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89/124.

IN THE ROYAL COURT OF JERSEY

Before Commissioner F.C. Hamon
Jurat M.G. Lucas
Jurat J.J. Orchard

Between	Prestige Properties Limited	Plaintiffs
And	Brian John Styles and Ruth Hugi, his wife	Defendants

Advocate G. Le V. Fiott for the Plaintiffs
Advocate P.C. Sinel for the Defendants

This action is by estate agents for commission of £3,900. The Defendants are hoteliers and own the issued share capital of Les Grandes Vagues Guest House Limited which in turn owns Les Grandes Vagues Guest House from which they conduct their business.

In November 1986 the Defendants approached Mr. Michael Sloman, a Director of the Plaintiffs, instructing him to sell their property. On the 21st November, 1986 Mr. Sloman wrote a letter. The Plaintiffs say that this letter was accepted by the Defendants as constituting the terms of the agency. The letter reads as follows:-

"Dear Mr. and Mrs. Styles,

Les Grandes Vagues Guest House, St. Clement's Coast Road

We thank you for your instructions for us to act as sole agents relating to the sale of the above mentioned property and to produce an applicant ready, willing and able to purchase the property for the sum of £225,000, or other such sum acceptable to you.

We wish to take this opportunity to confirm that in the event of our introducing a purchaser able to proceed at an agreed price our commission charges will be in accordance with the locally agreed scale of 2% in respect of the realty and a reduced rate of 2% in respect of the contents.

Enclosed are copies of our specifications for your information and retention which we trust you will find to be in order.

We will make every endeavour to dispose of the property in a confidential and expeditious manner.

Please do not hesitate to contact us at any time should you feel that we can be of any further assistance.

Yours sincerely,"

Now the Plaintiffs did not ask the Defendants to sign anything at all, and as a result have to rely in these proceedings upon an oral agreement evidenced by their own subsequent letter to their client "confirming" their instructions. Had the Plaintiffs asked the Defendants to sign a copy of the letter they sent to him, then the Defendants would have been bound by it. (See L'Estrange v. Graucob Limited (1934) ALL ER REP 16 where at page 19 Scrutton L J laid down a general rule which is, in our view, equally applicable to estate agent cases. "When a document containing contractual terms is signed, then in the absence of fraud, or I will add, misrepresentation, the party signing it is bound and it is wholly immaterial whether he reads the document or not".)

The letter is important because in its second paragraph it appears to go further than the normal "ready, willing and able" types of agency agreement, in that it states that a commission charge will be levied "in the event of our introducing a purchaser able to proceed at an agreed price".

The letter also purports to create a sole agency. This would not, in our opinion, preclude a vendor from remaining free at all times to withdraw his instructions, or from refusing to sell his property to an applicant introduced by the agent. It would, however, preclude him from allowing the property to be sold through another agent's introduction.

For a moment let us establish the facts. The agents set out, after the 21st November, 1986, to attempt to find a purchaser. Only Mr. Brian Styles was called as a witness by the Defendants but he told us that when he had first contacted the Plaintiffs he had hoped that the property would be sold within two or three months. By February 1987 only one offer had been received from a firm called J. J. Fox International Limited and they wished to purchase the property not as a guest house but as office accommodation for their staff. In fact that Company made two separate offers (both of which were unacceptable to the Defendants) one on the 13th February, 1987 in the sum of £180,000, and the other on the 3rd June, 1987 in the sum of £175,000. It was on the 30th June, or thereabouts that two prospective purchasers began to show a real interest in Les Grandes Vagues as a guest house purchase. They were Mr. and Mrs. Nigel Tanguy, and Mr. Tanguy gave evidence before us.

Everything seemed set fair for completion. Mr. and Mrs. Tanguy had offered £185,000 and had a survey carried out on the property, which was satisfactory. The Housing Committee was informed of the proposed transfer of occupancy, an inventory was prepared, the Tourism Committee consented to the change of management. Arrangements were made at a later stage for Mr. and Mrs. Tanguy to store their furniture at Les Grandes Vagues (although this arrangement never came to fruition). During the night of the great storm of October 16th Mr. and Mrs. Tanguy even went so far as to lend the Defendants a tarpaulin to cover damage caused by the storm to the roof tiles of the property.

