of the District Court of Limassol, whereby he gave judgment against the defendant for the sum of £1,300 as commission to which the plaintiff claimed to be entitled under an oral agreement for commission.

35 The plaintiff is an estate agent in Nicosia, and in his statement of claim, he alleged that he was authorized by the defendant, the owner of plots 696 and 11, situated at Ayii Omoloyite Quarter

of Nicosia, to find a purchaser for the sale of the properties in question for a price not less than £120,000. It was further stated that the authority of the defendant was given in writing covering a period from June 5, to June 20, 1971, but after its expiration, an oral mandate in the same terms was given to him. The plaintiff claimed that he introduced the properties to Hadji-Iosif, Zapitis and Asprides Co. Ltd., and that his intervention was the effective cause of the sale and was entitled to his commission amounting to £2,600.—

On the contrary, the defendant traversed the allegations of the plaintiff and alleged in the statement of defence that she had given written authority to the plaintiff of a limited duration, viz., from June 5, 1971 to June 20, 1971; and that on the expiration of that written mandate, the plaintiff had no longer authority, and he ceased to communicate with her; and that the sale of the property was effected through the instrumentality of another agent who was paid his commission.

The facts, as accepted by the trial Court, are these:—The plaintiff travelled to Limassol where he met the defendant and her husband and was given an oral authority to find a purchaser for the sum of £120,000.— of her property. He returned to Nicosia and approached Mr. Asprides—a well-known buyer of land, and on June 5, 1971, he went to Limassol once again where he had secured written authority for a period of 15 days in order to carry out his investigations for a purchaser. He further stated that on June 5, 1971, he was told by defendant's husband, who was actually managing the business affairs of his wife, that after the lapse of the 15 days, whichever agent sells the property, will get his commission.

On June 22, 1971, the plaintiff once again visited the defendant's house at Limassol, and although he failed to secure a further written authority, an oral mandate was given to him in the following terms:— "Whichever agent sells—and you are included—will get his commission". In fact, the plaintiff went on to add that this authority was repeated by the defendant's husband at the house of Mr. Theodosiades in Nicosia two days afterwards. Later on, he telephoned the husband of the defendant at Limassol repeating to him that he has found someone who was interested, and his reply was "All right Pamboule, bring him and you will get your commission. Who-

ever will bring first a purchaser, I will pay his commission". The property was ultimately sold to Asprides, Hadjilosif and Zapitis Co. Ltd. on July 1, 1972. When the plaintiff was informed of that sale in November, 1972, he telephoned the defendant and her husband, contending that he has found the purchaser.

There was further evidence by Mr. Sofoclis Hadjilosif, one of the directors of the Company, who finally purchased the property, who said that he was informed that the plaintiff called and saw Mr. Asprides, but when the Company studied the matter for about one month, it turned down the purchase of the properties in question, because it had other commitments, and the decision of the company was announced to the plaintiff who called four or five times at the office. The reasons given to the plaintiff was that they had financial problems at that time. Questioned further, he said that the company decided to purchase that property the following year when they had proposals through other estate agents, and particularly from Mr. Kotsapas whom they asked to bring them in touch with the seller. Questioned further by the Court, he said that the plaintiff had a complaint why they had not called him when he learned that the properties had been sold to them. He agreed that the plaintiff mentioned that he had a written authority up to a certain date when he called to see him, and finally, he said that the reason why he did not mention Mr. Kotsapas to the plaintiff was that he thought that he had not even received commission, because he was a close friend of his and of Mr. Theodosiades.

On the contrary, the defendant and her husband explained that the written authority was given to the plaintiff because he represented to them that he would travel to England to see prospective purchasers. But, that authority expired on June 20, 1971, and the agency came to an end. It was further added that the plaintiff had no contractual relation with the defendant and that they had neither met him nor did they have any conversation with him, and denied that they extended the oral authority. There was further supporting evidence by the husband of the defendant, Mr. Sofoclis Schizas, who said that on the first visit of the plaintiff to their house, he informed the plaintiff that he had a property for sale on a cash basis for the sum of £120,000.—and that he would pay 2% commission to the

agent who would introduce a purchaser on these terms. He further added that he told the plaintiff that he would pay him 2% commission because he said that he would travel to England for that purpose. If the purchaser was an inhabitant of Cyprus, he would pay only 1% on the sale price. In fact, the father of the defendant, Mr. Costas Theodossiades said that the plaintiff applied for written authority when he was at his house in Nicosia on the eve of June 5, 1971. On the contrary, the plaintiff denied this, and stated that the meeting at Theodossiades' house took place on June 24, 1971, when the oral authority was affirmed which pre-existed the written authority and was affirmed on June 22, 1971 at Limassol.

