

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CLAIM NO. 484 OF 2006



BETWEEN:

DAVID GEORGE

Claimant

V

ERON OLIVER

Defendant

Appearances:

Mr. C. Dougan Q.C. for the Claimant
Miss V. Frederick for the Defendant

2008: May 7 and 23.

JUDGMENT

- [1] **MATTHEW J. (Ag.):** On January 16, 2006 the Claimant filed a statement of claim in which he sought the sum of \$51,012.40 being the amount due and payable by the Defendant to the Claimant as "finder's fees" in the sale and purchase of 140,402 square feet of land situated at Carapan and sold by the Defendant to Blessings Investment Ltd in January 4, 2006 for \$1,020,248.00.
- [2] In his statement of claim the Claimant said he is a taxi driver in Saint Vincent and the Grenadines and the Defendant is and was at all material times a land proprietor of lands at Carapan.
- [3] He stated that in or about June 2005 while his car was parked near to the Music Centre in Kingstown, the Defendant stopped him and told him he had some lands for sale at Carapan and that if he got a buyer he will have some money coming.

- [4] He stated that it was mutually agreed that if the Claimant got a buyer the Claimant would be paid by the Defendant the universally accepted finder's fee of 5 per cent of the purchase price.
- [5] The Claimant later contacted Mr. and Mrs. Vernon Johnson in the United States of America and gave them the Defendant's telephone number in Saint Vincent. The Johnsons called the Defendant on June 12, 2005 and told him the Claimant had put them in touch with him.
- [6] On June 15, 2005 Mr. and Mrs. Johnson flew to St. Vincent and having been shown the land agreed to purchase the same for \$1,020,248.00. The land was conveyed to Blessings Investment Ltd by virtue of Deed No. 97 of 2006.
- [7] Soon thereafter the Defendant met the Claimant at Ratho Mill and handed him an envelope but the Claimant, without opening or touching the envelope, said he noticed that the envelope contained no more than \$200.00 and he refused to accept it.
- [8] The Claimant alleged that there was a meeting between himself and the Defendant together with their respective solicitors when the Claimant through his solicitor demanded the sum of \$51,012.40.
- [9] The Defendant filed his defence on or about December 19, 2006 in which he categorically denied each and every averment pleaded in the statement of claim in its entirety save and except for the fact that the Claimant was the taxi driver who transported the eventual purchasers to the home of the Defendant
- [10] The Defendant alleged that the Claimant is neither a friend, nor a business partner, nor an acquaintance of the Defendant and is known only as a taxi driver by the Defendant.

- [11] The Defendant alleged that at no time did he make any agreement with the Claimant for the latter to find purchasers for the Defendant's land.
- [12] The Defendant stated that as a known seller of lands he regularly advertised lots for sale in the newspapers and on a bulletin board at his home and has never used real estate agents to sell any of the lands which he owns.
- [13] He stated that it was possible for anyone passing along the road in Ratho Mill to get information about his lands for sale.
- [14] The Defendant counterclaimed against the Claimant for the sum of \$10,000.00 being monies expended for consultations and opinions by reason of the claim.
- [15] On January 23, 2007 the Claimant filed a reply and defence to the counterclaim in which he joined issue with the Defendant in his defence.
- [16] In his defence to the counterclaim the Claimant contended that monies allegedly expended by the Defendant for consultations and opinions cannot be properly counterclaimed for, since such monies may be recoverable as costs. I tend to agree.

EVIDENCE

- [17] At the trial the Claimant gave evidence and called June Johnson as his witness. The Defendant gave evidence but called no witnesses.
- [18] So much of what is in the witness statement has already been pleaded and I have already referred to that practice in other judgments. The Claimant stated that on June 17, 2005 the Defendant told him the people took the land and he would deal with him later.

