

1st November, 1982

NORMAN WOOD

24 PLAINTIFF

-v-

COLIN HAMILTON

FIRST DEFENDANT

AND

FIVEWAYS (JERSEY) LIMITED

SECOND DEFENDANT

DEPUTY BAILIFF: There are some premises known as the Burlington Arcade, St. Saviour's Road. They are owned by a company called Peregrine Limited and at the relevant time the plaintiff in this action, Mr. Norman Wood, had been occupying No. 1 Burlington Arcade for sometime. He did not have a written lease but he believed, a belief that was justified by the subsequent action of his landlord, that he would acquire one if necessary. The premises had previously been occupied by a baker and in the course of time Mr. Wood had taken over those premises to run a green grocery or fruiterer's business. He became ill in the course of 1980 and was approached by the first defendant in this action, Mr. Colin Hamilton, who evinced an interest in acquiring the lease. We stress that the interest was primarily to acquire the lease and not the green grocery business. As a result of discussions with Mr. Wood, Mr. Hamilton made himself known, in due course, to the managing agents of the owning company, Messrs. Jones, Lang & Wotton, in the form of their manager or estate manager, Mrs. Kennedy. The two parties, Mr. Norman Wood and Mr. Hamilton, came to an agreement that Mr. Hamilton would acquire the lease (because it was believed at that time that there was a lease) from Mr. Wood for the sum of £5,000. In the event some more money changed hands because not only was a deposit paid of ten per cent of the £5,000, but an additional £90.00 odd was paid for the green grocery stock. The issue is quite simple between the parties, that is to say between the plaintiff and the first defendant. As regards the second defendant it is a limited liability company which was incorporated during the occupation of the premises by the first defendant. The business was run in its name and the shares in that company were subsequently sold. We understand that that company is now "en desastre" and Mr. Boxall, who appeared for the first defendant, kindly agreed to represent the Viscount in order that the records could be complete, but as we have said the issue is really between the plaintiff and the first defendant. The contention on behalf of the first defendant is that it was a term in the contract that he could be able, not only to conduct the business of a general store there, and that matter we are satisfied was known to Mr. Norman Wood, that is to say that he intended to operate a general store, but included in the business

which he would be able to transact there would be the sale of tobacco and confectionary. To the extent that that wish of Mr. Hamilton formed part of what he wanted to do then clearly in his own mind at least it was a term of the contract; but what we have to be satisfied about before we can properly find that it was in law a term of the contract was that that intent was firmly made known to Mr. Norman Wood as a condition or term of the contract. We think that the proper position was this. Mr. Hamilton was anxious to acquire the lease and indeed the document which was signed by him of the 30th June refers just to that and he agreed to take the lease of 1 St. Saviour's Road. The document is as follows:-

"I, Colin Hamilton, agree to take the lease of 1 Sav: Road known as Norman's Fruit Stores, from Mr. Norman Wood for the sum of £5,000.

10% to be paid on the 1st July (Date of Take over). Balance to be paid on completion of lease by Lang Jones & Wootton.

C. J. Hamilton"

There is no mention in the document of the type of business which he was going to run. However, in the witness box he admitted that he knew that the lease was tied, that is to say there was a condition in it which would prevent the lessee from carrying on a business in competition with other occupiers of the rest of the Burlington Arcade. That being so it was up to Mr. Hamilton to satisfy himself as to what the conditions of those tied provisions were. There was a good deal of conflict of evidence as to how and when the question of the confectionary and tobacco were first mentioned. We have come to the conclusion that it was in fact first mentioned when Mr. Egge, the tenant of another of the shops in the Burlington Arcade, came in to 1 Burlington Arcade a few days after Mr. Hamilton had started his business at the beginning of July. It was then that he learnt from Mr. Egge that he couldn't sell tobacco and confectionary. That being so it is clear to us that those two items were not made a term of the contract with Mr. Wood and the only term of the contract was that Mr. Hamilton should be able to acquire a lease. That lease was subsequently prepared and submitted to Mr. Hamilton. He found it unsatisfactory and would not accept it. In our opinion he was not entitled to do so. The plaintiff will have the amount he is claiming, namely £4,500, with interest at ten per cent from the date of the cause of action, that is when Mr. Hamilton refused to accept the lease, to date and he will have his costs.