In support of the allegation of the defendant that a commission was paid, Kyriacos Kotsapas, 79 years of age, said that he had been an agent since 1951. In 1964 he was in Australia, but he returned to Cyprus in 1965. Since 1966 he was in the office of Mr. Hadjilosif whom he considered as his own son. Because he was unemployed, he used to open the office of Mr. Hjiilosif in the morning. He was also related with Mr. Theodossiades, the father of the defendant, and he was authorised to find a purchaser for the sale of the properties in question. He managed to secure a contract which was finally concluded in the office of Mr. Asprides. He further stated that the rate of commission was agreed at 1% on the visit of the purchasers to Limassol when the negotiations started, and he accompanied Hadjilosif to Limassol. Finally, he added that he collected the sum of £1,300, 2-3 days after the conclusion of the deal and he had signed a receipt for the defendant.

The trial Court, having listened to the whole evidence before it, and having observed the demeanour of the witnesses in the witness box, reached the conclusion that the defendant gave to the plaintiff oral authority both before and after the period of the written authority to find a purchaser for a price not less than £120,000.—on a cash basis, and that the oral authority was of unlimited duration.

Dealing further with the evidence of Mr. Kotsapas, the trial Court made this observation: "Kotsapas is daily at the office of Hadjilosif. Hadjilosif, until after these proceedings were started, was with the impression that Kotsapas received no commission. Kotsapas is closely connected not only with

HadjiIosif, but with defendant's father Theodossiades, who lives at Nicosia. The demeanour of Kotsapas in the witness box left much to be desired. I reject the story of the payment of the commission to Kotsapas as an improbable incredible story; it is an after-thought." It was the case of the plaintiff all along that he introduced the property to the ultimate purchasers and that that introduction was the effective cause of the subsequent sale.

Then the trial Court, having considered the question whether the acts of the plaintiff were the effective cause of the sale which took place on July 1, 1972, said: "The operative effect of the introduction by the plaintiff did not cease; it did not come to an end. It is the introduction by the plaintiff which was so seriously taken by the company, that was the effective cause of the sale. Though months elapsed the first contact between HadjiIosif and the defendant took place some months before the conclusion of the deal—the effect of plaintiff's introduction remained. The relation between buyer and seller was really brought about by the act of the plaintiff and he is entitled to his commission, although the actual sale has not been effected by him."

As it was said earlier, the case for the plaintiff was all along that he introduced the property to the ultimate purchasers and that his introduction was the effective cause of the subsequent sale. He further claimed that his mandate was unlimited and that he had agreed with the defendant to be paid 2% commission on the date when the agreed sum of the purchase money would have been paid.

On appeal, counsel for the appellant-defendant argued with force (a) that the remuneration can be claimed only when the transaction was the direct consequence of the agency, but in the present case, the written mandate and the oral one were cancelled by the seller before the sale was effected by a different agent; and (b) that the finding of the Court that the respondent-plaintiff remained the operative effect of the introduction, and the effective cause of the sale to the company in question, is wrong in law and contravenes the principles enunciated by the Supreme Court in *J. F. Aho Et Fils Trading Under The Style Societe B.E.P.I.N and Another v. Photos Photiades & Co.*, (1968) 1

C.L.R. 477; and *Costas Kalisperas v. Victor Papadopoulos*, (1969) 1 C.L.R. 480.

It has been said in a number of cases that a contract by which an owner of property puts it into the hands of an agent for sale amounts to a promise binding upon the principal to pay a sum of money upon the happening of a specified event through the instrumentality of the agent. With that in mind, we start with the decision of the House of Lords in *Luxor (Eastbourne) Ltd. v. Cooper*, [1941] 1 All E.R. 33, bearing in mind that in that case the contract was for commission to be paid on completion of sale as in the present case. I quote from Viscount Simon L.C., who said at p. 40:-

“ There is, I think, considerable difficulty, and no little danger, in trying to formulate general propositions on such a subject, for contracts with commission agents do not follow a single pattern, and the primary necessity in each instance is to ascertain with precision what are the express terms of the particular contract under discussion, and then to consider whether these express terms necessitate the addition, by implication, of other terms.”