- [19] The Claimant was extensively cross-examined by learned Counsel for the Defendant. He said he has known the Defendant for more than thirty years and was at one time the minibus driver for the Defendant, his wife and children, from Stubbs to Kingstown.
- [20] He said he did not sell land for the Defendant before and did not know the Defendant was selling land. The Defendant did not tell him where the land was located. The Defendant did not tell him how much money he would be receiving and he did not ask the Defendant specifically how much money.
- [21] The Claimant said he did not know how much land the Defendant was selling. They did not speak about 5 per cent at the Music Center but after the Claimant filed the case he believed he should be getting 5 per cent.
- [22] He said he had several conversations with the Defendant between June 2005 and January 2006 but he did not ask the Defendant how much money he would be getting.
- [23] He said it was not true that the information he obtained about the sale of the land was what he overheard as he drove the Johnsons around. He said he never knew that Mr. Oliver had advertised land for sale.
- [24] He said he knew Mrs. Johnson was in Saint Vincent before June 9, 2005 and wanted to buy property and he did not come to Court to lie his way through.
- [25] He said Mr. Oliver tried to give him an envelope on January 25, 2006 and three times he asked Mr. Oliver what was in the envelope and he would not reply so he left Mr. Oliver and went to retain Counsel. He said he thought he would get about \$50,000.
- [26] Upon re-examination he said he acted as agent for Mr. Oliver and he was entitled to at least 5 per cent of the purchase price. He said he knew Mrs. Johnson had a land deal with Celia Hadaway which was not concluded.

- [27] June Johnson stated that she and her husband retained the taxi services of the Claimant to take them to her brother's resident at Lowman's where they stayed in Saint Vincent and the Grenadines.
- [28] She stated that on several occasions they mentioned to the Claimant that they were interested in the purchase of land for business purposes. She said she was in St. Vincent on June 6, 2005 and left on June 9, 2005. She said on June 11, 2005 she received a call from Mr. George and he gave her the telephone number of the Defendant.
- [29] She said on June 12, 2005 she called the Defendant and discussed her interest on purchasing lands mentioned by the Claimant. She said she and her husband returned to Saint Vincent and the Grenadines on June 15, 2005. Mr. George met them at the airport and took them to the home of Mr. Oliver.
- [30] They had discussions with Mr. Oliver and Mr. Oliver joined her husband and herself in the taxi that Mr. George was driving and Mr. Oliver gave directions to the land.
- [31] She said the purchase of the lands was finalized in January 2006 and the land was conveyed to her company, Blessing Investments Ltd.
- [32] When she was cross-examined she stated that she had used the taxi services of the Claimant on visits previous to June 2005. She said when she came in May 2005 she was not looking for land but afterwards she began thinking of that as a result of a conversation with her sister-in-law.
- [33] She said she had entered into a formal agreement with Celia Hadaway to purchase land but that agreement was not concluded into a purchase and sale of land.
- [34] She said she did not tell the Claimant to look for land for her but he was at the airport when the agreement with Hadaway was canceled and so she was not surprised when Mr. George called her in the U.S.A. to tell her about land.

- [35] She stated that George did not tell her how much land was for sale or the cost of the land.
- [36] She said when George took herself and her husband to the Defendant's home and they spoke the Defendant entered the taxi which George was driving with herself and her husband and he proceeded to give directions to the land.
- [37] The witness stated that Mr. George had told her that the land was at Carapan and the view was what she wanted.
- [38] She further stated: "All I know is Mr. George took me to his home and introduced me to him ... We did not discuss anything with Mr. George. The most I know him is as a taxi driver."
- [39] The Defendant filed his witness statement on May 31, 2007. The Defendant stated that he is a Retired Third Officer aboard Merchant Vessels registered in Liberia and all during his employment for 38 years he had saved his earnings to purchase properties for later sales at a profit.
- [40] He said he had never used the services of anyone to buy or sell anything.
- [41] He said: "The first time I saw the Claimant was the day he drove the Johnsons to my gap at Ratho Mill and they, the Johnsons, said to me that they spoke to me about some lands and they would like to see the lands."
- [42] He said he drove himself from Ratho Mill to Carapan and the Claimant drove the Johnson's behind him to Carapan. That evidence is in direct conflict with what June Johnson said.

