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IN THE ROYAL COURT OF THE ISLAND OF JERSEY

Before P.L. Crill, C.B.E. - Deputy Bailiff
 Jurat The Hon. J.A.G. Coutanche
 Jurat Mrs. B. Myles

BETWEEN **John Dixon Habin** PLAINTIFF
 AND **Jersey European Airways Limited** DEFENDANT
 (by original action)

AND

BETWEEN **Jersey European Airways Limited** PLAINTIFF
 AND **John Dixon Habin** DEFENDANT
 (by counterclaim)

Advocate L.M. Gould for the Plaintiff
 Advocate J.G.P. Wheeler for the Defendant
 L.A.

The background.

Jersey European Airways Limited is a company incorporated in the Island ("the Company"). It operates an airline business. From 1979 to 1983 the Plaintiff, a shareholder in the Company, was its Chairman ("the Plaintiff") and responsible for the conduct of its airline business as Managing Director. Towards the end of 1982 the company found itself under-capitalised and began to borrow money first from Mr. Jack Walker and then from G. Walker and Sons Limited, a company registered in England, and which eventually acquired a controlling interest in the Company, and then in October, 1983, the whole of the issued share capital, either in its own name or through nominees. In spite of the injection of money the Company did not prosper and in an effort to change its fortunes, the then board advised on technical matters by the Plaintiff who had considerable experience in the aircraft business, decided in July, 1983, to buy two F-27 aircraft, which at that time were in France. One aircraft had been manufactured in 1963 and the other in 1967. Both aircraft were on the French register and in order for them to satisfy the requirements of the Civil Aviation Authority and enable them to be transferred to the British register, a considerable ^{amount} about of work would have to be effected on them. Accordingly, both aircraft were surveyed by Air UK Limited, a company in Norfolk, and the reports of the findings were submitted to the Board of the Company by Mr. Habin on the 5th July, 1983. The cost of such modifications to each aircraft would be approximately £275,000. The Board agreed to purchase the aircraft/....

aircraft and authorised Advocate M.M.G. Voisin and the Plaintiff to negotiate the purchase of them by the Company. At about the same time the Company, which also owned an Islander aircraft, decided to sell that machine. The sale was concluded in October or November, 1983, by Mr. Habin, for £45,000. Both F27 aircraft were eventually flown to Norwich to the workshops of Air UK. Work was carried out, first to the later aircraft, that is to say the one manufactured in 1967 to a high standard, not only to satisfy the requirements of the CAA, but also to attempt to provide a new image for the use of the aircraft in the Company's services. The cost to the Company for the engineering and decorative works was in the region of £250,000.

That was the position towards the end of October, 1983, but no work had yet been started on the earlier aircraft, that is to say the one manufactured in 1963. That work was put in hand but the extent of the authority for it and what was actually carried out is in dispute. On the 12th November, 1983, the Plaintiff negotiated with Mr. Walker, who by then had acquired the whole beneficial interest either in his own name, or for his own company in the Company, for a commission of two per cent on the sale of the two F-27 aircraft. It had earlier been agreed that he would receive two per cent on the sale of the Islander.

In January, 1984, the Plaintiff went on holiday and whilst he was away, the Company completed the sale of the two F-27 aircraft. It is not disputed by it that in the ordinary course of events the Plaintiff would have been entitled to his commission of the two per cent on those sales, and his share of the Islander, as in the first instance he had introduced the eventual purchaser.

The dispute.

The issue between the parties is now a narrow one. Was there a condition expressed or implied imposed upon the Plaintiff by Mr. Walker acting for the Company, at the time it was agreed that the Plaintiff would have his commission on the sale of the two aircraft, to the effect that he would have to earn his commission by obtaining a reduction in the cost of refurbishing the older F-27 by some £100,000. The Company denies it owes the Plaintiff anything and counterclaims in the sum of £100,000.

The evidence.