In that case, the agents could only succeed if a term could be implied. In the present case, no implied term is relied on. Viscount Simon L.C., said:-

“ It may be useful to point out that contracts under which an agent may be occupied in endeavouring to dispose of the property of a principal fall into several obvious classes. There is the class in which the agent is promised a commission by his principal if he succeeds in introducing to his principal a person who makes an adequate offer, usually an offer of not less than the stipulated amount. If that is all that is needed in order to earn his reward, it is obvious that he is entitled to be paid when this has been done, whether his principal accepts the offer and carries through the bargain or not.”

Then Lord Russell of Killowen said at pp. 43-44:-

“ A few preliminary observations occur to me. (1) Commission contracts are subject to no peculiar rules or principles of their own. The law which governs them is the law which governs all contracts and all questions of

agency. (2) No general rule can be laid down by which the rights of the agent or the liabilities of the principal under commission contracts are to be determined. In each case, these must depend upon the exact terms of the contract in question, and upon the true construction of those terms.”

In a later passage, Lord Russell said this at p. 47:—

“ I have already expressed my view as to the true meaning of a contract to pay a commission for the introduction of a purchaser at a specified or minimum price. It is possible that an owner may be willing to bind himself to pay a commission for the mere introduction of one who offers to purchase at the specified or minimum price, but such a construction of the contract would, in my opinion, require clear and unequivocal language.”

In the present case, as we said earlier, the written contract, *exhibit 2*, which had already expired was to the effect that the appellant was given a mandate to find a client for the sale of the land in question for the sum of £120,000.—minimum; and that that offer would expire on June 20, 1971, inclusive. In the later oral contract, it was made clear by the seller, the appellant, that “Whichever agent sells—and you are included—will get his commission”. The event, upon the happening of which the money is payable, must therefore depend upon the construction of the contract, and the clarity with which the event is defined by the contract, and as it was said, there are no special rules of construction applicable to estate agency contracts. Normally, when that event is the finding of a purchaser, no claim for commission can arise until the purchase price has been received or would have been received but for the default of the principal. (See *Jones v. Law*, [1947] K.B. 73; *Fowler v. Bratt*, [1950] 2 K.B. 96, at p. 105; and *Dennis Reed Ltd. v. Goody*, [1950] 1 All E.R. 919 at p. 923).

Thus, it appears that if the principal enters into a binding contract with the purchaser and the latter is able and willing to complete, a fact which the agent must establish, and the principal refuses to complete, the commission is payable. But, remuneration can be claimed only on transactions which are the direct consequence of the agency. It is not necessary that the agent should actually complete the transaction but he must show that it was brought about as the direct result of his intervention.

In *Toulmin v. Millar*, [1886–1890] All E.R. (Rep.) 1782 Lord Watson, dealing with the question of commission, said at pp. 1783–1784:—

“ It is impossible to affirm, in general terms, that A, is
 entitled to a commission if he can prove that he introduced 5
 to B. the person who afterwards purchased B’s estate, and
 that his introduction became the cause of the sale. In
 order to found a legal claim for commission, there must not
 only be a causal, there must also be a contractual relation 10
 between the introduction and the ultimate transaction of
 sale. If A. had no employment to sell, express or implied,
 he could have no claim to be remunerated. If he was
 generally employed to sell, and thereafter gave an introduc- 15
 tion which resulted in a sale, he must be held to have
 earned his commission, although he did not make the
 contract of sale or adjust its terms; because, in that case
 he had implemented his contract by giving the introduction,
 and his employer could not defeat his right to commission
 by determining his employment before the sale was effected 20
 When a proprietor, with the view of selling his estate,
 goes to an agent and requests him to find a purchaser,
 naming at the same time the sum which he is willing to
 accept, that will constitute a general employment; and
 should the estate be eventually sold to a purchaser 25
 introduced by the agent, the latter will be entitled to his
 commission, although the price paid should be less than
 the sum named at the time the employment was given. The
 mention of a specific sum prevents the agent from selling
 for a lower price without the consent of his employer; but 30
 it is given merely as the basis of future negotiations, leaving
 the actual price to be settled in the course of these negotia-
 tions.”