- [43] He said that Johnsons came out and he took them through the land while the Claimant who never spoke to him or the Johnsons was seated on a log at the roadside waiting for the Johnsons.
- [44] He said the next time he saw the Claimant was outside the lawyer's office sitting in his vehicle and was never in the office with the Johnsons and himself.
- [45] He said the next time he saw the Claimant was at the law office of Mr. Dougan where he was claiming that Defendant should pay him commission because Defendant had collected a lot of money and he was the one who brought the people to see the land.
- [46] The Defendant said he told the Claimant that he had no arrangement or agreement with him over anything. He said he owes the Claimant nothing as he had advertised his lands for sale in the Newspaper, which he exhibited, and on his Notice Board affixed to a tree on the lands.
- [47] When he was cross-examined, the Defendant stated that he did not know Mr. George. He has seen him pass in a minibus but he does not know the guy. He said he is a seaman and even if the Claimant knows him for 30 years he does not know the Claimant.
- [48] He said he did not go near to the Music Centre in June 2005 and did not have a conversation with the Claimant there and the Claimant made up a story of all he had said in evidence earlier that morning.
- [49] He said he was surprised when the Claimant came to his home with the Johnsons as he did not know who he was. In response to the Claimant he asked him what lands he wanted to see and the Claimant said it was lands at Carapan.
- [50] The Defendant said he did not get in the taxi with Mr. George and did not know if Mrs. Johnson was lying or not.

[51] The Defendant stated that he did not take an envelope to the Claimant or attempted to pay him money. He said he agreed that it was Mr. George who got the Johnsons to see him; but does not want to pay him any money for he never hired him.

[52] He said he did not know Mrs. Johnson before and Mrs. Johnson never told him that Mr. George had contacted them about the land.

[53] He said further: "Before today, I cannot remember seeing the Claimant anywhere. Yes, the last time in Court I saw him when the case came up."

[54] He said he did not agree that the Claimant was a finder to buy his land and asked why should he as a matter of conscience pay the person who brought the purchasers to him.

[55] He stated that about 90 per cent of what Mr. George said in evidence are lies and of the other 10 per cent is that he got a buyer for the land. So at one point he said he did not agree that Mr. George was a finder to buy him land and at another time he got a buyer.

[56] In response to the Claimant's evidence that the Defendant and his family were in the habit of using his minibus for traveling to and from Kingstown the Defendant said himself and his family always had their own vehicles.

CONCLUSIONS:

[57] In her final submissions learned Counsel for the Defendant submitted that the Claimant was claiming a finder's fee as a cause of action and that was not a cause of action under the law. That submission was no doubt based on the claim at the end of the statement of claim.

[58] I had to deal with a similar submission in the Saint Lucia case 61 of 1989 **Desmond Jardine v North Rock Ltd** heard in 1991. Learned Counsel for the Defendant in that case

by use of Order 18, Rule 19, submitted that there was no cause of action and the matter should be struck out.

[59] The thrust of the submission was that in the statement of claim there was no allegation of any specific tort, whether it be negligence, nuisance, trespass to land etc. In the case the Plaintiff had sued the Defendant for damage to his house caused by the Defendant's blasting and use of explosives.

[60] In my judgment I said that there was no requirement on the Plaintiff to state the tort in issue in his statement of claim and I referred to the 12th Edition of **Bullen, Leake and Jacob on Precedents of Pleadings**.

[61] My judgment on this issue was not touched by the Court of Appeal headed by Sir Vincent Floissac.

