

40 pages.

9 APR 1990

IN THE ROYAL COURT OF THE ISLAND OF JERSEY JERSEY

(Samedi Division)

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9th April, 1990.

BEFORE MR. P.R. LE CRAS COMMISSIONER
JURAT THE HON. J.A.G. COUTANCHE
JURAT M.J. LE RUEZ

BETWEEN BROADLAND ESTATES LIMITED Plaintiff

And SAMUEL HENRY ALFRED LAPIDUS First Defendant

And CONSOLIDATED HOTELS (CHANNEL ISLANDS) LIMITED Second Defendant

AND

BETWEEN ROBIN GEORGE BILLINGSLEY Plaintiff

And CONSOLIDATED HOTELS (CHANNEL ISLANDS) LIMITED First Defendant

And SAMUEL HENRY ALFRED LAPIDUS (Second Action)

AND

BETWEEN HUGH GILL Plaintiff

And CONSOLIDATED HOTELS (CHANNEL ISLANDS) LIMITED Defendant (Third Action)

The present proceedings arise as a result of the sale of the Grand Hotel in 1988. The negotiations leading to the sale were so conducted

that no less than three Plaintiffs commenced proceedings claiming that they were entitled to commission on the sale.

As all three claims related to the sale of the same hotel, and as a good many of the facts on which each Plaintiff wished to rely were, to some extent, common between them, the Court ordered not the consolidation of the proceedings but that all three should be heard at the same time.

After the proceedings had started in the Royal Court, the first Plaintiff, Broadlands Estates Limited, requested leave to withdraw. There being no objection from the Defendants, the Court acceded to that request, with by agreement, no order as to costs.

This then left two Plaintiffs in the field, each claiming a different sum.

Both claims were disputed by the Defendants.

Mr. S.H.A. Lapidus told the Court that prior to October 1988, the Grand Hotel had been owned by the S.H.A. Lapidus Settlement (a Settlement made for his family) through Consolidated Hotels. It was clear to us that he was, whatever the office he held, effectively the prime mover.

Mr. Gill, whose evidence was not contested by the Defendants, described himself as a sales and marketing consultant. He had had, he said, previous dealings of a satisfactory nature with Mr. S.H.A. Lapidus who had asked him if he would be interested in selling the hotel. Not unnaturally, Mr. Gill said he would be; a commission was discussed of 1% up to £12½m. and 1½% above that figure with which Mr. Gill was content. Confidentiality was stressed by Mr. S.H.A. Lapidus ("Mr. Lapidus") and, in due course, on the 16th May 1988, the agreement was put into writing when Mr. Lapidus wrote to Mr. Gill as under:-

"I confirm that if you introduce a prospective buyer of whom we must approve and complete negotiations to our satisfaction we will pay you 1% on the price obtained plus an additional payment of ½% on any price we accept above £12.5 Million. No one, however, must be approached without our consent.

The price on which commission is payable would be the price we obtain either for the sale of the freehold property and the three properties in Peirson Road or the price we obtain for the shares of the Grand Hotel Limited which company owns the Grand Hotel and the three properties in Peirson Road.

We are, of course, including in the price the fixtures and fittings and moveable furniture except for specific personal items which I have loaned to the Grand Hotel, these mostly being the painting in the hall, a number of Le Capelans and some prints.

There is a possibility that the three properties in Peirson Road would be excluded from the sale on the purchaser's option and therefore, any future sale of these properties by ourselves would not come into this reckoning.

Finally, we must retain the right to refuse any offer from any source and the right to sell to any person or persons remain with us. We also must retain the right to withdraw the property or company from a sale at our complete discretion without disclosing any reason in which case there would be no fee payable."

The last paragraph was included, we were told, because Mr. David Kirch had an option on the hotel which Mr. Lapidus thought, correctly as it transpired, that he would not wish to exercise.

Before this letter was written, Mr. Gill had, in late March 1988, met a friend of his a Mr. T. Kitchen, an Accountant in Jersey and mentioned that he had a leading hotel for sale. In mid-April, Mr. Gill told us, Mr. Kitcherang him and asked him to speak to a Mr. Hamilton who, we were told, lives in Guernsey. He did so, and as a result of the conversation which he reported to Mr. Lapidus, first received from the latter the letter we have set out above. Having received it, Mr. Gill wrote to Mr. Hamilton on the 25th May to confirm an arrangement to which he said Mr. Hamilton had agreed on the 25th May.

"Further to our recent discussions, I have now received written confirmation of commission from the Proprietor of the hotel concerned.

I regret that it will be impossible for me to pay you half a percent as we discussed. I am however, able to offer you a fixed sum of £25,000 (twenty five thousand pounds) on the successful completion of a sale to a party or parties introduced by you, at whatever price.

I do hope you will understand my position - as I said, I am acting more as a friend of the Proprietor than as his agent, and do not

expect therefore, to receive normal agency rates of commission.  
I look forward to hearing from you soon."