In *Burcheli v. Gowrie and Blockhouse Collieries, Limited*,
 [1910] A.C. 614, P.C., Lord Atkinson, dealing with point (1) 35
 that the acts of the appellant, Burchell, were not the efficient
 cause of the particular sale which in fact took place, said at p.
 624:—

“ There was no dispute about the law applicable to the
 first question. It was admitted that, in the words of Erle 40
 C.J. in *Green v. Bartlett* ([1863] 14 C.B. (N.S.) 681), ‘if the

relation of buyer and seller is really brought about by the act of the agent, he is entitled to commission although the actual sale has not been effected by him'. Or in the words of the later authorities, the plaintiff must shew that some
5 act of his was the causa causans of the sale (*Tribe v. Taylor* [1876] 1 C.P.D. 505, 510), or was an efficient cause of the sale (*Millar v. Radford* [1903] 19 Times L.R. 575)."

Then, his Lordship, having dealt with the facts of this case, said at pp. 624-625:-

10 " In reference to these passages it was contended (1) that the appellant should not have taken it upon himself to 'turn down' these proposals, but should have communicated them to his principals, and (2) that the acts of an agent cannot be held to be the efficient cause of a sale which he
15 has in fact opposed.

The answer to the first contention is that there is not a suggestion from beginning to end of this long correspondence that less than one half of the consideration for the sale of the mine should be paid in cash. On the contrary,
20 ready money, at least, to that amount was the great desideratum. The lowest price which Lindsay would in December, 1905, consent to take was, as appears from the correspondence, —105,000, half in cash and half in stock.

In September, 1906, he informed Burchell that he had
25 rejected Sir H. Montague Allan's proposals, and that his (Lindsay's) 'directors did not see their way to join any scheme which did not provide for part of the purchase-money being paid in cash'.

Their Lordships do not think that any duty lay upon an
30 agent, such as Burchell was, to communicate to his principals proposals which those principals had theretofore in effect informed him could not and would not be accepted.

The answer to the second contention is, that if an agent
35 such as Burchell was brings a person into relation with his principal as an intending purchaser, the agent has done the most effective, and possibly, the most laborious and expensive, part of his work, and that if the principal takes advantage of that work, and, behind the back of the agent and

unknown to him, sells to the purchaser thus brought into touch with him on terms which the agent heretofore advised the principal not to accept, the agent's act may still well be the effective cause of the sale."

In *Bow's Emporium, Limited v. A.R. Brett and Company, Limited*, [1927-28] Vol. XLIV T.L.R. 194, H.L., where an agent was employed to make inquiries about a particular business with a view to his employer's acquiring it on the terms of his being paid by the purchaser a commission on the purchase price if business was transacted, and where the parties were brought together through his agency, he was entitled to commission, even where the actual purchase was ultimately effected through the intervention of another agent, provided that his services were really instrumental in bringing about the transaction. 5 10

In an action by an agent for a claim for commission from the purchaser on the sale of a business, the Lord Ordinary found on the facts that the agent had earned his commission and his decision was affirmed by the Court of Session in Scotland. 15

Held (Lord Phillimore and Lord Blanesburgh dissenting), that the concurrent findings of the Court below ought not to be disturbed. 20

Viscount Haldane said at p. 195:-

"The question which we have to decide is whether the respondents, who carry on business as agents for the sale and purchase of businesses and other properties, are entitled to commission on a transaction. The appellants, who are a company carrying on a large business as outfitters in Glasgow, acquired in 1925 as a going concern the similar business of R. Wylie Hill and Company, Limited, in that city. The respondents to some extent were instrumental in bringing about this result. If they were entitled to a commission at all, its amount has been restricted to £1,350, and the amount itself is not now in question." 25 30

Then, Viscount Haldane, having reviewed the facts as found by the Courts below, said at p. 197:- 35

"The learned Judges in the Inner House were unanimous in adopting the decision of the Lord Ordinary on what was really no more than a question of fact. It is quite

true that they decided as they did with some reluctance. They thought that even the reduced commission as agreed on was a large sum to pay for very little work. That may have been why Lord Blackburn said that he could not help feeling that justice was not being done in the case. But not the less he was clear that the judgment of the Lord Ordinary must be affirmed. He thought Fairhurst an unduly plausible person. But the conclusion come to about the evidence he thought that a Court of Appeal could not ignore.