The course of negotiations does not always run smoothly to its conclusion, and there were two fairly substantial setbacks during the course of these protracted negotiations. The first of these occurred when the Defendants

received a higher offer privately which, in July 1987, they appeared minded to accept. It became necessary for Mr. and Mrs. Tanguy to increase their offer to £196,000 before that alternative proposed purchase fell to the ground. Mr. Sloman conceded candidly to us that had the alternative offer proceeded to completion, and had the Tanguys (his introduction) withdrawn from the transaction, then he would not have had any claim for commission.

As it happened the Tanguys had returned to the negotiating table by the 24th July, 1987. They had, by then, taken the serious step of selling their own property and renting alternative accommodation awaiting the purchase, which was due for completion on the 5th January, 1988.

About the 10th September, 1987 Mr. Sloman was surprised to hear from the Defendants that there was a mortgage on the property which required six months notice to be given. The Defendants' Advocate appeared to have forgotten the instructions that he had received to attempt to have that period of notice waived and he had not approached the mortgagor by the 29th July, 1987. The Plaintiffs, through Mr. Sloman, negotiated a completion date for the end of January 1988 which would have covered the six months notice, but as things turned out, the mortgagor voluntarily waived the requisite period of notice and allowed repayment without penalty.

On the 18th September, 1987 the Defendants' lawyer Advocate Trott wrote to the Tanguys' lawyer in these terms:-

> "Thank you for your letter of the 10th instant and I am sorry that it has taken me so long to respond to your communication. Primarily I was waiting final instructions from my clients, Mr. and Mrs. Styles, as to whether or not they were proceeding with the sale to your clients Mr. and Mrs. Tanguy.
>
> I have now obtained such instructions and the transaction is to take place by way of share transfer and I would suggest the completion takes place on or before the 5th January next, so that if completion does

take place on that day, the consideration will immediately give value to my clients but we will discuss arrangements in due course.

If your instructions now accord with mine, would you kindly let me know, and I will put in hand the preparation of a share vending agreement and will let you have sight of the company books and statutory documents."

The correspondence is marked "subject to contract".

It came as a complete surprise to the Plaintiffs and to Mr. and Mrs. Tanguy when a letter dated 19th October, 1987, was received by the Tanguys' lawyers Fiott and Huelin from Bois Labesse the Defendants' lawyers It stated somewhat pithily; "I regret to say that I have now received instructions from my clients to the effect that they do not wish to proceed with the sale of the above property".

Mr. Styles had no explanation as to why this letter was written and was adamant that it had been written entirely without his instructions. He re-assured the Plaintiffs and the Tanguys. He told us that shortly after this date he and his wife were looking for an alternative property. They had found a house at Grouville which was suitable for them and their three children and they had a fixed time to complete their negotiations for this property. The time limit imposed expired in the last week of October. This time limit was, according to Mr. Styles, the straw that broke the camel's back. Mr. Styles told us that he and his wife were completely frustrated. They laid the blame firmly on their lawyer, Advocate Trott, whom they say had procrastinated and never produced a written agreement as instructed. Mr. Styles also blamed, to a certain extent the Tanguys' lawyer, Mr. Huelin, and the Plaintiffs for the delay. As far as Mr. Styles was concerned, although he felt sorry for the purchasers, he felt, in the absence of a written contract, in no position to compel them to complete. He felt that the matter was not a question of loyalty to his purchasers, but a matter of law and legal principle.

On the 29th October the Defendants sent out two letters, one to the Plaintiffs and one to Mr. and Mrs. Tanguy who again appear to have been taken totally by surprise. The letters read as follows:-

"Dear Michael,

I regret to inform you that the deal on Les Grandes Vagues is now definitely off. Both Ruth and myself have been under great pressure during these past weeks, especially after a very busy season. We just cannot take any further stress!

We both really appreciate all the work you put in to trying to conclude a successful deal, however, we also put in some hard hours with our clients, in order to secure a deal, and as I assured you at the time, we would have been quite happy to share the commission with you, if a deal had been concluded.