It is at about this time that Mr. Billingsley entered the scene. He told the Court that he had heard of the proposed sale from Mr. Tanguy, whom he had met during a previous sojourn in the Island, who had, in turn, heard it from Mr. Hamilton. This evidence was confirmed by Mr. Tanguy who added that Mr. Billingsley had, earlier, pointed out to him in no uncertain terms that if there were any property business in the Island he would be likely to have waiting clients.

Mr. Billingsley described himself as a financier with many contacts in the hotel world.

Having spoken twice to Mr. Tanguy, he had, he said, rung Mr. Lapidus at his home and told him that he would have a client to purchase the hotel. By his account Mr. Lapidus was very pleased and asked if he could send him a financial package with all the relevant information to satisfy the clients. Mr. Billingsley asked Mr. Lapidus if Mr. Tanguy could bring it up to London, to which Mr. Lapidus replied that it must be brought by Mr. Gill, whom Mr. Billingsley regarded as just a courier. Mr. Billingsley went on to say that he had discussed with Mr. Lapidus the question of a commission and indeed that this discussion had been initiated by the latter who told him that he had offered Mr. Gill a commission but that if he, Mr. Billingsley, sold the hotel he would be regarded as the main person.

Mr. Lapidus, however, denied that Mr. Billingsley had spoken to him at all before Mr. Gill went off to London with the papers. To start with, he said, Mr. Billingsley would not have had his telephone number which was ex-directory. He added in cross examination that he did not know that the papers were to be left with Mr. Billingsley, adding that if he had spoken to Mr. Billingsley on the telephone and satisfied himself as to his credibility

(which, as we say, he denied) then the documents could have been sent by post or Mr. Billingsley could have come to Jersey to pick them up.

Mr. Gill's evidence was also quite contrary to that of Mr. Billingsley. He stated that Mr. Hamilton had telephoned him between the 6th and 9th June and had asked him to prepare a package to be taken by messenger to London. This was already, it would seem, part prepared and on the 10th June Mr. Lapidus wrote to Mr. Gill enclosing the documents. This letter includes the following:-

"You already will have the plans so please find enclosed.

Valuation to use as you think, we could exclude Pierson Road and therefore the price is m. £16 approx but feel we should get offers below this of say 5% to 10% if we can

I suppose speed is the essence now the market has woken up. Lets get an offer."

He added that he had been urged by Mr. Lapidus before he went to be discreet, as he was to hand the documents to a party he did not know for a purchaser he did not know and that he had to decide when he got there whether to hand the package over. It was his opinion, he said, that Mr. Lapidus did not know who was to receive them and that he took his knowledge from him: another reason, he said, for him to go with the documents.

There is however no doubt at all as to the immediate next step, although there is a considerable conflict of evidence as to what transpired there.

On 11th June, Mr. Gill went up to London and met Mr. Billingsley at the Sporting Club in Park Lane.

Mr. Billingsley's account of the meeting is that Mr. Gill gave him the package which had been prepared (but which did not contain an aerial photograph which he required) on behalf of Mr. Lapidus; that he asked Mr. Gill if he were getting commission to which he (Mr. Gill) replied that he was just "getting a drink", well, £20,000, because Mr. Lapidus was a friend of his, following which Mr. Gill asked him if he could get a commission from his client, whose

name he (Mr. Billingsley) did not disclose. Mr. Billingsley told him, he says, that this was impossible. They discussed, he said, the documents very briefly, as he had seen that everything he needed was there. The meeting lasted two and a half hours, during which they discussed other things over lunch.

He gave Mr. Gill he said no hint that he had spoken to Mr. Lapidus as the latter did not say that he had at that time spoken to him (Mr. Billingsley).

Mr. Gill's account differs in certain marked respects. He stated that upon his arrival, Mr. Billingsley asked if it were the Grand Hotel; that he had undertaken (to Mr. Hamilton) not to ask Mr. Billingsley who the prospective purchasers were; and that he was assured by Mr. Billingsley that there was only one prospective purchaser, a major Northern brewer.

Following this, he said, commission was discussed. He told Mr. Billingsley that he was a friend of the owner and would not get the normal 2% commission to which Mr. Billingsley replied that he (Mr. Gill) was not to worry as he Mr. Billingsley, would be paid by the buyers, an assertion that he repeated in cross examination; and added that he (Mr. Billingsley) would look after Mr. Hamilton. Mr. Billingsley did not ask him, he added, nor did he volunteer, what he was receiving. In cross examination he went further and added that Mr. Billingsley had not told him he was getting commission from Mr. Lapidus, and further that he was not aware, as it was put to him, that his function was to hand over the documents to Mr. Billingsley who had already been instructed.

Following this, once he was reassured that there was only one buyer they started to go through the papers, and Mr. Gill stated that he also went over the sales arguments which he would have used had he been attending a presentation. They were there well over two hours; price was discussed as were the three adjoining guest houses and the possibility of selling a wines and spirit business (RDF) owned by the Defendant.