My Lords, I am for the reasons that I have stated of opinion that it is our duty to affirm the judgment and dismiss the appeal with costs. The point in issue is purely one of legal right, and sentiment must not be allowed to enter into its consideration."

In *Jack Windle, Ltd. v. Brierley*, [1952] 1 All E.R. 398, the defendant instructed the plaintiffs, a firm of estate agents, to endeavour to sell his bakery business, and he signed a document dated March 11, 1949 appointing the plaintiffs to be his agents for that purpose. The plaintiffs introduced G and a price was agreed on, but G was unable to raise the necessary money, no contract was signed and the negotiations ceased.

Lynskey, J., having stated the facts, said at p. 400:—

"An agent is only entitled to commission if he introduces a ready, willing, and able purchaser. It is true that the plaintiffs introduced Mr. Greatorex, but at the time of the introduction and right up to May 17, although Mr. Greatorex was a willing purchaser, he was not an able purchaser. He had not the money. I am satisfied that on May 12 negotiations for the sale had ceased and the effect of the introduction, although to some degree it remained, was really no longer an operating factor in the sale of the property thereafter. Mr. Greatorex never became an able purchaser until the defendant provided the necessary finance on unsecured terms, relying for £3,200 of the purchase price on a promisory note and leaving £1,500 on mortgage. The effective cause of the subsequent sale to Mr. Greatorex was, not the introduction, but the provision of finance by the defendant which enabled the sale to take

place. I am not satisfied that the introduction was the effective cause. In those circumstances I cannot find that any effort on the part of the plaintiffs was an effective cause of this sale, and this claim fails.

In *Nightingale v. Parsons*, [1914] 2 K.B. 621, Lord Reading C.J., in dismissing the appeal said at p. 624:- 5

“ In my opinion the proper test in an action by a house agent to recover commission is that laid down by *Collins M. R. in Millar v. Radford* (19 Times L.R. 575) in which apparently Mathew and Cozens-Hardy L.JJ. concurred, namely, whether ‘the introduction was an efficient cause in bringing about the letting or the sale,’ and not merely a causa sine qua non. In the present case the county Court Judge has found that ‘though the plaintiff introduced the property to Mr. and Mrs. Sounes, that introduction was not, in my view, the effective cause of the subsequent sale.’ That is a finding that the plaintiffs have not established that which is essential to their claim. The county Court Judge having found that fact upon evidence which entitled him so to find, it is not open to the Divisional Court or to this Court to interfere with that finding.” 10 15 20

In *Allan v. Leo Lines Ltd.*, [1957] 1 Lloyd’s List Law Reports, 127, it was held (1) that the plaintiff was the effective cause of the introduction and his efforts were the effective cause of the sale; and accordingly he was entitled to commission on the sale. 25

Mr. Justice Devlin, having stated the facts, said at pp. 131-133:-

“ No doubt the situation is not unusual where the same buyer gets introduced through two different channels and in the end the matter has to be sorted out and it has to be ascertained which one of them is the effective cause of the sale. That is agreed to be the test. Although Mr. Glucksman knew or suspected that they were one and the same, he did not know and could not know until the matter was investigated whether it was Mr. Allan or Mr. Manne who had really effected the introduction... Mr. Allan, of course, passed this on with a strong recommendation that it should be accepted. Mr. Glucksman did not accept it, but he decided to make another counter-offer and he 30 35

telegraphed back direct to the Yugoslavs, offering £63,750...
Finally, on July 3, the buyers in Yugoslavia accepted the
compromised figure of £63,750 and the deal went through
on that basis... To my mind, there can be no doubt at
all that Mr. Allan was the effective cause of the intro-
duction...

The other point Mr. Tilling relies upon is this. He
says that the question is, in effect, not who is the effective
cause of the sale, looking at the sale broadly, but who is
the effective cause of the sale at £63,750? Undoubtedly
that was Mr. Glucksman. Mr. Tilling submits that it is
irrelevant that it was by accident that Mr. Glucksman
took the matter out of Mr. Allan's hands, and that the
only question I have to ask myself is: who caused the sale
at that figure, not who caused the sale generally.

