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89/36

ROYAL COURT (INFERIOR NUMBER)

Before: Mr. V. A. Tomes, Deputy Bailiff,
Jurat M. W. Bonn
Jurat D. E. Le Boutillier

Broadland Estates Limited, Plaintiff,

-v-

David Henry Chapman and
Marguerite Ann Chapman, nee Godel, his wife, Defendants.

Advocate S. Slater for the Plaintiff
Defendants in person

This is an action whereby the plaintiff claims from the defendants the sum of £1,308.50 for estate agent's commission on assignment of the lease and sale of the business of Rosadella Guest House, Maufant, in the Parish of St. Saviour, (the Rosadella).

The plaintiff claims that it was at all material times acting as agent for the defendants; that the plaintiff duly introduced purchasers to the defendants, namely Ian Joseph Andrews and Marie Thérèse Andrews, his wife, who entered into a written agreement with the defendants on the 30th March, 1986, to purchase the business and take an assignment of the lease for a consideration of £30,000; that the agreement was completed on or about the 14th April, 1986; that on or about the 16th April, 1986, the plaintiff rendered an account for £1,308.50; and that the defendants have without just cause failed, neglected or refused to pay the plaintiff's account.

The defendants, who were not legally represented, filed an informal answer to the plaintiff's statement of claim in which they stated that they had

instructed five estate agents to sell the business and lease; the asking price was £35,000. They pleaded that, eventually, they received a call from the plaintiff who had found buyers, namely a Mr. and Mrs. Moulton at £32,000; but that after a long and painful procedure, taking up some five months, the transaction fell through as the plaintiff had failed to ensure that the purchasers had the necessary 'qualifications' under the Housing (Jersey) Law, 1949, as amended. At least a fortnight later Mr. Francis Windsor (Frank) Luce, of the plaintiff company, had telephoned the second defendant to say that he had another prospective purchaser, but at £25,000; the second defendant said that she would discuss the matter with the first defendant; a few minutes later she telephoned the plaintiff to request the name of the offeror, but Mr. Luce was not in the office and she was unable to obtain the information; later, she discussed the matter with the first defendant and they decided to refuse the offer; she telephoned the plaintiff accordingly. Subsequently, it was Easter Saturday, the 29th March, 1986, the second defendant received a telephone call from Mr. Andrews, who had heard that the lease and business were for sale; he asked if he could call and said that he knew the property very well, through the defendants' son; arrangements were made for Mr. and Mrs. Andrews to call the following evening, Easter Sunday, the 30th March, 1986. They did so; when Mr. Andrews arrived he was carrying a brown envelope; they were shown around the guest-house by the second defendant and then waited for the first defendant to return from work; when he did so, Mr. Andrews introduced himself and his wife, said that they had seen around the guest-house, that he had £30,000 available, not a penny more, and that if the defendants were not prepared to accept the offer there was no point in wasting each other's time, but if the defendants were interested he, Mr. Andrews, had drawn up an agreement of sale, which he produced from the brown envelope, for them all to sign. Mr. Andrews paid over a cheque for £6,000 by way of deposit and all four signed the agreement and "shook hands on the deal". On the following Tuesday morning, the Monday being the Easter Monday bank holiday, the first defendant delivered the signed document and cheque to the defendants' solicitor. The second defendant went

to the Housing Department, completed an application for consent to the transaction with the help of Mr. William Hague Sugden of that Department, and delivered it to the defendants' solicitor. She then made an inventory of the contents of the guest-house and made two copies. The following evening, Mr. Andrews again called; they checked the inventory together and Mr. Andrews and the second defendant signed it. The inventory was delivered to the defendants' solicitor. The defence, therefore, was that the plaintiff had no involvement in the sale to Mr. and Mrs. Andrews and was not entitled to any commission.