In spite of losing so much time, we intend to go ahead with all the work on "Les Grandes Vagues" in order to bring the guest house into line with all the latest Tourism Regulations.

I have advised Joan and Nigel Tanguy of our decision. With kindest regards."

"Dear Joan and Nigel,

I tried to telephone you yesterday evening without success.

Unfortunately, the deal on "Les Grandes Vagues" is definitely off. Both Ruth and myself have been under severe pressure during these past few weeks, and after completing a very busy season, we just cannot take any further strain!

We both appreciate how disappointed you must be, however, we have had to take some very important decisions during this coming week-end and therefore decided in fairness to all concerned, to call off the deal.

With kindest regards and best wishes for the future."

The Plaintiffs replied on the 31st October wishing the Defendants well, expressing the purchasers' disappointment, and enclosing a fee note for commission in the sum claimed.

Both Counsel referred us to the oft quoted case of Luxor (Eastbourne) Limited v. Cooper (1941) 1 ALL ER 33 and which was cited with approval in the recent judgment of this Court in Prestige Properties v. Shield Investments 1985-86 JLR 258 at page 270 where Commissioner Le Cras said this:-

"In our view the principles which are relevant are to be found in Luxor (Eastbourne) Limited v. Cooper, a decision of the House of Lords and thus of the highest persuasive authority in this Court. The contract with the agent was in that case one where the agent was to find a purchaser rather than one on the terms of the instant contract, but in our view the words of Lord Russell of Killowen clarify and illuminate the principle of law with which we are concerned when he said: "My Lords, in my opinion there is no necessity in these contracts for any implication, and the legal position can be stated thus. If, according to the true construction of the contract, the event has happened upon the happening of which the agent has acquired a vested right to the commission, (by which I mean it is debitum in praesenti, even though only solvendum in futuro) then no act or omission by the principal or anyone else can deprive the agent of that right. Until that event has happened, however, the agent cannot complain if the principal refuses to proceed with, or carry to completion, the transaction with the agent's client."

Every case, in our view, must turn on a proper interpretation of the particular contract involved. There are, however, some general observations which are of assistance. These are well contained in the speech of Lord Russell of Killowen at page 43, where he said:

"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.

3. Contracts by which owners of property, desiring to dispose of it, put it in the hands of agents on commission terms are not (in default of specific provisions) contracts of employment in the ordinary meaning of those words. No obligation is imposed on the agent to do anything. The contracts are merely promises binding on the principal to pay a sum of money on the happening of a specified event, which involves the rendering of some service by the agent. There is no real analogy between such contracts and contracts of employment by which one party binds himself to do certain work and the other binds himself to pay a remuneration for the doing of it."

Let us then return to the opening chapters of this negotiation, and in particular to the letter of the 21st November. This letter, of course, "confirms" nothing at all. It does, however, contain in writing the terms upon which the agent will seek to obtain his commission. It cannot, of course, be

regarded as a contract of employment because the agent in general terms is not under an obligation to do any work at all. However, the agent here goes further than the normal understanding of an estate agent's contract because he seeks to be appointed as sole agent. In our view, and in those circumstances, he must then use his best endeavours to sell the property, and clearly if he sat back and did nothing at all, then he would be in some difficulty in establishing a claim for commission.

But an offer must have as its corollary an acceptance in order to establish a contract.

In reply to the letter of the 21st November, Mr. Styles wrote:-

"Dear Michael,

Many thanks for your letter dated 21st November.

I have enclosed a copy of your specifications with a few small corrections and additions, just to keep the records straight. Also I should prefer to raise the asking price slightly to £130,000 (this was altered in Mr. Sloman's handwriting to £230,000 and was clearly an error).

I think it is important to draw attention to the fact the main building is an original granite built farmhouse! With kind regards."

Can that letter be taken as a consent?

