

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA**

CLAIM NO: ANUHCV 2010/ 0083

BETWEEN:

GARFIELD CHRISTIAN

Claimant

AND

IVAN HIXON

Defendant

Appearances:

Lawrence Daniels for the Claimant
Esco Henry for the Defendant

2011: May 10
June 14

JUDGMENT

- [1] **REMY J.:** An unpaid 5% commission lies at the centre of this claim by the Claimant against the Defendant.
- [2] In his Statement of Claim, the Claimant pleads that the Defendant, the owner of property situate at Royal Gardens, St. John's, Antigua, contracted the Claimant to sell the property on his behalf at a 5% commission. The Claimant pleads that he secured a buyer, namely Mr. Philbert Mason, for the property and that Mr. Mason purchased the property after being taken to view it by the Claimant. Further, that after the sale of the property, the Defendant, in breach of contract, refused to pay the Claimant his 5% commission being the sum of \$50,000.00 as a result of which the Claimant suffered loss and incurred expense. The

Claimant's claim is for the sum of \$50,000.00 being 5% commission owed for the sale of the property, damages for breach of contract, interest, costs, and further or other relief as the Court thinks fit.

[3] In his Defence, the Defendant denies that he entered into any contractual arrangement with the Claimant for the sale of the property, which said property, he pleads, was jointly owned by himself and his wife Delrose Hixon.

[4] In his Reply to the Defence, the Claimant pleads that when the Defendant contracted the Claimant, he acted on behalf of both parties as joint proprietors. He states that if the Defendant's wife was not in agreement for the sale of the property, she would not have signed the land Transfer document.

EVIDENCE

[5] The evidence of the Claimant as contained in his Witness Statement is that the Defendant, with whom he had "developed a good relationship," told him that he wanted to sell his house at Royal Gardens for the sum of \$1,000,000.00. He stated that the Defendant and himself had a discussion regarding the Claimant's 5% commission, and the Defendant agreed that once the Claimant had "got a buyer and the transaction went through", that he would pay the Claimant the 5% commission "that he was entitled to."

[6] The Claimant stated that, notwithstanding the fact that his Attorneys wrote to the Defendant about the unpaid commission, the Defendant has refused to pay the 5% commission due and owing to the Claimant.

[7] Under cross-examination, the Claimant testified that he has been a real estate agent in Antigua since 2005 and is a registered real estate agent. He testified that the agreement whereby he undertook to act for the Defendant as a real estate agent and to get the Defendant's property sold took place in early 2007, and that the sale of the property was concluded in 2008. He stated that between 2007 and 2008, he made several efforts to sell

the property, which efforts included speaking to roughly 3 or 4 persons regarding the property. He stated that nobody ever showed a keen interest after hearing the price, until he met Mr. Philbert Mason.

[8] The Claimant testified that he took Mr. Mason to view the house on two occasions. On the first occasion, he took him to see the outside of the house and on the next occasion, he took him to view the inside of the house, following a discussion with the Defendant. The Claimant denied the suggestion of Counsel for the Defendant that there was no agreement between him and the Defendant for the sale of the house. He also denied Counsel's suggestion that he took Mr. Mason around the house so that the Defendant could discuss with Mr. Mason about the construction of his (Mr. Mason's) house, and also that he could have a first hand view of the kind of work that the Defendant could do.

[9] The Claimant further testified that the Defendant's wife was never involved in the agreement for the sale of the property. He stated that the suggestion of Counsel for the Defendant that no contract existed between the Defendant and himself and/or that the Defendant was not indebted to him for breach of contract was "incorrect."

[10] Mr. Philbert Mason was called as a witness for the Claimant and gave evidence at the trial pursuant to a Witness Summons. In his examination in chief, Mr. Mason testified that he asked the Claimant to locate a contractor or builder for him for the purpose of carrying out repairs to one of his buildings. He stated that the Claimant took him to the Property for the purpose of satisfying himself that the builder whom the Claimant was recommending to do work for him was a person who, in his estimation, was capable of doing the repair work.