The Law

The question of estate agents' commission received the attention of the Court of Appeal in *Channel Hotels and Properties Limited, appellants, and Parrish, respondent*, (1975) JJ 279. At page 286, R. J. Parker Esq., Q.C., President, said:-

"The law applicable is, in my judgment, clear.....the respondent is entitled to commission if, but only if, his introduction was the effective cause of those sales. This is made clear by the judgment of Lord Justice Swinfen Eady in *Nightingale v. Parsons* (1914) 2 KB 621. At page 625 the Lord Justice said this:

'The County Court Judge has found that the introduction of the property by Terry to Mr. and Mrs. Sounes, was not the effective cause of the subsequent sale.....In *Millar v. Radford Collins M.R.* laid down the test applicable to this class of case.....The defendant there employed the plaintiffs to find a purchaser or, failing a purchaser, a tenant for a certain property. The plaintiffs failed to find a purchaser but found a tenant, and they were paid commission in respect of the letting. After the tenant had been

in possession for about fifteen months he purchased the property from the defendant. The plaintiffs thereupon claimed commission on the sale, but the Court held that they were not entitled to it. In delivering judgment, Collins M.R. said 'The claim of house agents to be entitled to commission in circumstances like the present was a claim which was often made and was likely to continue to be made. It was therefore important to point out that the right to commission did not arise out of the mere fact that agents had introduced a tenant or a purchaser. It was not sufficient to show that the introduction was a cause sine qua non. It was necessary to show that the introduction was an efficient cause in bringing about the letting or the sale. Here the plaintiffs failed to establish what was a condition precedent to their right to commission viz, that they brought about the sale. It was open to the defendant in an action like this to say either that, though the plaintiffs effected a sale, they were not his agents, or that, though they were his agents, they had not effected the sale. If the defendant proved either the one or the other, the plaintiffs failed to make out their case'. Every word of that is applicable to the present case. The plaintiff Terry did not effect the sale, though he did effect the original letting. The sale was not brought about ^{by} him in any effective way'.

"This was the approach adopted, rightly, by the Royal Court..."

The Court considered the question again in *Prator Limited v. Hales and another*, (10 July, 1984 - unreported). At page 2, the Court said this:-

"In order to succeed in its action the plaintiff must prove:

1. that the defendants agreed to appoint Mr. Pulley as their agent for the purpose of selling....the hotel...
2. that the introduction by Mr. Pulley of Mr. Bowden to the

- defendants was the effective cause of the sale; and
3. that the defendants agreed to pay Mr. Pulley a fee in accordance with the scale referred to."

And at page 14:-

"As we have stated earlier, the plaintiff must prove three matters in order to succeed in its action, and we now deal with each of them in turn. The first issue is whether the defendants agreed to appoint Mr. Pulley as their agent for the purpose of selling the hotel and The Moorings."

And at page 16:-

"We must next answer the second question: was Mr. Pulley the effective cause of the sale of the hotel and of The Moorings to Mr. Bowden?

Chitty on Contracts (25th edition) para. 23/2 states -

'subject to any express terms to the contrary, where the agency contract provides that the agent earns his remuneration upon bringing about a certain transaction, he is not entitled to such remuneration unless he is the effective cause of the transaction being brought about.'

"Whether in any particular case the agent is the effective cause depends upon the particular facts."

And, commencing at page 18:-

"Para. 2312 of Chitty states: 'The agent need not, however, be the immediate cause of the transaction, provided that there is sufficient connection between his act and the ultimate transaction'. There is then cited the case of *Green v. Bartlett* (1863) 14 C.B.(N.S.) 681, in

which the facts were that an auctioneer was instructed to sell the Island of Herm by auction or otherwise, but the island failed to reach the reserve price at the auction. A potential buyer then asked the auctioneer for the name of the owner and, upon receiving it, purchased the island directly from him. It was held that the auctioneer was entitled to his commission.

"It is immaterial that Mr. Bowden could not afford to pay the asking price or considered it to be too high, or both. It very often happens that a potential buyer cannot afford the asking price, or can afford it but thinks it too high. That does not prevent him from being a person ready, able and willing to purchase if, after further negotiations on price, a sale results.

"Equally, it is immaterial that Mr. Bowden and Mr. Hales decided to negotiate direct without the help of Mr. Pulley. A vendor cannot avoid paying commission to the person whom he has appointed his agent and who has introduced the eventual purchaser by the expedient of ignoring him and negotiating directly with the purchaser, provided of course that the eventual sale is sufficiently closely connected with the introduction.