Following the meeting, Mr. Gill stated that reported briefly to Mr. Lapidus by telephone that same day, and spoke to him again on the following Monday and arranged a meeting for Wednesday 15th June. He also wrote to Mr. Hamilton on the 15th June in the following terms:-

"Further to our telephone conversation yesterday, please take this letter as formal withdrawal of my written offer to you of commission on the Hotel, and of my subsequent verbal offer.

I understand from the prospective buyer's representative, that he is arranging for your commission to be paid by the purchaser."

Leaving for a moment, the progress of the sale in Jersey we turn to Mr. Billingsley's activities in England,

It is common ground that, prior to the meeting with Mr. Gill and in anticipation of the receipt of the package, Mr. Billingsley had arranged a meeting with representatives of De Vere's.

Having obtained the aerial photograph via Mr. Tanguy, he went, with his partner Mr. Williams, to Warrington on Sunday 19th June and met representatives of De Vere's at 9.30 a.m. on the morning of Monday 20th. Among the De Vere's representatives at the meeting was Mr. A.H. Hunter, the property manager of De Vere's which was a subsidiary of Greenall Whitley PLC. The package was discussed, De Vere's were interested, and arrangements were made by Mr. Billingsley for Mr. Reed and Mr. Hunter to come to Jersey which they did on the 27th, 28th and 29th June.

At the meeting in Warrington on the 20th June, Mr. Hunter stated that he asked Mr. Billingsley whether he was looking for commission from De Vere's and that he (Mr. Billingsley) replied that he was not. Mr. Hunter said he made it quite clear that there would be no commission payable to him by De Vere's. Mr. Billingsley, he said, assured De Vere's that he was not looking to them for commission, as any commission would be dealt with elsewhere.

We should say at once that we accept that Mr. Hunter did make it clear to Mr. Billingsley that no commission would be paid to him by De Vere's, and that

Mr. Billingsley accepted it, and second that had Mr. Billingsley subsequently tried to put them off they would have sought to contact Mr. Lapidus direct; and, third that it was from this meeting that the sale of the hotel finally resulted.

Meanwhile, in the Island there had been further movement in the affair. Apart from Mr. Gill's evidence as to his immediate actions to which we have adverted, Mr. Billingsley's friend Mr. J.B. Tanguy had been busy on his behalf in the Island, first of all prior to the meeting in Warrington.

Mr. Tanguy stated he was an Architectural Consultant and had previously worked for Messrs. Speakman Sayers & Partners in consequence of which he knew, in a professional capacity, both the Hotel and Mr. Lapidus.

He had heard from Mr. Hamilton in Guernsey, with whom he was acquainted, that the Grand Hotel was for sale and in consequence had, as we stated above informed Mr. Billingsley.

Following further telephone conversations, Mr. Billingsley had requested him to act as courier to take papers to London, though he did not know who had asked for the package. Mr. Tanguy had however told him that the most useful item would be an aerial photograph which he told him was available and which he got from his old office after speaking to Mr. Lapidus.

In his evidence in chief, Mr. Tanguy placed this call as being about 16th June. He had telephoned Mr. Lapidus at his home from the Grand and had been invited round. He explained his mission and his involvement with Mr. Billingsley, in response to which Mr. Lapidus said he still wished his representative, Mr. Gill, to take the documents to London, but that he was by all means to get the photograph and send it as well.

Mr. Tanguy, having explained the amount of work which Mr. Billingsley had already done suggested that Mr. Lapidus might consider a commission of 2% to Mr. Billingsley and that Mr. Gill might be dealt with separately. He



understood, he said, that Mr. Lapidus was happy so far and would arrange with Mr. Billingsley. Having failed to get something formal, he then, with Mr. Lapidus' permission, telephoned to Mr. Billingsley and then passed the telephone to Mr. Lapidus for him to speak. It was, he believed, their first contact. We should note however at this point that Mr. Billingsley in his evidence claimed that he had already reached a verbal agreement with Mr. Lapidus before the 11th June.

After some conversation he heard Mr. Lapidus say that he did understand the amount of work which Mr. Billingsley had done, that he should get a commission and that this would be sorted out - a repetition of what he had said to Mr. Tanguy before the telephone call. He added that it seemed to him that there was no half way meeting point between the two.

Mr. Lapidus on the other hand, stated that he did not know of the meeting between Mr. Billingsley and De Vere's before it took place, but only subsequently from Mr. Gill (he believed) and put the date and time of the meeting at 2.30 p.m. on June 20th, that is, on the afternoon of the day on which Mr. Billingsley met De Vere's in Warrington.

Mr. Lapidus stated that at the meeting Mr. Tanguy had told him that De Vere's were interested, that he, Mr. Tanguy was to be the messenger to go to Mr. Billingsley, that Mr. Tanguy had said he thought Mr. Billingsley deserved and ought to get commission and that he (Mr. Tanguy) was there to negotiate it, to which Mr. Lapidus replied, so he said, that he would have to meet Mr. Gill and that there was only one commission to be paid.