In my judgment, that is not right. One cannot look at
the final end of the negotiations and see which was the
more effective force in bringing about a particular figure.
If it were otherwise it would make an agent's position
hopeless. It is well known that in these matters there is
a term to be implied that a principal will not do anything
which might prevent his agent from earning commission.
Therefore, if Mr. Glucksman had deliberately decided to
take the matter out of Mr. Allan's hands, the position
would be much the same, and I cannot believe it to be the
law that if an agent works very hard at bringing the parties
close together so that only a thousand pounds or two
separates them, the principal is entitled to say, 'I propose
to deal with the matter myself because I think I should
be more effective than you in clinching the final figure',
and when he has done that to say 'No, you never arranged
a sale at this figure. The best you could do was £1000
less than I was willing to take'. All these points, in my
judgment, therefore fail, and I hold that Mr. Allan was
the effective cause of the sale."

In a recent case, *Christie Owen & Davies Ltd. v. Rapacioli*,
[1974] 2 All E.R. 311, the defendant instructed estate agents
to assist him in the sale of the good will of a restaurant and to
quote a price of £20,000. It was agreed that the estate agents
would be entitled to a commission if they effected "an intro-

duction either directly or indirectly of a person ready, able and willing to purchase" at £20,000, or for any other price acceptable to the defendant. The agents introduced A as a prospective purchaser who offered £17,700 and the defendant agreed to accept that offer. The defendant, however, had in the meantime received a better offer, and so declined to proceed with the contract. The estate agents claimed that in the circumstances they were entitled to their commission. 5

Cairns L.J., having dealt with the facts of this case and having referred to a number of authorities relating to commission, in allowing the appeal said at pp. 318-319:- 10

" It seems to me that the trend of the authorities supports the three propositions enunciated by counsel for the plaintiffs. ¹ The decision whether the commission is payable depends on the terms of the contract and on ordinary rules of construction. ² When the agreement between principal and agent is for commission to be payable on the introduction of a person ready, able and willing to purchase, the commission is payable if a sale actually results, but may become payable when the transaction becomes abortive. ³ Commission is payable when a person who is able to purchase is introduced and expresses readiness and willingness by an unqualified offer to purchase, though such offer has not been accepted and could be withdrawn. 15 20

In connection with the third proposition it is to be assumed that the offer is one within the terms that the agent has been authorised to invite; also, that the offer is not withdrawn by the applicant but is refused by the vendor. In my judgment on the facts in this case the plaintiffs bring themselves within that proposition and are entitled to the commission claimed." 25 30

Orr, L.J., delivering a separate judgment and having agreed with Cairns L. said at p. 319:-

" The contract in this case was that commission should be payable in the event of the plaintiffs effecting an introdu- 35

1. [1962] 3 All E.R. 391.

2. [1962] 3 All E.R. 396.

3. [1950] 1 All E.R. 864.

5 ction of a person ready, able and willing to purchase at the
named price, or at any other price that the defendant might
agree to accept. It is not a case in which an offer made by
a person so introduced was later withdrawn (*Dennis Reed*
10 *Ltd. v. Goody* [1950] 1 All E.R. 919), or in which the offer
was expressed to be 'subject to contract' (*Martin Gale &*
Wright v. Buswell (1961) 178 Estates Gazette 709), or
qualified by some condition (*Graham and Scott (Southgate)*
Ltd. v. Oxlade [1950] 1 All E.R. 856). In those circum-
stances in my judgment, on the authorities to which Cairns
L.J. has referred the entitlement to commission arose when
the person introduced by the plaintiffs made a firm offer
for the purchase of the property in question on terms accept-
able to the vendor. The views expressed by Denning L.J.
15 in *McCallum v. Hicks* [1950] 1 All E.R. 864, and
Dennis Reed Ltd. v. Goody (supra) and by Hodson J. in
the latter case, that the entitlement does not arise until
some later date, whether it be the signing of a contract or
the completion of a sale, cannot, with great respect, be
20 accepted as correct.

The result is that where a prospective vendor binds him-
self, on the terms with which we are here concerned, to
more than one estate agent, he may find himself liable to
pay more than one commission. This consideration
25 clearly influenced Denning L.J. in expressing the views to
which I have referred. But, in my judgment, the authorities
to which Cairns L.J. has referred, going back for a quarter
of a century or more, are clear, and the remedy of the
prospective vendor, if he wishes to avoid paying more
30 than one commission, is not to enter into a contract on such
terms as those with which we are here concerned."