"We have no doubt at all that the introduction by Mr. Pulley led directly to the sale. As is quite usual, negotiations were necessary to agree a price and to obtain Housing Committee consent, but the sale which finally resulted was basically the very transaction which was envisaged when the introduction was effected. We therefore find that Mr. Pulley was the effective cause of the sale".

And, at page 19:

"We now arrive at the third and final question: did Mr. Hales agree to pay Mr. Pulley the scale of fee now claimed, or can such an agreement be implied; and if not, what fee is payable?

"The general principles governing the right of an agent to receive remuneration from his principal are stated in Halsbury's Laws of England (4th edition) Vol. 1 at (inter alia) para. 799, from which we take the following extracts:-

'An agent has no right to receive remuneration from his principal unless there be a contract, express or implied, to that effect. Where the parties have made an express contract for the remuneration, the amount of remuneration and the conditions under which it will become payable must be ascertained by reference to the terms of that contract....In the absence of an express contract on the subject, a contract to pay reasonable remuneration may be implied from the circumstances of the case. In awarding such remuneration the Court may have regard to previous negotiations between the parties or trade custom....

The mere fact of employment of a professional agent itself raises the presumption of a contract to remunerate him, the amount of the remuneration and the conditions of its payment being ascertainable from the usages of his profession'."

We adopt the law on the subject under discussion as above stated.

The Evidence

We now have to examine the evidence in order to apply the law to it:

Mr. Brian D. R. Heppolette, an estate agent employed by the plaintiff, with over twenty-five years' experience as an estate agent in Jersey, and familiar with the Rosadella, recalled having received instructions from the defendants in April, 1985, and exhibited to us a letter of 4th October, 1985, in relation to the proposed sale to Mr. and Mrs. Moulton. In which the professional scale of charges of the plaintiff was set out. Although the plaintiff was not a member of the Jersey Auctioneers' and Estate Agents' Association, it adopted that Association's scale of fees (as did Mr. Pulley in *Prator Ltd. v. Hales & anr.*) and the printed scale was exhibited to us. Mr. Heppolette had been involved in the proposed sale to Mr. and Mrs. Moulton and a detailed inventory of the contents of the guest-house had been drawn up by him in connection with that sale. A copy of the inventory was exhibited to us.

Much of Mr. Heppolette's evidence was directed to proving that the defendants had agreed to appoint the plaintiff as their agent for the purpose of selling the lease and business of the guest-house. However this was later conceded by the defendants; indeed the first defendant told us that he had never denied that the plaintiff had been instructed and he was certainly happy to have prospective purchasers introduced by the plaintiff as well as by other agents. There is no doubt that the relationship between the plaintiff and the defendants was somewhat turbulent but we are satisfied that if, at times, the defendants' agreement to appoint the plaintiff as their agent was either suspended or withdrawn, it was on each occasion restored, and, at the time of the sale to Mr. and Mrs. Andrews, the plaintiff was the agent of the defendants.

Mr. Luce, who had been an estate agent in Jersey for some thirteen years, was familiar with the Rosadella; the plaintiff, by whom he was employed,