He was adamant that there were no telephone calls, whilst Mr. Tanguy was there; and that Mr. Tanguy did not telephone Mr. Billingsley on that occasion. At that time he said, he had never spoken to Mr. Billingsley. It was left, he said, that he would arrange another meeting, at which, he told us, he wanted Mr. Gill to be present as it was evident that Mr. Billingsley

had the documents and could be claiming commission.

In cross examination Mr. Lapidus reiterated that the meeting with Mr. Tanguy took place on the 20th June and not the 16th, that it did not last very long and opined that it occurred as a result of Mr. Billingsley having been told in Warrington that he would not be retained by De Vere's.

It is our view that, given the conflicting accounts, it is of great importance to establish the date of this meeting between Messrs. Tanguy and Lapidus.

It is common ground that a meeting was held between Messrs. Lapidus, Tanguy and Gill on June 23rd to which we will come in due course. Prior to this meeting, which he says he called because of his meeting with Mr. Tanguy, Mr. Lapidus dictated, possibly on the 22nd, a long letter to Mr. Gill which he dated and signed on the 23rd in order to hand it over at the meeting on that day. It had been typed he said by his secretary at The Grand. The letter was a long one, and although it is out of sequence we reproduce it here. It read as follows:-

"David and I have become increasingly concerned regarding the proposed meeting with Board Members of either Greenall Wittley/de Vere's due for next Monday and Tuesday, because of what is appearing to be a claim for commission if the hotel is sold.

I feel I ought to get this letter to you before the meeting with John Tanguy and certain points from it could then be made clear to him because in certain respects there is a hint of a type of blackmail.

As you know the hotel is not generally for sale and it has only ever been offered on a one to one basis either by you or by David and I direct. We have always said that if anyone came along with the right price then the hotel could be for sale.

We have no reason to alter that position, therefore, what has happened is indeed very surprising. I accept that fact that you obtained a contact via Terry Kitchen which led you to take a package of documents to London on the 11th June, 1988, and if you remember I insisted that you took them rather than a messenger, whom I learned yesterday was suppose to be John Tanguy. In London at the Sporting Club you met a Mr. Billingsley, an ex resident of Jersey, who informed you that he had clients who wished to be very secretive but had a desire to buy a hotel in Jersey. I understand he told you they were people of substance and there were to be three or four board

meetings culminating in a meeting in the North of England last Monday, 20th June, 1988, and Mr. Billingsley made it known to you that he was not concerned about a commission in respect of himself. This we have always understood and surely must be true because I understood that he had sat in on a board meeting and could not have done that without being on some sort of a retainer from the people with whom he sat, especially as we are led to understand that they are a public company.

This has been my understanding until a few days ago when I was amazed to receive a call from John Tanguy who said he wished to see me with some urgency, that it was very important and that it affected me personally. When I met him he posed the question as to whether you had spoken to me about him and frankly I did not connect Billingsley with him, but he then told me that he was connected with Billingsley and I immediately realised then where the question of the aerial photograph came from. He intimated that and he thought that he was due for some commission from you and I think I made it clear that you and he would have to come to an arrangement regarding any commission. He also told me that Billingsley was a personal friend of his and still required the aerial photograph and he said he knew where there was one and this in due course was sent on to Billingsley.

Various conversations have gone on about the price and they differ from your end as to John Tanguy's end and we have now learned that John Tanguy is supposed to meet, bring them to the hotel and introduce them to David. Whereas I understood from your angle that they are being looked after and will make themselves known sometime on Tuesday. All I can say is this is extremely strange for Board Members of a public company and the way this has been handled makes one wonder with whom one is dealing. I even had a hint from John Tanguy that Robin Billingsley could prevent these two directors from coming over if he felt inclined to do so.

This is obviously a ludicrous situation and I cannot believe that two directors of a public company who express a serious interest in Jersey, when there is a willing seller at the right price, could be prevented or persuaded not to come by a contact because of certain persons not being satisfied with how the commission side is being handled.

We have to say that there will be only one commission paid if the sale is successful and therefore, any commission has to come from you and as far as we are concerned, we need to be assured that we are dealing with people of integrity, that we know their names, that we know that they are serious negotiators and that they will be met and introduced to the owners of the hotel on a proper basis.

Finally, I must say that it is strange indeed that more information has not been available and I am sure the gentlemen concerned being members of the board and those are the only people we would wish to talk to, would be as dismayed as we are, if they knew of the

ramifications that have gone on. Whatever conclusion this reaches will now be entirely up to David and I on the assumption that we are dealing with two important people and I would say that, the less individuals to do with the sale now, unless appointed by us, the better."

In addition we were referred to Mr. Lapidus' diary which merely had "T" in it for the 20th June and to Mr. Tanguy's diary which had entries on the 15th (2 hours) and the 16th (3 hours) with the mention of "Mr. H", by which he stated he meant Mr. Harry i.e. Mr. Lapidus, and not Mr. Hamilton, nothing for the 20th and further entries for the 22nd (4 hours), the 23rd @ 4 p.m. (no time involved put down) and the 24th at noon with Mr. Gill. He admitted that the days were sometimes incomplete and that he did not always keep his diary scrupulously.

