

DRAFT JUDGMENT.

Royal Court

—  
2nd April, 1987  
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Before The Bailiff, Jurat Perrée and Jurat Bonn

Between J.K. Fruit and Vegetable Catering Ltd Plaintiff  
And Harbour Lights Hotel, Ltd Defendant

—  
Adv. C.M.B. Thacker for the Plaintiff  
Adv. J.G.P. Wheeler for the Defendant  
—

Judgment

**The Bailiff:** This is an action which arises by reason of a contract entered, it is said, by the plaintiffs, J.K. Fruit and Vegetable Catering Ltd., with the defendants, Harbour Lights Hotel Ltd., as a result of a holding out, or representation by conduct, of one of the employees of the defendant company. The facts of the case are not in dispute and briefly they are these:-

Randalls Vautier, a brewery company, acquired a premises, Harbour Lights, and an adjacent property behind. They wished to embark on the restaurant business as well, and to that end it was agreed that another company would be formed Caeleatta Limited, which would have the franchise for the food side of the Harbour Lights business. It is not necessary for us to go into the details of an agreement which was entered into in April, 1985, between the defendants and

Caeleatta Limited. In fact the owner was not the brewery, but was a company called Randalls Properties Limited, which is a subsidiary, we understand, of the Randalls/Vautiers Group.

Now we were told that even before the agreement was entered into for the franchise of the food, on the premises known as the "Warehouse Restaurant", there had been a beginning of a service provided, but actually no meals were provided until the agreement had been completed; and so we have to look at the agreement to see what was decided there, what was arranged between the parties. It is an agreement which for the purposes of this action is *res inter alios acta*, in other words it is between two parties and does not really concern the plaintiff at all. The plaintiff really bases its case on this one fact: that Mr. Tanguy, who was the plaintiff's salesman, who had been employed by it for some 3½ to 4 years, used to visit establishments where it was thought he could quite properly obtain orders, and he went to see somebody at the "Warehouse Restaurant", at about the time it was being opened. Now there is an advertisement which we were shown and it was placed in the copy, which we have, of the "Jersey Evening Post" on the 12th April, 1985, and it is a photograph of some place, I think of the Royal Square, it is difficult to say, and the wording says 'Open "the Warehouse" at the Harbour Lights'; and about the time that the advertisement appeared, as I say, Mr. Tanguy went to the premises quite properly to solicit custom; he said he wanted to go and see the manager; he was not quite sure how he was invited there; he thought it might have been a call from the chef; but at any rate when he got there, he went to what he thought was the back entrance, but there wasn't one, or it was blocked up, and he therefore had to go through the front part of the Harbour Lights bar or pub, into the bar, and there he asked to speak to the manager, there was a barmaid and a man or two men behind the bar, and the barmaid went to the back of the bar, picked up a telephone, and

called to somebody. As a result of that telephone call, a man came down the stairs end, in the words of Mr. Tanguy, he didn't know him from Adam. The conversation was very vague; he merely said to that man that he had come from the plaintiff company and could he speak to the chef. He was taken up through some stairs at the back of the public house and to the top floor into the kitchen of, in fact, the restaurant, and he was introduced to the chef whom he only knew as Daniel. There was no long conversation and Mr. Tanguy said that he understood that from his own point of view that he was dealing, although with the chef, he believed that he, in fact, was dealing with the defendant company. Those are the facts on which this case is founded.

As a result of the chef's talking to the plaintiff, or to Mr. Tanguy as representative of the plaintiff, orders were placed by the chef by way of an answer-phone, which were delivered to the restaurant, and in turn some of the items of food were sent downstairs to furnish the bar of the Harbour Lights Public House, with bar food. And so to the extent that the defendant company would obviously would want to have good food in its bar, it had a common interest with Caeleatta Limited in seeing that the quality of the food supplied was good. But there the responsibility or the interest of Harbour Lights Hotel Limited stopped. The agreement to which I have referred provides that the defendant would have overall control both of the Harbour Lights Hotel itself and of the restaurant for the purposes of policing the licensing laws, and for no other reason. And we think it would be stretching a point to suggest that because of that, the defendant company had overall control and supervision of the restaurant business itself. Goods were supplied over a period of time in the summer of 1985, and on two occasions, notwithstanding that the allegation is that the contract was in fact between the plaintiff and Harbour Lights Hotel Limited, two cheques were paid in the course of the summer; one on the 26th June for

£1,924.38 and another for £1,000 on the 9th September, 1985, by Caeleatta Limited to the plaintiff.