had received instructions from the defendants and he had taken a number of prospective purchasers around the guest-house after making arrangements with the defendants; the plaintiff had advertised the business and lease for sale "frequently"; he had certainly taken three or four persons there personally but they had showed no interest; his only relationship with Mr. Andrews had been a business one; he denied a personal or "social" relationship with Mr. Andrews; he had been speaking with Mr. Andrews about another guest-house; when the proposed sale by the defendants to Mr. and Mrs. Moulton failed to materialise he went to see Mr. Andrews at his place of work to offer him the Rosadella; Mr. Andrews did know of it because he knew Mr. Moulton; he, Mr. Luce, gave Mr. Andrews the "specification sheet" for the premises and explained all the background; that was on the Easter Saturday, the 29th March, 1986; Mr. Luce told Mr. Andrews that he should go and have a look at the premises. Mr. Luce had told Mr. Andrews on several occasions prior to that that he should go and see the Rosadella; Mr. Andrews had said that he was interested and had instructed Mr. Luce to convey an offer of £25,000; at that time Mr. Andrews had not seen the property; Mr. Luce had communicated the offer; the second defendant had telephoned back to identify the offeror and Mr. Luce had told her it was Mr. Andrews; she had telephoned later to refuse the offer. (Here, there was a direct conflict of evidence because the second defendant denied all knowledge of the identity of the offeror at £25,000). On the Easter Saturday, the 29th March, 1986, Mr. Luce told Mr. Andrews that his offer of £25,000 was not acceptable but that he really should look at the property and that the "rock-bottom" price was £30,000. On Easter Sunday, the 30th March, 1986, Mr. Luce returned to his home at lunch-time to find Mr. Andrews there; he said that he was very keen to purchase the defendants' business and lease, but that time was of the essence and he had telephoned direct to make an appointment; Mr. Luce said that that was "fair enough" and that Mr. Andrews would no doubt tell the defendants that he had been to see Mr. Luce; Mr. Andrews asked if Mr. Luce wanted to attend and he had replied that it was not really necessary; Mr. Luce advised Mr. Andrews that he, Mr. Andrews, would be very wise to draw up an agreement of some sort to sign in the event of a sale being concluded

because it was highly likely that the defendants would change their minds; Mr. Luce gave Mr. Andrews basically the wording of the agreement to be obtained. Mr. Andrews telephoned Mr. Luce later the same afternoon to say that he would not be involved in a "Dutch auction"; he had written out an agreement on the lines that Mr. Luce had advised; he read out what he had written and Mr. Luce told him that the wording was adequate. Mr. Andrews' copy of the agreement was identified to us. Mr. Andrews telephoned on the Easter Monday morning, 31st March, 1986, to report the signing of the agreement; Mr. Luce told him to call early on the following morning to complete and sign the necessary Housing Law application form and arrange an appointment for approval of the inventory with Mr. and Mrs. Chapman. On the Tuesday morning, 1st April, 1986, Mr. Luce completed a Housing Law application form and Mr. Andrews signed it. Mr. Luce later obtained the signature of Mr. David Eves, the beneficial owner of the landlord company. The signatures were witnessed by Mr. Luce and a member of the plaintiff's staff. A copy of the application was identified to us; it was in Mr. Luce's own handwriting. Mr. Luce then telephoned Mr. Chapman to report the completion of the housing form and to arrange an appointment. However, he was met by four letter expletives and told that it had nothing at all to do with him; Mr. Luce said that Mr. Chapman gave him a "mouthful of abuse". Mr. Luce then reported back to Mr. Eves of the landlord company who instructed him to submit the application for approval of the proposed lease to Mr. and Mrs. Andrews because he, Mr. Eves, "would be pleased to see the back of the Chapmans". A consent was duly received from the Housing Department; because of the manner in which the application had been submitted the consent was to "the assignment of the lease, expiring 24th March, 1990, of Rosadella Guest House, Maufant, St. Saviour, by Withy-Drumel Holdings Limited (the landlord company) to Mr. Ian Joseph Andrews and Mrs. Marie Thérèse Andrews, née Algate, his wife, jointly."

Mr. Luce also gave evidence about the scale of charges and the quantum of the commission charged in the present case. However when the second

defendant gave evidence she said that she would "not have argued over their (the plaintiff's) fees if they had done their job." Also she later stated that the scale of fees was accepted and there was no dispute on it. The first defendant also agreed the scale fee - he said "If I owed it, the amount claimed would be correct."

Therefore, by the evidence of Mr. Heppolette and Mr. Luce, its employees, and the admissions of the defendants, the plaintiff has proved the first and third of the three matters which it has to prove in order to succeed in its action, leaving only the second matter, that the introduction by the plaintiff of Mr. and Mrs. Andrews to the defendants was the effective cause of the sale, to be decided by us.