The Supreme Court of Cyprus, having dealt with a contract
for a commission in *Stelios P. Orphanides v. Vyron K. Michaelides*,
35 (1967) 1 C.L.R. 309 adopted and applied the principle
enunciated in *James T. Burchell v. Gowrie and Blackhouse*
Collieries Ltd. (supra). In this case, the appellant, an estate
agent, visited the shop of the respondent in February, 1966 and
enquired whether he was willing to sell his property. The
respondent who was acquainted with the appellant, said that he
40 was willing to sell his land at the price of £30,000. Nothing was
said during that meeting about a commission to be paid to the

appellant and no express contract was made appointing the appellant to be the agent of the respondent for the purpose of effecting the sale. After that meeting, the appellant introduced to the respondent, one Mr. Hadjiarabis in the latter's office at Limassol as a prospective purchaser. Mr Hadjiarabis then visited the land of the respondent and after protracted negotiations lasting for about a month, offered to the respondent in the presence of the appellant, to buy the land at a price of £26,000 but on certain conditions. The respondent agreed to consider the offer, but eventually be rejected the offer. Thus, the negotiations between them ceased, in so far as the firm Cybarco was concerned. But Mr. Hadjiarabis then told this appellant that he was interested personally to purchase the property in partnership with another person. He then approached one Mr. Michael Drakos and spoke to him about the purchase of this property. Mr. Drakos assured him that he knew the father-in-law of the owner and persuaded him to leave the matter to him. Questioned by Dracos as to the person who introduced this business to him, Mr. Hadjiarabis replied: It was the appellant the estate agent.

In delivering the judgment, having referred to the evidence, and having quoted a number of English cases, in allowing the appeal, I said at pp. 317-318:-

“ With due respect to the learned trial Judges we find ourselves in disagreement with the above reasoning. There is ample evidence on record to show that the appellant introduced Mr. Hji Arabis to the respondent and, although the negotiations for the sale of his land to Cybarco through Mr. Hji Arabis had ceased, the effect of the introduction remained and it was really the operating factor in the sale of the property thereafter. It was Mr. Hji Arabis, who informed Mr. Drakos that the land of the respondent was offered for sale, and he, Mr. Hji Arabis, was, to the knowledge of the respondent, one of the buyers. Thus, the subsequent sale to Mr. Hji Arabis and the others, although not negotiated by the appellant, but by Mr. Drakos, was really brought about by the introduction of Mr. Hji Arabis to the respondent, which was effected by the appellant.....

As, however, in the present case the appellant has, on the contrary, done the most effective part of his work by

introducing to the respondent the said Mr. Hji Arabis, we are of the opinion that appellant's act remained the efficient cause of the sale taking place, and, therefore, in our view this contention of counsel for appellant succeeds."

- 5 In *J.F. Aho Et Fils, Trading Under the Style Societe B.E.P.IN., and Another v. Photos Photiades & Co.*, (1968) 1 C.L.R. 477, Josephides, J., in allowing the appeal said at pp. 494-495:-

10 "To sum up, the position is this, that we have to look to this case as being governed by the ordinary law of contract and to interpret and apply the contract as alleged to have been made by the parties, if made at all, and not to make the contract for the parties or reconstruct an agreement on equitable principles.

15 With regard to the payment of commission, this matter was considered by the Supreme Court of Cyprus in the case of *Orphanides v. Michaelides* (1967) 1 C.L.R. 309, at page 318. Reference was made there to several English cases and the principle adopted was that the act of the agent must be the efficient cause of the sale. In Pollock and Mulla's Indian Contract and Specific Relief Acts, 8th
20 edition, where the English cases on the point are summarised, it is stated, at page 679: 'But in order to establish a claim for commission the agent must show that the transaction in respect of which the claim is made was a
25 direct result of his agency. It is not sufficient to show that the transaction would not have been entered into but for his introduction. He must go further, and show that his introduction was the direct cause of the transaction.'