The Court has to ask itself how a letter can "confirm" matters that have not been agreed upon, because it is clear from the evidence that the verbal instructions given by the Defendants were to sell their property for an agreed price. The basic rule of offer and acceptance suggest to us that the estate agent, by introducing fresh material, makes an offer to his client which cannot be binding unless and until it is accepted in some positive fashion. There

appear to us to be two general rules - that acceptance is not to be inferred from silence and that a person need not pay for an unsolicited service. But the letter of reply in our view can and does bind the Defendants. It cannot, in our view, be argued that the agent's conduct in carrying out the negotiations with the person he introduced constitutes agreement, because it seems to us clear that this conduct is as referrable to the original instructions (which were unqualified) as to the agent's modification of them. Although the letter written by Mr. Styles did not specifically state that the terms were accepted, it is quite clear that they had been read, and indeed, they had been altered slightly.

If, as we say, that letter is to be taken as a consent to the terms, are those terms reasonable and certain? Although not cited to us by either Counsel, we feel that the case of Jacques v. Lloyd D. George and Partners Limited (1968) 2 ALL ER 187 is helpful in this regard. (The case is cited in the footnote of paragraph 801 of Halsbury's Laws 4th Edition Volume 1 Agency which was read to us in Court). In that case at page 190 Lord Denning said this:-

> " We have had many cases on commission claimed by estate agents. The common understanding of mankind is that commission is only payable by the vendor when the property is sold. It is payable out of the purchase monies; but some agents have sought, by their printed forms, to get commission even though the property has not been sold, or the purchase money received. At first it was "when a binding contract is signed". Next it was if they introduced a person "ready, able and willing to purchase". Then they missed out "able" and want a commission if they only got a "prospective" purchaser or a "willing" purchaser who was unable to purchase. Now we have got the widest clause that I have yet seen - "should you be instrumental in introducing a person willing to sign a document capable of becoming a contract to purchase ..."

Can an estate agent insert such a clause and get away with it. I think not. I regard this clause as wholly unreasonable and totally uncertain. Suppose a man signed a piece of paper which had just got on it the address of the premises and the price. That could be said to be a "document capable of becoming a contract" even though there was not an offer contained in it. So also if a man signed a document which was expressly "subject to contract" or even signed a blank form with all the blanks to be filled in, it might be said to be "a document capable of becoming a contract". Even if the man was quite unable to complete he might still be a person "willing" to sign. So we are faced with the question in this case to what extent can estate agents go in putting a form before vendors to sign?

The principles which, in my opinion, are applicable are these: when an estate agent is employed to find a purchaser for a business or a house, the ordinary understanding of mankind is that the commission is payable out of the purchase price when the matter is concluded. If the agent seeks to depart from that ordinary and well understood term, then he must make it perfectly plain to his client. He must bring it home to him so as to be sure that he agrees to it. When his representative produces a printed form and puts it before the client to sign, he should explain its effects to him, making it clear that it goes beyond the usual understanding in these matters. In the absence of such explanation, a client is entitled to assume that the form contains nothing unreasonable or oppressive. If he does not read it and the form is found afterwards to contain a term which is wholly unreasonable and totally uncertain as this is, then the estate agent cannot enforce it against the innocent vendor."

So in this case we have the first paragraph of the letter which, in our view, had it stood, might well have fallen to be decided "according to the common understanding of mankind", but which is then qualified by the second paragraph "we wish to take this opportunity to confirm" (there was, of course, no "confirmation")" that in the event of our introducing a purchaser able to proceed at an agreed price our commision charges will be .....".

Now that in our view is a perfectly clear and understandable qualification of the words in the first paragaph.

In Dennis Reed Ltd. -v- Goody (1950) 1 All E.R. 919, Denning L.J. reiterated and elaborated the words he had expressed in McCallum -v- Hicks (1950) 1 All E.R. 864:

> " On consideration of this clause I am satisfied that it is capable of a reasonable construction. The words "upon your introducing" do not mean the commission becomes due at the moment of introduction. The introduction takes place when the order to view is given and no one knows then whether the person introduced will like the house or not.
>
> The words "upon your introducing" cannot therefore signify the time when an agent becomes entitled to commission, they can only signify the services to be rendered by the agent. They mean "in consideration of your introducing". Now whom must the agent introduce? He must introduce; "... a person ready, able and willing to purchase the above property for the sum of £2,825, or such other price to which I shall assent". These words do not mean a person ready, able and willing "to make an offer" or even "to enter a contract". They mean a person ready, able and willing "to purchase" i.e. to complete the purchase. He must be a person who is "able" at the proper time to complete; i.e. he must then have all the necessary financial resources. He must also be "ready" i.e. he must have made all necessary preparations of having the cash or a banker's draft ready to hand over. He must also be "willing" i.e. must be willing to hand over the money in return for the conveyance. The interpretation means that the special clause has practically the same effect as the usual terms on which an estate agent is employed. This is just as what it should be, for having regard to what took place when the housewife was asked to sign the document I should not expect it to go beyond the ordinary understanding on these matters. So far I have considered this particular clause only. I would, however, like to add the various new clauses that appear seem to be capable of