Mr. Andrews substantially corroborated the evidence of Mr. Luce, although he believed that he first became aware of the availability of the lease and business of the Rosadella on Easter Saturday, the 29th March, 1986. He had been negotiating for another guest-house but was still open to look at others. Mr. Luce called to see him at work and said that the people who were to buy the Rosadella had "pulled out". Mr. Andrews there and then made an offer of £25,000; he had not seen the premises but was happy to make an offer; he knew Mr. Moulton and, as far as he, Mr. Andrews, was concerned. Mr. Moulton had already purchased the lease of the Rosadella; Mr. Andrews was very surprised when Mr. Luce offered it to him because Mr. Moulton had seemed very satisfied; Mr. Moulton had obtained a full structural survey; Mr. Andrews did not know Mr. Moulton's price but he based his offer of £25,000 on his estimate of the value of the remainder of the lease; Mr. Luce mentioned £32,000. Mr. Luce gave him detailed information about the Rosadella but it was all verbal; he did not recall a "specification sheet"; he, Mr. Andrews, put forward an offer of £25,000. At first, he had the impression that the first defendant was pondering the offer; however, he obtained a "feedback" from Mr. Luce that his offer would not be acceptable. It was possible that this interchange occurred shortly before the 29th March.

Mr. Andrews told us that he "short circuited the system". After speaking to Mr. Luce on the Saturday, he spoke to his wife and then telephoned the defendants to arrange to view the premises; he thought Mr. Luce had advised against that course because he, Mr. Luce, was the agent. He called to see the defendants armed with the letter or agreement which he had drafted with Mr. Luce's help. In that respect he had "cut" the plaintiff out of the negotiation but certainly Mr. Luce had been instrumental in the preparation of the agreement that he and his wife and the defendants signed.

In summary, Mr. Andrews knew (a) the location of the Rosadella because he lived in the area; (b) had viewed the swimming-pool at the Rosadella; (c) had on occasion "dropped off" the defendants' son who was a friend of his step-daughter, at the premises, but the boy had never mentioned the guest-house - this was at least a year before the negotiations started and there could not have been any indication of the availability of the premises from the son; (d) he knew that the Rosadella had been on the market because of Mr. Moulton's interest but he believed that the negotiations had been successful and that all was "signed, sealed and delivered"; and (e) he knew of the property's availability only from Mr. Luce and from no source other than Mr. Luce, whose introduction had been the effective cause of his purchase.

With regard to the Housing Law application form, Mr. Andrews maintained that he had signed only one form and that the one form was that prepared in the office of the plaintiff. He had not been given a form by the second defendant and thought the arrangement made at the meeting on the evening of Sunday, 30th March, 1986 was that the form was to come from the defendants' solicitor.

Mr. Andrews said that he had told the defendants that Mr. Luce had been to see him to tell him about the availability of the Rosadella and that he had already made an offer of £25,000; he would not have known that the business and lease were still for sale otherwise.

With the leave of the Court Mr. Luce was recalled and identified a number of entries in the plaintiff's office diary supporting earlier appointments and activity in the attempted sale; challenged by the defendants as to the absence of Mr. Andrews' name, Mr. Luce explained that as he saw Mr. Andrews and the sale was concluded over a holiday weekend, there were no entries; he did not regard Mr. Andrews' call at the office on the morning of Tuesday, 1st April, 1986, as an appointment because it was not arranged in advance.

The second defendant claimed that when Mr. Andrews contacted her on the evening of Easter Saturday, 29th March, 1986, he said that he had heard "on the grapevine" that the Rosadella was back on the market for sale; that he had not mentioned anything about Mr. Luce's involvement; and that he had made no mention at all of the plaintiff. When on the following Tuesday morning she had delivered the agreement and cheque to her solicitor^t he had asked firstly about Housing Committee consent and secondly if there was any Estate Agent involved. She had replied firstly that she would collect a Housing Law application form from the Housing Department, which she did; Mr. Sugden helped her to complete it - he actually filled it out for her; she later took the form to Mr. Andrews' place of work; he was out for lunch; accordingly she delivered the form to the defendants' solicitor who said he would get it signed. That was the last she had seen of it. Secondly, she had said that no Estate Agent had been involved in the sale. The second defendant insisted that when Mr. Luce had telephoned her with the offer of £25,000, he had not stated any name at all; she had telephoned back, but Mr. Luce was out and the "young lady on the telephone" could not recall any offer of £25,000. The defendants were asking £32,000 and if they had known that an Estate Agent was involved, Mr. and Mrs. Andrews would not have purchased at £30,000. The sole reason why the second defendant did not pay the commission was that the plaintiff did not do the work. She, the second defendant, did all the work that estate agents normally do and the plaintiff was trying to claim £1,300 for doing nothing.