30 Looking at the three letters, dated the 25th September, 1962, 7th March, 1963, and 16th May, 1963, we find nothing to support the agreement as alleged by the plaintiff in his statement of claim and we hold that no such agreement has been proved by the evidence. Two of these letters refer to other projects, and there is no general agreement; and the
35 third one simply refers to transactions or joint action to be taken in future which, in fact, was never agreed upon..."

„In *Costas Kalisperas v. Victor Papadopoulos (supra)* relied upon by counsel for the appellant, the respondent gave exclusive authority to the agent-appellant by a contract in writing dated

November 24, 1965 to find during the validity of the contract, a buyer for a property of considerable value. The duration of the contract was fixed at one year, after the lapse of which the respondent would be entitled to terminate the contract by a fortnight's notice to the agent in writing. In June, 1966, the respondent, having apparently found a buyer, communicated to the agent his decision to terminate the contract; and in fact, soon after the repudiation the property in question was sold for £24,000 to the buyer found by the respondent. When the appellant came to know of the sale, he claimed from the client (respondent) the payment of the agreed commission on the actual sale price of £24,000. Vassiliades, P., in dismissing the appeal, said that the trial Court rightly held that the agent was entitled to his alternative claim for damages for breach of contract, and said at p. 486:—

“ After hearing exhaustively counsel for the appellant, we found it unnecessary to call on the respondent; it is clear to us that the submission on behalf of the appellant rests on a completely wrong interpretation of the contract between the parties. The position is undoubtedly governed by the relevant statutory provisions in our Contract Law (Cap. 149) which have been considered in this Court, in connection with similar claims in a number of cases. We may refer to two recent ones: *Stelios Orphanides v. Vyron Michaelides* (1967) 1 C.L.R. 309, where the agent was held to be entitled to remuneration in the form of a reasonable commission for his services in finding and introducing to the seller, the buyer to whom the property was eventually sold directly by the owner; and *J.F. Aho & Fils and Another v. Photos Photiades* (1968) 1 C.L.R. 477 where *Luxor (Eastbourne), Ltd. v. Cooper (supra)* was considered, this Court adopting the view that the law applicable to this type of claims (for agent's commission or remuneration) is the ordinary law of contract; and where referring to *Orphanides v. Michaelides (supra)* the Court quoted from Pollock and Mulla's Indian Contract and Specific Relief Acts (8th Ed. at p. 679) the statement that ‘to establish a claim for commission, the agent must show that the transaction in respect of which the claim is made, was a direct result of his agency’. (The Aho & Fils case, *supra*, at p. 494).”

Having reviewed the facts in the present case, and having analysed the legal principles enunciated in the cases quoted as to whether the introduction of the agent was the effective cause in bringing about the sale, we shall now proceed to decide this issue.

In our judgment, once the appellant had introduced the parties together, it is a well-known principle that the principal will not do anything which might prevent his agent from earning his commission once his services were instrumental in bringing about this result. It is true, of course, that negotiations had ceased between the parties for a while because the company had put forward at that time that it had some financial problems. But the effect of the introduction, in our view, remained and was an operating factor, and indeed, it was the effective cause of this sale.

We think, in fairness to counsel appearing for the appellant-defendant that he has done his very best in arguing this case with a view to convince this Court that once the negotiations had ceased, the effect of the introduction was really no longer the operating factor because the oral authority was, in the meantime, withdrawn by the appellant-defendant; and that the sale was effected by Mr. Kotsapas the agent who took over the negotiations and that his introduction was the effective cause of that sale.

The trial Court has found as we have said earlier, that the employment of the respondent was of a general nature, and that the oral agreement appointing the respondent to be her agent for that purpose, was of an unlimited duration. Furthermore, the Court found that the plaintiff obtained site plans from the D.L.O. and introduced the property to the purchasers. He urged them to purchase it and he continued to pester them. The purchasers took seriously this introduction, but they decided not to purchase at that time for financial reasons. Once, therefore, the trial Court came to the conclusion that Kotsapas received no commission because he did not act as an estate agent, but simply as a common friend to bring the parties into direct contact, in our view, having regard to the authorities quoted, the trial Court rightly found that the introduction by the plaintiff was the effective cause of that sale and therefore entitled to commission of the sum of £1,300.

For the reasons we have stated and because the two cases *Aho J.F. Et Fils* and *Kostas Kalisperas*, (*supra*) relied upon by counsel are distinguishable, 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.

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