similar interpretations. I see no sensible distinction between instructions to "find a purchaser", "find a party prepared to purchase". "find a purchaser able and willing to complete the transaction", and "find a person ready, willing and able to purchase".

These words of Lord Denning were, however, expressly disapproved by the Court of Appeal in Christie Owen and Davies v. Rapacioli (1974 2 ALL ER page 311) where Orr L J said at page 319 "the contract in this case was that commission should be payable in the event of the Plaintiffs effecting an introduction 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 Limited v. Goody), or in which the offer was expressed to be "subject to contract" (Martin Gale and Wright v. Buswell) or qualified by some condition (Graham and Scott (Southgate) Limited v. Oxlade). In those circumstances in my judgment on the authorities to which Cairns L J has referred the entitlement to commission arose when the person introduced by the Plaintiff made a firm offer for the purchase of the property in question on terms acceptable to the vendors. The views expressed by Denning L J in McCallum v. Hicks and Dennis Reed Limited v. Goody, 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 accepted as correct."

The authorities are clear that almost every contract in a claim for estate agent's commission must be decided on the terms of that unique contract. We have derived much assistance from the case of Christie Owen and Davies Limited v. Rapacioli (cited above) which was relied upon by both Counsel to support their contentions. That case is particularly interesting because it post-dates the Luxor case and it contains an analysis of the cases, several of which were cited to us in the course of argument. There are two passages which we found particularly helpful. Cairns L J at page 318 said:-

" 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 payable if a sale actually results may become payable when the transaction becomes abortive.

3. Commission is payable when a person able to purchase is introduced and expresses readiness and willingness by an unqualified offer to purchase, although such offer has not been accepted and could be withdrawn.

In connection with the third proposition it is to be assumed that the offer is one that the terms of 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".

The other passage is the judgment of Orr L J at page 319 that we have cited above.

It does seem to us that by the 29th October the Plaintiffs had established a very strong foundation to their claim. There occurs, however, a major stumbling block which we will need to examine in some detail. We should say in passing that we cannot accept that the transaction was anything

other than a continuing one which was not altered in any material way by a "gazumping" incident in July when the Defendants found a possible alternative purchaser privately (as they were entitled to do) and the Tanguys had to increase their offer to £196,000 in order to remain in contention.

On the 28th July, 1987 Mr. Huelin of Flott and Huelin wrote to Advocate Trott a letter in these terms:-

"Dear Mr. Trott,

Les Grandes Vagues Guest House, Pontac, St. Clement

I refer to the letter dated 24th inst. addressed to you by Mr. Michael Sloman, Director, Prestige Properties Limited, with regard to the proposed sale by transfer of the whole of the issued share capital in the limited company which owns it of the above mentioned guest house to my clients, Mr. and Mrs. N. A. Tanguy, by your clients, Mr. and Mrs. Styles, and Mr. Sloman's letter to me of the same date, a copy of which I enclose.

I note that you were to have seen your clients today and provided that you receive the appropriate instructions I look forward to earliest possible receipt of the following:-

1. A suitable share vending agreement with annexed inventory

2. The Company's statutory books

3. The Company's contract of purchase

4. The Company's Housing Committee consent to the purchase.

5. A photostat extract from the Ordnance Survey Map showing the extent and location of the property."

The letter is headed "subject to contract". Mr. Huelin also wrote to the Plantiffs and headed that letter "subject to contract".

In his reply of the 30th July Advocate Trott picked up these words. He wrote:-

"Dear Mr. Huelin,

I thank you for your letter of the 28th inst. and for the enclosure attached thereto.