The Plaintiff's case is that no such condition was imposed. It would have been impossible for him to have effected such a reduction because the age of the older aircraft would have meant that considerably more remedial work would have had to be carried out on it than was the case in respect of the later aircraft. He had gone once to Norwich and an air ticket produced by the Defendant Company indicates that this was on the 18th November, 1983, but that was not for the purpose of effecting a saving, as suggested by the Defendant Company. The allegation that there was a condition attached to the undertaking of the Defendant Company to pay the Plaintiff a commission on the sale of the aircraft is such that the burden of proving it lies upon the Defendant Company. To this end it puts forward an unrecorded meeting of the directors of the company, attended by Mr. Walker and others on the 4th October, 1983. There is a conflict of evidence about what took place on this occasion. On the one hand Mr. Habin and Mr. Brown are satisfied that no figure was mentioned of £150,000 which would be the amount of the refurbishing costs, less the £100,000. On the other hand because Mr. Habin had been able to negotiate a reduction of £25,000 from the earlier figure of £275,000 for the newer aircraft, it was implied that he would have been able to negotiate a reduction in respect of the refurbishing costs for the older aircraft. Mr. Walker recalled the figure being mentioned of £150,000 for a first-class job, "with a lick of paint". This meant that the aircraft would not have the same finish as the later aircraft, which as we have said, had been refurbished in order to give a new image to the company's services. According to Mr. O'Donnell, who was keeping a watching brief for Mr. Walker, at that meeting Mr. Habin was asked what the figure would be and he said the work could be done for "one and a bit". When pressed to explain what that meant, he said it would be a figure in the region of £150,000. This matter was not put directly to Mr. Habin in cross examination. Mr. Walker's and Mr. O'Donnell's recollections were supported by Mr. Brown who said that at the meeting on the 10th October, which went over matters which had been discussed on the 4th October, for the benefit of company directors who had not been present at the earlier meeting, Mr. Habin said that the matter could be left with him and he would reduce the price to something in the region of £150,000. It was an impression that he got in respect of this statement, more in the nature of Mr. Habin agreeing to "sort it out". Mr.

Bulstrode, who was a director of JEA on behalf of Lazard Brothers, which had originally financed the company, did not recall the meetings of the 4th and 10th October, but so far as any reductions concerned in the cost of refurbishing he did not remember a specific figure of £150,000 but remembered that when the price of the two aircraft had been discussed at some four million dollars, Mr. Habin was asked to get the job of refurbishing the second F-27 for as little as possible. Mr. Sidney Norman, who was a director of the Defendant Company and a shareholder, and had operated a company aircraft as well as being a pilot for some years, was not present at the meetings in October, 1983, but he recalled a number of other meetings before or after the 4th and 10th October, when discussions took place about selling the two F-27 aircraft. He did not remember any condition being imposed in respect of the cost of refurbishing the older aircraft and no specific arguments in his presence took place. However, all were concerned at endeavouring to save as much money as possible. All directors were anxious to rehabilitate the older aircraft at the lowest possible cost but commensurate with the requirements of the CAA. And whilst no specific amount was mentioned he accepted that it would have been unreasonable to expect Mr. Habin to reduce the sum to £100,000 but that Mr. Habin had said that the matter should be left to him to negotiate. Nevertheless, Mr. Norman thought that any such sum would be quite impracticable.

The Plaintiff's evidence in some part is supported by that of Mr. S. Kaye, the chief engineer of Air U.K. Limited. The second F-27 did not arrive in Norfolk until 31st October, 1983. It was therefore most unlikely that some weeks before Mr. Habin, without knowing the approximate cost, would have committed himself to a firm figure of about £150,000. The figure submitted to the Company in 1984, which was of course after the Plaintiff and the other directors had resigned, for refurbishment of the second F-27 was what Mr. Kaye called the "ball park" figure of £250,000. Although on a cost

and materials/....