We heard from Mr. Lee, who is the manager of the plaintiff company, that he didn't know of these cheques; they were dealt with by members of his office staff. The fact is that they were paid, and they were paid by the Company which believed it had entered into a contractual relationship with the plaintiff. As Mr. Thacker has said, the fact that the cheques were paid would not alter the legal relations, if they had been entered into, between Harbour Lights Limited and the plaintiff; but equally of course Mr. Wheeler, for the defendant, said that the payments by Caeleatta in fact were made under the terms of the contract, and that, certainly from the point of view of Caeleatta, would appear to have been the case. Now we <sup>were</sup> referred to a number of authorities, which Counsel agreed represented the Law, and the first authority to which I wish to refer is that of Halsbury, the 4th Edition, Volume 1, at paragraph 725 and the author says this -

"HOLDING OUT. An agency by estoppel arises where one person has so acted as to lead another to believe that he has authorised a third person to act on his behalf, and that other, in such belief enters into transactions with the third person within the scope of such ostensible authority. In this case the first-mentioned person is estopped from denying the fact of the third person's agency under the general law of estoppel, and it is immaterial whether the ostensible agent had no authority whatever in fact, or merely acted in excess of his actual authority. The principal cannot set up a private limitation upon the agent's actual authority so as to reduce the ostensible authority. The onus lies upon the person dealing with the agent to prove either real or ostensible authority, and it is a matter of fact in each case

whether ostensible authority existed for the particular act for which is is sought to make the principal liable. Holding out is something more than estoppel by negligence; it is necessary to prove affirmatively conduct amounting to holding out."

We were referred to a number of cases but the one to which we have had perhaps greater regard is that of FREEMAN AND LOCKYER -v- BUCKHURST PARK PROPERTIES (MANGAL) LTD AND ANOTHER [(1964) 1 All E.R. at 630]; that, of course, is not a case particularly in point, but there are certain observations at page 646 by Lord Justice Diplock, as he then was, where he says this:-

"If the foregoing analysis of the relevant law is correct, it can be summarised by stating four conditions which must be fulfilled to enable a contractor to enforce against a company a contract entered into on behalf of the company by an agent who had no actual authority to do so. It must be shown (a) that a representation that the agent had authority to enter on behalf of the company into a contract of the kind sought to be enforced was made to the contractor."

Well as I have said the representation, which I shall come to in a moment, was that a man who it is said was the manager, because he had been called for-we are asked to infer that he was the manager or somebody with authority- introduced Mr. Tanguy to the chef and that act of introduction, it is said, binds the defendant company, and that, in fact, is a form of contracting by holding out. I go on:-

"(b) that such representation was made by a person or persons who had "actual" authority to manage the business of the company either generally or in respect of those matters to which the contract relates."

Well I have mentioned that the only actual authority which the manager, if he were the manager, and we make no finding on that, (Mr. Lennon we were told but he was not called) even if he were the manager, we do not know whether he would have had actual authority; I think the only authority he would have had, as I have already said, would have been to control the premises as regards the licensing aspects only, with perhaps a peripheral control over the food which came downstairs to the public bar for bar food; and

"(c) that he (the contractor) was induced by such representation to enter into the contract, i.e., that he in fact relied on it;"

well it is quite clear that if there were a representation, then Mr. Tanguy did act on it, and

"(d) that under its memorandum or articles of association the company was not deprived of the capacity either to enter into a contract of the kind sought to be enforced or to delegate authority to enter into a contract of that kind to the agent."

We have had no evidence as to what the powers of the company were, but we accept for the purposes of this case that it had the usual powers to deal with all sort of businesses and we see no reason why the supply of food to a public house would not have fallen within any normal powers of such a company. But having looked at the authorities and having examined the facts as I have stated them to be the conduct that is relied on by the plaintiff is that via the chef, Mr. Daniel Preston, I think his name is, there was a binding contract between the plaintiff company and the Harbour Lights Hotel, and this was evidenced firstly by the advertisement which I have already mentioned; we think too great a stress has been placed on the advertisement; it links, to some extent, the two companies

together, or the two businesses on one premises; secondly the proximity of the two premises: well, we have had it explained to us that they are different premises but semi-detached and that in order to get to the restaurant from the pub you have to go along a corridor-it is a separate area-before you get into the restaurant; going up the stairs, it was suggested by Mr. Tanguy, links the two together, but the stairs are not part of the property which the public normally use. And thirdly, as I have already said, that the manager, in fact, held out Daniel as in some way being able to contract on behalf of the Harbour Lights Hotel, or alternatively that he himself by doing that was contracting. We find it impossible to reach that conclusion; we have every sympathy with the plaintiff company in the position in which it finds itself, but the fact is that it does not appear to have sent an invoice to Caeleatta at all at any stage. After the trouble was brewing, it accepted cheques from them; it does not appear to have sued Caeleatta at all; and probably for the very good reason that it has no assets, it has chosen to go against the Harbour Lights Hotel. We cannot find that there must be a representation as suggested by the plaintiff, and therefore we find for the defendant.

Now under all the circumstances however I am exercising my discretion, I make no awards of costs.

Case cited in the Judgment.

Freeman and Lofley (a firm) v. Buckhurst Park Properties (Mangal) Ltd & Anor : (1964) 1 All ER 630.

Referred to:

Rama Corporation Ltd v. Proved Tin & General Investments, Ltd : (1952) All ER, Vol 1, 554.

Dyer & Anor v. Pearson, Price, and Clay : (1824) 3 B & C 39.

Barrett v. Deere : (1828) M & M 200.