I am presently taking instructions in the matter and I shall write to you as soon as possible. The matter is, as you say, "subject to contract"."

Even when Advocate Trott was writing on behalf of his clients to the Plaintiffs on the 11th December he said this:-

" We do not understand how your client Company can claim commission in respect of an abortive transaction which as you will know was always subject to contract."

Can the Defendants escape their liability in this way?

We must immediately say that this Court was not impressed with Mr. Styles' evidence on his reasons for not proceeding with the contract; he refused to meet Advocate Fiott's detailed cross-examination and indeed when pressed by Advocate Fiott on the Answer filed on his behalf, said that he had not read those pleadings. That is quite impossible for us to believe as on the 8th February, 1989 Advocate Sinel wrote to Advocate Fiott in these terms "I have now had the benefit of taking further extensive instructions from my clients who as you are aware were not ad idem with their previous legal advisors and likewise wish to amend their pleadings as follows; (probably not the tidiest manner of doing so however I am trying hard to clarify the true issue in dispute between the respective parties)."

Be that as it may we must now consider whether the Defendants can escape their liability because of the "subject to contract" clause which was, as has been shown, initially inserted by the purchasers' lawyer. Let us first turn to Telford v. Pattison (1964 JJ 411). In that judgment the Deputy Bailiff as he was then said this:-

> " Mr. Telford came to Jersey at Whitsun and ran the business for some ten days. For the first few days he had the assistance of the Defendants' two sons and although he says that Mr. and Mrs. Pattison agreed to remain in Jersey he expected them to allow him to occupy the dwelling accommodation and themselves to move to dwelling accommodation elsewhere. Whilst running the business, he paid the electricity account and also bought stock, and he furnished no accounts of his receipts and payments. He had accepted the fact that he would not be shown anything from which he might ascertain the profits of the business; that the only way in which he could ascertain its true worth would be by running it, but notwitstanding this fact he had disposed of part of the business which he carried on at Whitley Bay and would have disposed of the rest of it had he been able to do so. So far as the Defendant is concerned arrangements were made for the transfer of the telephone, electricity services, into Mr. Telford's name, and we accept Mrs. Pattison's evidence that after agreement had been reached with Mr. Telford no steps were taken for the sale of the business to anyone else.

If, as the Plaintiffs allege, the words "subject to contract" were intended to have the meaning that would normally be assigned to them in England, it would have been open to the Defendant to withdraw from the agreement if he so thought fit, and there is nothing to show that this was the understanding of the parties; the actions of Mr. and Mrs. Pattison, were the actions of persons who regarded the sale as complete and the actions of Mr. Telford were not those of a man who considered the Defendant had a right to withdraw, particularly as he had taken such

active steps to dispose of his business interests in England. We therefore conclude that the words "subject to contract" were not intended to have the meaning that would normally be assigned to them in England."

With deep respect to the learned Deputy Bailiff we are not certain that it was necessary to go as far as that. We think that any Court - on the facts there before it - would have reached the same decision. A decision which was clearly right. But matters there had reached the stage when nobody could have doubted that the agreement was a completed agreement, it only had to be formalised in due course. Advocate Sinel asked us to distinguish the case. Here he says the Defendants had taken no final step vis-a-vis their purchasers at all.

Because the Telford case is the only Jersey authority where the question of the words "subject to contract" has been considered, and because its decision turns on its own very distinctive facts, it is not particularly helpful.

In Graham and Scott (Southgate) Limited v. Oxlade 1950 1 ALL ER 856 the Court of Appeal held that if a prospective purchaser made an offer which was subject to any conditions, such as "subject to contract" or "subject to survey" this showed that he was not "willing to purchase" as he had reserved for himself a "locus poenitentae". In that case Cohen L J said at page 861:-

"...I think that the agent may prove that a person he has introduced is willing to purchase the property by showing that that person has made an unqualified offer, or expressed an unqualified intention to make an offer, notwithstanding that such an offer until accepted could be withdrawn. On the other hand if the evidence shows that the offer is qualified by a condition inserted to prevent the other party turning the offer into a contract of acceptance, I think it impossible to say that the agent has discharged the onus which rests on him of proving the person he has introduced was willing to purchase the property..."