A further pointer came from Mr. Hunter who confirmed that the aerial photograph had been produced to the meeting on the 20th June in Warrington.

Last on this point Mr. Lapidus' Secretary, Miss Karen Hughes, was called. She had known Mr. Tanguy as a result of his employment with the Architects. She stated that she had met him in the summer of 1988 on a day when she got back from lunch and found a message on her desk from another employee of the Hotel saying that Mr. Tanguy was asking to speak to Mr. Lapidus as it was to his advantage. She telephoned Mr. Lapidus and told him about it and told him that Mr. Tanguy was coming back. When he did so at about 2.30 p.m. she told him that he could speak to Mr. Lapidus. He did so privately and spoke for a few minutes after which he left, but rang back about half an hour later to say that he could not find Mr. Lapidus' house.

She could not remember whether she gave him the number or dialled it herself; but she did confirm, and was not challenged on this, that Mr. Lapidus' telephone number was not available nor was it in the telephone book.

As to the date, she was positive it was on the Monday or Tuesday of the week commencing the 20th June. She recalled, she said, the whole sequence of events. She knew that the letter, to which we have referred above, was written on the 23rd and that this visit occurred a couple of days earlier.

As we say a meeting had been arranged for the 23rd which was attended by Mr. Gill, Mr. Tanguy and Mr. Lapidus. Prior to the meeting, Mr. Billingsley had, and again there is no dispute as to this, made arrangements for Mr. Hunter and Mr. Reed to come to the Hotel at the end of June.

However, so far as the meeting is concerned and the actions of the parties preceding and during it, there is again a conflict of evidence.

Mr. Billingsley in his evidence in chief stated that he had spoken to Mr. Lapidus, and informed him when the representatives of De Vere's would be arriving. However in cross examination he agreed that he did not tell Mr. Lapidus they were coming and that he had left it to Mr. Tanguy to do so.

On the 23rd June, Mr. Billingsley sent a facsimile message to Mr. Tanguy. The first several paragraphs deal with the arrangements he had made, but they included the following:-

- "F) I hope you have reached a comfort level with Harry in relation to the commission mentioned and look forward to hearing from you to qualify the position."
- "G) John, please do not allow Mr. Gill to be involved with my people in the negotiations or to start touting for business with them for which he is well known in the brokers field."

This facsimile was in Mr. Tanguy's hand at the meeting and was brought out there by him when the last paragraph was shewn to Mr. Gill.

Mr. Billingsley stated that he had sent this via Mr. Tanguy because he thought that his commission had been agreed by telephone; that he had reached a verbal agreement prior to 11th June and that he was waiting for "hard copy" i.e. written confirmation of the agreement.

The meeting, Mr. Tanguy was called, he believed, by Mr. Lapidus and took place in the afternoon. When he arrived there he found that Mr. Gill, whom he did not know, was also there. He did not know that Mr. Gill was to be present, nor was he aware that either Mr. Gill or Mr. Lapidus knew who the prospective purchasers were. He had he said only just become aware himself.

Mr. Lapidus however, he said, confirmed his knowledge of the prospective purchasers, said they seemed an excellent choice and asked if the figure were yet known. According to Mr. Tanguy no specific figures as to price were mentioned at the meeting.

The next item which arose was the question of commission. According to Mr. Tanguy, Mr. Lapidus said he had agreed to pay commission to Mr. Gill, that he only wanted to pay one commission but that he appreciated the amount of work Mr. Billingsley had done and accepted that he should get some commission but that no actual conclusion was reached other than that it might be possible to vary the amounts in order that everyone be taken care of. He did not on that day know of the letter of the 23rd June (supra).

He had, he said, arranged for Mr. Billingsley to telephone during the meeting which he did. Mr. Lapidus answered, and passed the telephone to him. Mr. Billingsley spoke to him and asked if he had reached, in the words of the facsimile, a "comfort level" as to his commission to which he replied that he had not and passed the telephone to Mr. Lapidus.

After some discussion as to the purchasers, he said it was clear that the question of commission was raised as Mr. Lapidus confirmed his thanks to him and said he was due a commission for his work. He heard however nothing as to specific levels or amounts.

After the meeting he had telephoned Mr. Billingsley to report in answer

to which Mr. Billingsley replied that so far as he was concerned it was different to what he thought he had agreed on the telephone and very different to what he expected.

As he had left the meeting, he had made an arrangement to meet Mr. Gill the following day and this also he reported to Mr. Billingsley. Mr. Billingsley, he said, agreed that he had no option and should attend.

In cross examination however he agreed that the question of commission had been initiated by him.