and materials basis the figure would have been £267,082.95. Any lower figure, in our opinion, would not have resulted in the Company being able to obtain a certificate of air worthiness. Moreover, more work was needed to be done on the second F-27 than the first. All that Mr. Habin asked Mr. Kaye, according to the latter, was to try to keep the figures down as low as possible, to paint the exterior white and not to change the interior furnishing. Advocate Voisin who was the Chairman of the Company for some time up to the end of 1983, remembered the two meetings of the 4th and 10th October. Mr. Walker was not present at the first one and the second one was a repetition with Mr. Walker present of what took place at the first one. Mr. Voisin had a recollection, but no more, that at the second meeting, that is on 10th October, a figure of £150,000 may have been mentioned. He had no particular memory of a fixed figure being mentioned by the Plaintiff.

The meeting at which it is accepted a discussion on commission was mentioned, took place between the Plaintiff and Mr. Walker on 12th November. By that time the Plaintiff was no longer a member of the Board of the Company. He was therefore free to negotiate on his own behalf as there was no conflict of interest between him and the Company. We heard no evidence to suggest that the question of commission was raised at either of the two meetings in October. The Plaintiff was not entitled to his commission, Mr. Walker said when he gave evidence in reply to a question put to him by the Court, because he had not brought about the reduction in the cost of refurbishing the second aircraft. It is clear from Mr. Kaye's evidence that even if the Plaintiff had succeeded in reducing the cost by £100,000 the second F-27 aircraft as we have already said, would not have been brought up to air-worthiness standard. If it had not been brought up to that standard, it would not have been possible for the Company eventually to sell it in February, 1984. The only record of what took place between the Plaintiff and Mr. Walker is a draft letter of 14th November, 1983, prepared by Mr. Glenister to be sent to the Plaintiff. It is as follows:

"Dear John,

As agreed at the meeting held with Mr. J. Walker on Saturday 12th November 1983 we would confirm the details of your association with J.E.A. as follows.

You have the right to sell the two F27 aircraft which were purchased by C. Walker & Sons Limited, for a sum of 4,000,000 US dollars.

You are to receive a commission of 2 per cent and any amount above 4,000,000 US dollars will be for your own account.

It is also understood that any saving on the upgrading costs of £250,000 on the second F27 can be taken off the selling price.

To enable you to identify your position with J.E.A. we will have business cards printed for you which will state your position as:-

Jersey European Airways
Commercial Sales
States Airport
Jersey, C.I.

John D. Habin
Office 0534 31341
Home 0534 42572
Telex 4192166 SITA JERRMJY

You have kindly offered your services as and when required by Mr. Peter Glenister, Managing Director of J.E.A., which is greatly appreciated.

Yours sincerely,

PETER A. GLENISTER
Managing Director."

It is to be noted that there is no mention in that letter at all of any conditions attached to the Plaintiff's right to earn commission.

A second letter dated 20th December, 1983, was sent to the Plaintiff by Mr. Glenister. It is as follows:

"Dear John,

I have been asked to write to you in respect of the F27s, as follows:

When initially discussing the sale of the F27s, it was anticipated that this would be concluded by the end of the year. Clearly this is unlikely now to be the case. In respect, therefore, of your being exclusively involved in the sale, we are prepared to give one month from this date. Thereafter any sale made as a result of your introduction, either before or after that date will entitle you to commission, as discussed.

However, from the 20th January, 1984, we regard ourselves as being free to follow any avenue of sale open to us without liability to yourself.

Kind regards,

Yours sincerely,
for JERSEY EUROPEAN AIRWAYS LTD.,
P.A. GLENISTER
Managing Director."

That letter did not affect the Plaintiff's rights to commission except that he would no longer have the exclusive rights to negotiate on behalf of the Company at the conclusion of one month from the date of the letter. The evidence to us seems to show that, on balance, all the Plaintiff undertook to do was to do his best to reduce Air UK's figure and no more. We are satisfied, therefore, that the Plaintiff has succeeded in his claim and we give judgment for him in the terms of the Order of Justice and dismiss the counter claim. The Company will pay the Plaintiff's costs.