[62] I accept the submission by learned Counsel for the Defendant that the relationship of principal and agent can only be established by the consent of the principal and agent – **Garnac Grain Co. v H.M.F. Faure and Fairclough Ltd** 1968 A.C. 1130 at page 1137. But what is in issue here is the sharp conflict in evidence between the Claimant and the Defendant.

[63] As Counsel herself submitted, the Claimant alleges there was an agreement and the Defendants wholeheartedly, to use her expression, denied asking the Claimant to function as agent. So it is really for the Court to look at the evidence and all the circumstances to determine whether there was an agreement or not.

[64] An important aspect in the case is the Defendant's advertisements in the Newspapers. The Defendant's contention is that the advertisement could have been the cause for bringing about the subsequent sale which took place in 2006.

[65] Mrs. June Johnson and her husband purchased the Defendant's property but Mrs. Johnson seems to have been the dominant purchaser. She is Vincentian and her husband is Guyanese but they live in the U.S.A. The Johnsons were in Saint Vincent in May 2005 and they expressed interest in purchasing land for business. After spending some time in Saint Vincent they returned to the U.S.A. in May 2005.

[66] As early as October 29, 2004 the Defendant had a rather small advertisement in the News "30 acres of land at Carapan – Hill Top land at Rivulet Tel. 458-4028." In November there were even more innocuous advertisements. They certainly did not get the attention of the Johnsons nor the Claimant. The advertisements were in the Newspapers in May 2005 while the Johnsons were holidaying in Saint Vincent.

[67] But it was not until they returned to the U.S.A. and the Claimant telephoning them there and thereafter they telephoned the Defendant that the proposed sale began to take shape. The Johnsons returned to Saint Vincent soon after on June 6, 2005 when the Claimant met them and took them to the residence of the Defendant.

[68] In my judgment it cannot be doubted that the Claimant was the instrument for the eventual purchase and not the Defendant's advertisements, and I think the Defendant was compelled to admit that when under cross-examination he said: "I agree it was Mr. George who got the Johnsons to see me."

[69] The Defendant emphasized the fact that he did not know the Claimant. Before me he said that very morning of the trial, Wednesday, May 7, 2006 was the first time he had seen the Claimant until he was reminded and agreed that he had seen him on an earlier occasion when the case was called in Court.

[70] But even that admission would not be a correct statement for he said he was surprised on the day when the Claimant came to his house to bring the Johnsons to commence their negotiation for the land. And he admitted that on another occasion the Claimant remained outside while the Johnsons and himself went into Mr. Howard's chambers to finalize the

transaction. He also stated that he saw the Claimant yet on another occasion at Mr. Dougan's Chambers.

[71] I ask myself how or why would the Claimant find out the name of the owner of the land, which was not in the advertisements and simply send that information to the Johnsons in the U.S.A. without making contact with the Defendant to secure some sort of commission. I think that approach unlikely.

[72] The Claimant in his evidence exhibited a lot of intimate knowledge about the purchase price of the land and other matters. Learned Counsel for the Defendant in her submissions accepted the statement of Mrs. Johnson that she did not discuss anything about her business with the Claimant and that at all times he remained in his taxi. Mrs. Johnson gave that evidence in Court and I accept her evidence in full, more so than that of the Claimant and the Defendant.

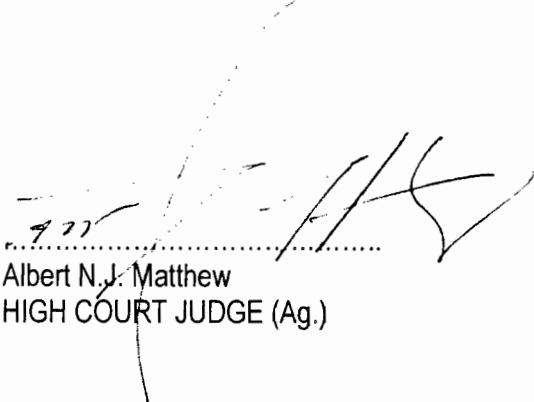
[73] If Mrs. Johnson did not tell him that she and her husband paid just over one million dollars for the 140,402 square feet of land, who told him? Could it be Mr. Howard the solicitor handling the transaction? Unlikely in my view. I tend to believe the Claimant that he had conversations with the Defendant concerning the selling price of the land.