Mr. Gill's evidence of the meeting is on several issues at odds with that of Mr. Tanguy. He said that Mr. Lapidus telephoned him on the 22nd and told him the identity of the purchaser, which he said he had learnt from Mr. Tanguy. He (Mr. Lapidus) had also added that Mr. Tanguy had telephoned him asking for commission. Mr. Gill said that he was less than pleased at that, as Mr. Billingsley had said he would be paid by the buyers. He agreed however to meet at Mr. Lapidus' house the following day: he understood Mr. Tanguy had requested the meeting.

He went, he said to the house at 4 p.m. the following day and had read the first four paragraphs of the letter of the 23rd June (supra) when Mr. Tanguy whom he had never met arrived with a bundle of facsimiles. That of the 23rd June from Mr. Billingsley to Mr. Tanguy (supra) upset and annoyed him, although he was not surprised by paragraph F. as Mr. Lapidus had advised him of the reason for the meeting.

He confirmed that Mr. Tanguy had asked for 2% commission for Mr. Billingsley and, disagreeing with Mr. Tanguy, that Mr. Tanguy had then said the purchasers would pay £14.4 m. which took Mr. Lapidus and himself by surprise. It was at this point that the telephone rang. He understood that it was Mr. Billingsley who had rung. Mr. Lapidus passed the telephone to Mr. Tanguy who said that they were in the middle of discussing commissions

and who did not discuss them on the telephone. The conversation was very short and the telephone was handed to Mr. Lapidus who said goodbye.

Mr. Gill was embarrassed, he said, at people whom he regarded as being in his chain meeting his principal without him. He also stated that Mr. Lapidus confirmed that there would be one commission payable (to himself).

Following the telephone conversation, the price was, he said, discussed. Mr. Tanguy confirmed the price of £14.4 m. It was not specified but it was his impression that he was talking at all times about the hotel, without counting in the guest houses.

As a result, Mr. Lapidus said to Mr. Gill that if the purchasers were to pay £14 $\frac{1}{4}$  m. he would pay him £250,000; / then 2% which Mr. Tanguy and he had both agreed. Mr. Gill had further said he would require it if £14 $\frac{1}{2}$  m. in writing. It was to be payable to him and he would have to settle with Mr. Tanguy. He felt this offer was quite generous and that he could therefore offer Mr. Tanguy (and Mr. Billingsley) £125,000 on the lower figure and 1% on the higher whilst still being nearly as well off as under the previous agreement.

It was this arrangement he said which Mr. Lapidus confirmed the next day by his letter of the 24th June:-

"Further to our meeting yesterday and my letter of 16th May, 1988, in general terms I agree that if the price of the Grand Hotel whether it be shares or the purchase of a property plus the contents reaches a figure of £14,250,000, excluding the three properties in Pierson Road, then £250,000 will be paid to you in full and final settlement. If the price reaches £14,500,000 or above, always excluding the properties in Peirson Road, then you shall be paid 2%.

I understand that you will deal completely within this sum, the other people who introduced the prospective purchasers and the other people that you know about who expect some commission. This is an internal arrangement between you and them and does not concern us.



The rest of my letter dated 16th May, 1966, still applies particularly the three last paragraphs.

I trust this now settles what could have developed into a very sensitive situation."

Mr. Lapidus' evidence was that he had commenced by being under the impression that Mr. Billingsley was on a retainer from the Purchasers. He believed that Mr. Tanguy had told him of the identity of the prospective purchasers on the 20th June. He wished, and had told Mr. Tanguy that, that there would be only one commission on the sale.

Following the preparation of the letter of the 23rd June supra, he had arranged the meeting at his house with Messrs. Tanguy and Gill on that day.

At the meeting he stated Mr. Tanguy had said he thought Mr. Billingsley should get commission, to which he (Mr. Lapidus) had replied that there would be one commission payable to Mr. Gill and that he must look to Mr. Gill for any commission required. He was handed the facsimiles and was amazed by paragraph F. of that of the 23rd June (supra). He had neither discussed commission with nor indeed, prior to the meeting, spoken to Mr. Billingsley.

At the meeting the telephone rang, he answered it, Mr. Billingsley announced himself and asked to speak to Mr. Tanguy. He handed the telephone to Mr. Tanguy but heard nothing of the conversation, so he said, because he had left the room at that time. The telephone was handed back to him, he said goodbye and put the telephone down.

The next time he spoke to Mr. Billingsley was after De Vere's left on about 29th June.

After the telephone call, he stated that Mr. Tanguy said he knew what Mr. Billingsley expected the purchasers to pay. As a result it was agreed that, subject to him confirming the terms to Mr. Gill, if a better price were to be obtained, the commission would be altered and would be paid to

Mr. Gill who would deal with Mr. Tanguy on behalf of Mr. Billingsley. His reason for doing this was that Mr. Billingsley felt he had introduced the buyer and wanted commission. He (Mr. Lapidus) was agreeable to this if the price were met which it never was.

In consequence he wrote the letter of 24th June (supra). When he wrote it, he wrote it in the knowledge that Mr. Gill already had his letter of the 16th May, which was still applicable to Mr. Gill but did not, in his view apply to Mr. Billingsley or Mr. Tanguy as they had come in afterwards.