[11] The evidence of the Defendant as contained in his Witness Statement is that the Claimant introduced Philbert Mason to him as someone who wanted him (the Defendant) to construct a building for him. He stated that while looking at the drawings for the building, he took Mr. Mason to various rooms in his house so that Mr. Mason "would get an idea of the type of work which he did and what he was capable of building." He stated that he

never had any agreement with the Claimant to sell his house on his behalf or to pay him a commission on the sale of the house at the rate of 5% of the sale price.

- [12] Under cross-examination, the Defendant testified that he never had an agreement with the Claimant for the sale of his property. He denied that the Property was sold through the efforts of the Claimant. He disagreed with the suggestion of Counsel for the Claimant that the agreement for the sale of the house was finalized on the very first occasion when the Claimant took Mr. Mason to view his property. He further testified that he did not hire the Claimant and therefore he did not pay the Claimant.

SUBMISSIONS OF COUNSEL

- [13] At the conclusion of the trial, the Court directed that Counsel for the parties file written submissions within 14 days. As at the date of writing of this Judgment, Counsel for the Claimant failed to file any submissions.
- [14] In her submissions, Counsel for the Defendant identified several issues for the Court's determination. The first such issue is whether the Claimant was at the relevant times a registered estate agent or broker.
- [15] Counsel for the Defendant submitted that "the Claimant was not at the material time and is not a registered real estate agent or broker and accordingly was and is not authorized to enter into agreements to act as an agent for anyone in the sale of their property." She contended that the Claimant did not comply with the Business Licence Act of 1994, in particular with Sections 3 (1) and 6 (1) of that Act, which provide, respectively, that no person shall engage in any business without first having obtained an annual licence and that the fee for every licence shall be determined by the Minister. Counsel further stated that, "it is respectfully submitted that a real estate broker who does not apply for and obtain an annual licence in any given year may not legally engage in any real estate business. Accordingly, he may not seek the court's assistance in recovering payment for any

services he may have rendered to a client during the course of conduct of such business. A court is barred by public policy from lending aid to him in pursuit of that illegal activity.”

[16] The Court, with respect, rejects Counsel’s above submission for, as stated by Saunders JA (as he then was) in the case of **Trevor Santos v Anis Yazigi**,¹ “the Business License Act of 1994, was declared unconstitutional in the case of **Attorney General of Antigua v Ann Henry et al.** ²

[17] In the view of the Court, the issues to be determined are:-

(1) Whether a contract existed between the Claimant and the Defendant for the sale of the Defendant’s property.

(2) Whether the Claimant is entitled to a commission.

ISSUE # 1 - Whether a contract existed between the Claimant and the Defendant for the sale of the Defendant’s property.

[18] It is common ground that there was no formal written contract between the Claimant and the Defendant. The Court therefore has to determine whether a contract nevertheless existed between the parties.

[19] Halsbury’s Laws of England, Volume 9 (1), Fourth Edition, Reissue at paragraph 620 states:-

“In the ordinary case, the law does not require a contract to be made in any particular form, nor according to any particular formalities; it is sufficient that there be a simple contract. Such a contract may be validly made either orally or in writing, or partly orally and partly in writing... The term ‘orally’ should be taken to include all communications made other than in writing, i.e., by word of mouth or by conduct or both.”

¹ Antigua and Barbuda Civil Appeal No. 9 of 2003

² Antigua Civil Appeal No. 10 of 1997

- [20] Paragraph 629 of Halsbury's (supra) states: - "A valid contract requires: (1) an agreement; (2) an intention to create legal relations; and (3) consideration."
- [21] Chitty on Contracts, Volume 1, 30th edition, at paragraph 2 – 001, states: "the first requirement for the formation of a contract is that the parties should have reached agreement." The primary factual issue to be resolved therefore, is whether or not there was an agreement between the Claimant and the Defendant for the sale of the Defendant's property. The Claimant contends that there was such an agreement. The Defendant refutes the Claimant's contention.
- [22] The onus of proof lies on the Claimant to prove that such an agreement existed. It is for him to prove this to the standard required by law, that is to say, on a balance of probabilities.
- [23] In his Witness Statement, the Claimant stated that "on or about 2007", the Defendant "made contact with him" so that he could show the Defendant a parcel of land which he (the Claimant) had for sale. The Claimant's Witness Statement continues as follows:-

At paragraph 6:- "That at a later stage in the year the Defendant met me and told me that he got a parcel of land in Royal Gardens and he took me to see it."