The second defendant claimed knowledge that Mr. Luce and Mr. Andrews were friends, that they went out drinking together, and that it was obvious, even on the morning of the trial, that they had been discussing matters together; she said that Mr. Andrews was lying about the alleged conversation between them. When questioned about the Housing application form the second defendant suggested there had been something "underhand" between Mr. Luce and Mr. Andrews. She did accept that Mr. Andrews had spoken to Mr. Luce on the Saturday afternoon but he had not mentioned the fact at their Sunday evening meeting. However she conceded that it must have been through the plaintiff that Mr. Andrews knew the term remaining on the lease and must have had other information from "Frank" (Mr. Luce).

The first defendant asserted that the plaintiff had had nothing to do with the sale to Mr. and Mrs. Andrews. He had been present for a substantial part of the Sunday evening meeting. At no time had the plaintiff or Mr. Luce been mentioned. He did not recall having spoken to Mr. Luce on the following Tuesday; he had known Mr. Luce for many years and had had many arguments with him. Mr. Andrews came to the premises of his own accord and had in no way been introduced by Mr. Luce. Mr. Luce and Mr. Andrews were friends and he had seen them drinking together in the Royal Yacht Hotel. He conceded that Mr. Andrews had spoken to somebody with detailed knowledge of the Rosadella, but he did not know who. He admitted having told Mr. Luce that the sale had nothing to do with him. Meanwhile, his wife had been to the Housing Department, had seen Mr. Sugden, had brought back a Housing application form which they both signed; he was "fairly certain" that it had been left at Mr. Andrews' place of work; the signed Housing form had disappeared. In later cross-examination the first defendant did recall a telephone conversation on the Tuesday morning, but it had been Mr. Clifford Jones, the Managing Director of the plaintiff, who claimed that the plaintiff had introduced Mr. Andrews; it had been a very heated conversation and the first defendant had told Mr. Jones that it was nothing to do with him. Mr. Luce did come in to the conversation after Mr. Jones and said that he had introduced Mr. Andrews and that if he, the first defendant, thought he could get away with it, he had another thing coming; the first defendant had told

Mr. Luce in strong language that he had nothing to do with the sale. Subsequent correspondence claiming commission and about checking the inventory merely showed that Mr. Luce had tried to come into the transaction after everything had been done.

With the leave of the Court, Mr. Sugden was called to give evidence. He confirmed that the second defendant had called at the Housing Department; it would be incorrect to say that he could remember anything more than having shown the second defendant how to fill-in the form. But no Housing application form other than the one drawn in Mr. Luce's handwriting had been received by the Committee. The form did state that the defendants were the existing tenants and if one applied one's mind one could work out the precise terms of the transaction; what the Committee was concerned with was the question of occupancy and the form showed all the information that the Committee was interested in having.

Decision:

The Court can find no evidence to support the allegation of the defendants that there was collusion between Mr. Luce and Mr. Andrews. The allegation, although not spelt out, by implication amounts to an accusation that they conspired to fabricate a false claim by the plaintiff to commission on the sale. The Court unreservedly rejects any such accusation.

There was a conflict of evidence, too, about the Housing Law application form. There is no doubt that the application was unsatisfactory; it should have been an application for the assignment of the unexpired term of the lease by the defendants to Mr. and Mrs. Andrews, with the consent of the landlord company, and the application should have been signed by the defendants as assignors. But the fact remains that the only application form received at the Housing Department, dated 1st April, 1986, had been completed by Mr. Luce in his own hand and he had been instrumental in obtaining the signature of approval from the beneficial owner of the landlord company.