Mr. Billingsley's account of the telephone call, however, is that he rang through while the meeting was in progress and spoke to Mr. Lapidus to see if his problem (that of obtaining "hard copy" i.e. confirmation in writing of the agreement he claimed to have entered into) had been resolved. His account is that Mr. Lapidus told him not to worry and that, once again, he had had to accept Mr. Lapidus' assurance that, as a gentleman and a fellow Brummie, he would pay him.

In cross examination Mr. Lapidus asserted that he had written the second paragraph of the letter of the 23rd June (supra) when the first meeting with Mr. Tanguy was fresh in his mind, and that commission must have been mentioned then, though he refused to discuss it. He agreed that he did not ensure Mr. Gill would pay Mr. Billingsley as he could not do so. He denied that at that stage he would have promised anything to anyone; nor he reiterated did he discuss anything with Mr. Billingsley. Indeed he did not know why Mr. Billingsley had telephoned the meeting.

His view was that if Mr. Gill did not agree to pay Mr. Billingsley he, the latter, should get nothing. He had gone on with the arrangements made by Mr. Billingsley because Mr. Gill had been at the meeting and had seen the facsimile. It was more or less a fait accompli that the eventual purchasers were coming over. He reiterated that he had never written to Mr. Billingsley nor Mr. Billingsley to him and that he (Mr. Billingsley) had never obtained

"hard copy", as it was called, from him.

Following the meeting at Mr. Lapidus' house on the 23rd June, Messrs. Gill and Tanguy met as arranged. This meeting took place possibly on the 25th June and at it Mr. Gill produced a letter dated 25th June addressed to Mr. Tanguy which read:-

"SUBJECT TO CONTRACT

This letter confirms our discussions today and our hand-shake agreement concerning commissions to be paid to you by me on the sale of the Hotel property concerned to a party or parties introduced by you or your colleagues.

As agreed the commission will be £125,000 if the sale value realises £14,250,000 plus contents and excluding the three properties adjacent. If the price reaches £14,500,000 or above always excluding the adjacent properties, the commission will be 1%, in both cases in full and final settlement.

I understand that you will deal completely with this sum and with the other people who may be involved from your side. This is an internal arrangement between you and them, and does not concern me. I exclude only the accountant, with whom I spoke originally, which will be my responsibility.

Commission will be paid on the sale of the freehold property excluding the three adjacent properties or by the price received for the shares of the Limited Company which owns the Hotel.

The price includes the fixtures and fittings and moveable furniture, except for specific personal items loaned by the proprietor, these being mostly paintings in the hall, a number of Capelans and some prints.

The owner retains the right to refuse any offer from any source and the right to sell to any person or persons remain with them. They also retain the right to withdraw the property or company from a sale at their complete discretion, without disclosing any reason, in which case no fee would be payable."

Mr. Tanguy's evidence was that it was produced on a "take it or leave it" basis and that Mr. Gill put it to him that he (and Mr. Billingsley) had no option but to accept it. Mr. Tanguy agreed with this, but stated he would only do so on the understanding that Mr. Gill would return to Mr. Lapidus to have the agreement reworded prior to the (then prospective) purchasers coming over. In particular, he did not like the figure levels as commission was only payable, on the face of the letter, if a certain figure were to be achieved. However, he said, Mr. Gill had agreed that regardless of what

he managed to achieve with Mr. Lapidus, he would be covered for a certain amount which would be split in half.

Mr. Gill confirms to some extent Mr. Tanguy's account of the interview. He accepted that Mr. Tanguy, whom he described as being in awe of Mr. Billingsley, asked him to go back to Mr. Lapidus, but he felt he could not do so and indeed it would be wrong to do so. However, he denied strongly that he had agreed to pay Mr. Tanguy half of any commission he would receive for a sale at under £14½ m.

The next step was that Mr. Tanguy, there and then wrote a letter, also dated 25th June which reads:-

"With regard to the commissions payable to myself as per separate letters of agreement, I undertake that should these amounts be subject to Jersey Tax I will undertake to settle any such with that department that they may require.

This refers only to the amount payable to myself and refers to the sale of the said Hotel."

He agreed in cross examination that there was no mention of any other arrangement for commission in this letter, which he agreed was drastically important and the omission of which an error on his part.

On leaving the meeting, which he regarded as being not very successful, Mr. Tanguy telephoned Mr. Billingsley whose reaction was not so harsh as Mr. Tanguy had thought likely when he reported that he had accepted Mr. Gill's offer backed up as it was in his view by the offer of half the commission; he did not seem surprised that Mr. Tanguy had not reached a "suitable" agreement, and merely asked him, he said, to keep trying. In reply to Advocate Voisin on re-examination he said that after the 25th June he got the impression that there was something going on: before that little things would annoy Mr. Billingsley but after that big things did not worry him.