Paragraph 7:- "That the Defendant subsequently told me that he had built a house on the parcel of land at Royal Gardens and he wanted to sell it, as he was contemplating moving back to Montserrat or possibly England."

Paragraph 8:- "That I told the Defendant no problem I would like to see the house in full. We made an arrangement and one day he drove me out to the house and gave me a tour. The house at the time was about 90 – 95% completed."

Paragraph 9:- "That at the time the Defendant told me that he wanted to sell the house. I asked him how much he wanted for the house and he said \$1,000,000.00"

Paragraph 10:- "That we had a discussion regarding my 5% commission on me securing a purchaser for the property. The 5% commission was 5% of the total sale price of the house."

[24] Based on the above, and allowing a reasonable period of time to have elapsed for the construction of the house, the visit to the house and the "discussion" about the commission would have taken place at a much later stage in the year (2007).

[25] Under cross-examination, however, the Claimant testified:- "the Agreement whereby I undertook to act for the Defendant as a real estate agent took place sometime in early 2007." This testimony is therefore inconsistent with that contained in the Claimant's Witness Statement referred to above.

[26] Taking the evidence adduced as a whole, I accept the testimony of the Defendant in preference to that of the Claimant. I accept his testimony that: "I never had an agreement with the Claimant to sell my property. I never told him 'I want you to sell my property.' I never took the Claimant to my property." In my view, the Claimant has not provided cogent evidence that the Defendant asked him to sell his property for him. I make the following findings:-

(a) That the Claimant took the purchaser Philbert Mason to the Defendant's home, not with a view to purchasing the property, but so that Mr. Mason could discuss with the Defendant about doing construction work for him. The evidence of Philbert Mason supports the Defendant's testimony that the Claimant introduced Philbert Mason to him as someone who wanted him to carry out repairs to his building. The evidence of Philbert Mason is that, before engaging the services of a contractor, he wanted to see work which that contractor had done. Further, that having satisfied himself with the building that he examined (the property), he offered the Defendant work on his building.

(b) I found Philbert Mason to be a credible and reliable witness. I accept his evidence that it was while looking around the house, he remarked to the Defendant that it was "a good house" and that he "admired the finishings", at which point the Defendant informed him that the house was for sale. I also accept Philbert Mason's evidence that the Claimant was not involved in any discussion with respect to the sale and purchase of the house and that the Claimant did not

accompany the Defendant and himself when the Defendant took him on a tour of the house. This evidence, in my view, when combined with my findings in (a) above, must lead to the conclusion that the role of the Claimant was not that of an agent employed by the Defendant to sell his property.

[27] Based on the totality of the evidence, I find that no contract existed between the Claimant and the Defendant for the sale of the Defendant's property.

ISSUE # 2 - Whether the Claimant is entitled to a commission.

[28] In light of my findings in paragraph 27 above, it has become unnecessary to adjudicate on this issue.

CONCLUSION

[29] For the reasons stated above, it is my finding that the Claimant has not satisfied the standard of proof required in this case, namely proof on a balance of probabilities. Accordingly, I dismiss the Claimant's claim against the Defendant.

ORDER

- [30]
1. The Claimant's claim is dismissed.
 2. The Claimant is to pay to the Defendant prescribed costs in accordance with Part 65.5 of the Eastern Caribbean Supreme Court Rules (CPR) 2000.


JENNIFER REMY
High Court Judge