The Court also heard allegations from the defendants that suggested that the inventory of the contents of the premises had been somehow tampered with. A detailed inventory had been drawn up by Mr. Heppolette for the intended sale to Mr. and Mrs. Moulton. This had been forwarded to the first defendant under cover of a letter of the 15th November, 1985. Amendments must have been required because, under cover of a letter dated 26th November, 1985, an amended inventory had been sent to the first defendant; a copy of that inventory, also dated 26th November, 1985, was exhibited to us. A further inventory, dated 11th December, 1985, was exhibited to us; this appeared to be a typewritten copy of the inventory of the 26th November, 1985, with amendments in manuscript. That inventory was forwarded to Mr. and Mrs. Moulton's legal advisers under cover of a letter dated 12th December, 1985. When Mr. Luce spoke to the first defendant on the telephone on the 1st April, 1986, he requested a meeting to verify the accuracy of the inventory. However, the first defendant was extremely rude, refused to meet Mr. Luce and said that he would make an inventory himself. Mr. Luce sent a copy of the inventory to the defendants' solicitor, suggesting that it be checked because, inevitably, the defendants would alter it. This was returned by the defendants' solicitor on the 7th April, 1986, an inventory having been prepared by the defendants. Indeed, the second defendant did type a new inventory on either the Easter Monday, 31st March, 1986, or the 1st April, 1986, and it was signed by herself, her husband and Mr. Andrews, after a joint inspection and verification. The second defendant told us that she worked very hard to complete the inventory, a task that the plaintiff would carry out for anyone else. At first, the second defendant denied that she had copied from the 11th December, 1985, inventory prepared by the plaintiff, despite an identical spelling error having been carried forward; she had not, she said, referred to the previous inventory. However, she then changed her evidence and admitted that she probably did have the earlier inventory alongside her as she typed the new one. The first defendant alleged that the inventory of the 11th December, 1985, prepared by the plaintiff, had been "fabricated" by the plaintiff and back-dated; i.e. that the inventory prepared by the second defendant had been

copied and altered by the plaintiff, and that Mr. Andrews had assisted in the deception. The Court has no hesitation in rejecting the allegation of the first defendant. The Court has no doubt that the second defendant typed an inventory for the sale to Mr. and Mrs. Andrews but is equally sure that in doing so she derived much assistance from the inventory prepared previously by the plaintiff.

The three matters we have mentioned are peripheral to the main and sole issue - was the plaintiff the effective cause of the sale of the business and lease of the Rosadella to Mr. and Mrs. Andrews?

Having rejected the allegation of collusion, the Court accepts the evidence of Mr. Andrews, the only independent witness, in all material parts. To a substantial extent, he corroborates the evidence of Mr. Luce. The Court is satisfied that Mr. Luce introduced Mr. Andrews to the property and, indirectly, to the defendants. It was Mr. Luce who obtained an offer of £25,000 and then, by his persistence, procured the direct contact between Mr. Andrews and the defendants which resulted in the sale. The sale was effected in close proximity of time to the introduction. Mr. Luce guided the preparation of the agreement which confirmed the sale and dealt with the Housing application form.

In the course of his cross-examination of Mr. Luce the first defendant put it to him that he did not do his job at all because it was a holiday and that he had sent Mr. Andrews to the property on the "off-chance". That is tantamount to an admission that Mr. Luce introduced the property or the transaction to Mr. Andrews. In his closing address the first defendant said that he thought an agent had to do much more to earn his commission. We can understand that the defendants felt that they had done more work than their agents in finalising the negotiations and effecting the sale; there was the long meeting on the Sunday evening in the absence of the plaintiff and the subsequent production and agreement of the revised inventory. However, that is

not the test. On the facts, the Court finds that the plaintiff was the effective cause of the sale of the business and lease of the Rosadella to Mr. and Mrs. Andrews and, thus, is entitled to judgment. Accordingly we order that the defendants, jointly and severally, will pay to the plaintiff (a) the sum of £1,308.50; (b) interest on the said sum at the rate of 10% per annum for the period from the 16th April, 1986, to the date of this judgment; and (c) the taxed costs of the plaintiff.

authorities referred to:-

Channel Hotels and Properties Limited, appellant, and Parrish,
Respondent (1975) JJ 279, at p.286

Prator Limited -v- Hales et al JJ 10th July, 1984 - unreported,
at pp.2, 14, 16, 18 and 19