"In the present case there was some evidence that Mrs. Smith was keen on purchasing. She had continually increased her offer to meet the rising appetite of the Defendant. She was described by her husband as anxious to purchase. She never made an unqualified offer and her anxiety was at all material times qualified by "subject to satisfactory survey". Such an offer meant that Mrs. Smith had constituted herself the arbitrator whether the survey was satisfactory, and the principal could not by accepting her offer constitute a binding contract. In these circumstances I think the learned Judge was right in his conclusion that the Plaintiffs had not established that Mrs. Smith was a "person willing to purchase the property"."

However in Christie Owen & Davies Limited v. Rapacioli the facts were different. There the Defendant had instructed agents (who were the Plaintiffs) to help him find a purchaser of his business and to quote a price of £20,000. The agency contract provided that the commission was payable in the event of the Plaintiffs effecting an introduction 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 Plaintiffs introduced a person who was prepared to purchase for £17,700 and this offer was accepted "subject to contract". The parties' solicitors thereafter negotiated and a draft contract was prepared and signed by the potential purchaser. The Defendant then decided to proceed no further with the sale. The Court of Appeal held that the Plaintiffs were entitled to succeed in their claim to commission. The person whom they had introduced was willing to contract to the Defendant in the terms acceptable to him until the moment of his withdrawal.

There is in our minds no doubt in the present case that the purchasers were poised to complete; when Mr. Tanguy says that the letter of the 29th October came as a complete surprise, we can well believe him. To add force to his argument, Advocate Fiott referred us to Alpha Trading Limited v. Dunnshaw-Patten Limited 1981 1 ALL ER 483 where the Court implied a term that once the principal had entered into a contract with a third party he could not break it and thereby deprive the agent of the commission to which, if the

contract had been performed, the agent would have been entitled. But yet again that case turned on its particular facts, as Templeman L J said at page 490:-

> "In my judgment it is necessary to imply a term which prevents a vendor in these circumstances from playing a dirty trick on the agent with impunity after making the use of the services provided by that agent in order to secure the very position and safety of the vendor. It is necessary to imply a term which prevents the vendor from acting unreasonably to the possible gain of the vendor and the loss of the agent. In my judgment the term properly to be implied under the present circumstance is that the vendors will not deprive the agents of their commission by committing a breach of the contract between the vendors and the purchasers which releases the purchaser from its obligation to pay the purchase price".

The words "subject to contract" are words which are well accepted in Jersey by lawyers and estate agents. They are perfectly familiar. It does seem to us that to require this Court to treat the words "subject to contract" as meaningless the Plaintiffs must show us that the facts are very strong and totally exceptional.

The purchasers had given irrevocable proof of their willingness to purchase. The price was agreed.

Although Mr. Tanguy told us that action for specific performance against the Defendants "had never occurred to him" this might well have been a case where, applying the principle in Taylor v. Fitzpatrick, ((1979) J.J.1) the Royal Court would have ordered specific performance in the absence of the "subject to contract" phrase.

Of the five documents required by Mr. Huelin in his letter of the 27th July, 1987 he realistically only required "a suitable share vending agreement" and the Company's contract of purchase to carry out his investigation into title.

It is unfortunately on those ancillary matters that this case founders. We do not think, however much our sympathy leans towards the Plaintiffs, that the facts of this case are so strong and so exceptional that we can say with certainty that here was a binding contract, where nothing remained to be done which was anything but a formality. We must, therefore, with some regret, dismiss the Plaintiffs' claim.

IN THE ROYAL COURT OF THE ISLAND OF JERSEY

Samedi Division

BETWEEN	PRESTIGE PROPERTIES LIMITED	PLAINTIFF
AND	MR. AND MRS. BRIAN STYLES	DEFENDANT

AUTHORITIES REFERRED TO BY COUNSEL AND BY THE COURT

Halsbury (4th ed.) vol. 1 paras. 799-802.

Inter-med Services Limited (trading as Prestige Properties) -v- Shield Investments (Jersey) Limited, 1985/1986 JLR 258.

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