[74] How would the Claimant know that the Defendant was charged in the region of \$52,500 by Vinlec to get electricity to the land? Did Vinlec advertise that or gave the Claimant that information? I believe the Defendant told him so, and further that the Defendant did tell him that if he got a buyer some money would come his way.

[75] I do not think that it is realistic that the Claimant should be able to bring another individual to say that the person witnessed a conversation or interaction between himself and the Defendant at the Music Centre or elsewhere; or that he had to point to another individual he approached to purchase the Defendant's land.

- [76] I also think it irrelevant that the Claimant could not point to any other communication he had with the Defendant prior to bringing the purchaser to see the land; or that there was never any conversation between the Claimant and the Defendant to the effect that the Claimant was bringing any prospective purchaser to see land. The same is true of the Defendant's submission that the eventual purchaser was not able to say how the Claimant knew that Defendant had lands for sale and could not speak of the existence of any agreement between the Claimant and the Defendant.
- [77] And it does not matter that the Claimant had not worked as an agent for anyone before or since. The Claimant is not an estate agent. He is a taxi driver who was asked to source a purchaser for certain land in the course of his taxi business.
- [78] I agree with learned Counsel for the Defendant that there was no evidence that the Claimant and the Defendant negotiated a price for the services to be rendered by the Claimant, but that does not mean that he should fail in obtaining a reasonable amount. I, like learned Counsel for the Defendant have much doubt that the Defendant ever offered the Claimant some form of payment in an envelope.
- [79] The case of **Shane Younger v Landsdowne Tractors Ltd** [2006] EWHC 1674 QB does not establish that the quantum of the finder's fee must be agreed to. In that case the Claimant was not believed that the FFA was finally executed. The Court could not rely on his evidence to that effect.
- [80] The case of **Temple Trees v Bellway Homes Ltd**, No. HQ01X02424 in the Royal Courts of Justice, London, was between a recognized agent and the Defendant Justice Rafferty was not satisfied upon the balance of probabilities that any agreement for estate agency commission had been reached. For the same reason the Claimant in **Ian Green Residential Ltd v Asfari** [2007] All ER (D) 322 failed. His oral evidence conflicted with his witness statement.

- [81] I find on the facts of this case that an oral agreement was made between the Claimant and the Defendant which was confirmed by the conduct of the Parties – the Claimant taking the purchasers to the Defendant's home after which the Defendant entered the taxi with them and took them to see the land. See *Goldschmidt v Minai* [2003] EWHC 1214 QB, paragraph 28.
- [82] I find there was a casual relation between the introduction of the Parties and the ultimate conclusion of the contract. See *Stephen H. Karelitz v Damson Oil Corporation*, United States Court of Appeal, First Circuit 820 F 2nd 529. I find that there was an agreement to pay remuneration that is reasonable.
- [83] Needless to say, I reject the Claimant's contention that he thinks he is entitled to 5 per cent of the purchase price, or that there is any universally accepted fee; or even that a finder's fee of about 3 per cent of the purchase price should be implied at common law.
- [84] In the case of *Goldschmidt* cited by learned Queen's Counsel for the Claimant the standard letter sent to the Defendant set out "the one per cent term." I do not think a casual finder like the Claimant should earn more than that, something he did in the course of his main business.
- [85] I think if the Parties had contemplated the fee and the taxi driver was told he would get 1 per cent he would readily agree. He had nothing to lose.
- [86] My judgment is that the Defendant must pay the Claimant finder's fee in the amount of \$10,202.48 and costs of \$4,250.00.


Albert N.J. Matthew
HIGH COURT JUDGE (Ag.)