Mr. Billingsley's account of the events following the meetings of the 16th or 20th, 23rd and 25th June however differs from that of Mr. Tanguy.

Mr. Billingsley's account was that following their meeting in London, Mr. Gill called him continuously as did he Mr. Gill; that he had also spoken to Mr. Lapidus who was concerned that he would not give him details of the people who were arriving; and that, insofar as the "comfort level" was concerned, Mr. Tanguy had met Mr. Lapidus prior to the purchasers arrival in Jersey and he had asked Mr. Tanguy to see if he could get from Mr. Lapidus in writing a commitment to his commission of  $1\frac{1}{2}$  or 2% on a successful transaction.

He said there were two meetings, one where Messrs. Gill and Tanguy were present on which Mr. Tanguy reported and told him about the letter regarding commission sent to Mr. Gill (which shocked him) and a second to which he sent Mr. Tanguy on his own before the Purchasers arrived in Jersey, to resolve the question of his commission being put on paper. During this latter meeting he had rung through to see if his problem regarding "hard copy" had been resolved, when Mr. Lapidus told him not to worry about "hard copy" as he wished to keep it as secret as he could; and that if he put any more commitments on paper he might experience problems with his trustees. Mr. Lapidus had again promised him that if he were successful he would be paid.

In cross examination he somewhat amended this statement. He knew he said that there was an agreement somewhere between Messrs. Lapidus and Gill, but that he wanted his "hard copy" before the purchasers arrived. Mr. Tanguy, he said, did not report to him, and he only received the letter of the 25th June well after that date, on the 9th July, when he had told Mr. Tanguy that it (the letter of the 25th June) was ludicrous and was nothing to do with him. He was only happy, he said, with his arrangement with Mr. Lapidus regarding his commission.

On or about the 27th June, in pursuance to the arrangements made by Mr. Billingsley, representatives of the purchasers (one of them Mr. Hunter)

arrived in the Island to view the hotel.

As to events subsequent to the Purchasers' visit, Mr. Billingsley went on to say that after hearing, through the purchasers, that the visit to Jersey had been successful and that it was thought that they might well proceed, he had kept in touch with Mr. Lapidus to keep his position clear as to his commission. After the purchasers had left the Island he had rung Mr. Lapidus seven or eight times a day for three or four days and had spoken to him or a lady at his house once or twice.

He had also, he said, continued to play a part in the negotiations.

Fairly soon after the visit Mr. Lapidus had rung him in London and asked him if he could convince the Purchasers to buy the Wine and Spirits Group (RDF). As a result he sent for the papers by facsimile on the 11th July.

Although the papers were not delivered to him he did discuss this with, inter alia, Mr. Hunter (who did not, as we recall, mention it in his evidence) and convinced the Purchasers to buy the business. Mr. Lapidus, however, who wrote to the Purchasers on the 19th July about RDF stated that during the visit of the Chairman of the Purchaser to Jersey he had then heard about the business which was the reason he had so written. Mr. Billingsley's facsimile of the 11th July meant nothing to him and he had not seen it when it came. He had never discussed RDF with Mr. Billingsley.

On 25th July Mr. Billingsley sent a further facsimile to Mr. Hunter:-

"Just to confirm our telephone conversation of this day.

Mr. Lapidus will have with him the documents you require for Mr. Thomas at the meeting Thursday evening in Jersey.

If you need any further assistance you can contact me at the following number after 3.30 pm Tuesday 26th July 1988....."

Mr. Hunter however was unable to recall it and thought it might have concerned RDF with which he had not himself dealt.

We have also had produced to us a facsimile being a memorandum dated 21st July and stated to be from Mr. Billingsley to Mr. Tanguy, the subject being the Jersey Hotel Sale. Mr. Billingsley, who appears to have signed it in London on the 29th July, told us that it was in fact never sent to Mr. Tanguy but instead to his legal advisers. After detailing his claims to have introduced the Purchasers, it contains the following paragraphs:-

"Mr. Lapidus has offered Mr. Gill £100,000 and Mr. Gill has offered me half but Mr. Lapidus will not put this in writing.

Mr. Lapidus had manipulated and changed his story all the way through this transaction.

John Tanguy was my agent to collect my fee from Hugh Gill hence his letter to John offering to pay."

We may say at once, that in cross examination when he was asked if he looked through Mr. Tanguy to Mr. Gill, Mr. Billingsley replied that he had no claim against Mr. Gill. Mr. Billingsley did however previously say that he had tried to negotiate with Mr. Gill; and that he resented Mr. Gill's claim to commission as he had only acted as a courier to deliver the package.

Mr. Billingsley's last contact, he said, with Mr. Lapidus was when the latter telephoned him on the day they both knew the Board meeting was taking place, when Mr. Gill also rang him to ask him to enquire what was happening. He did so and reported the result to Mr. Lapidus who said he could not thank him enough and asked him to remain quiet. Mr. Lapidus had written to Mr. Dermody of the Purchasers on the 10th September which was he said before he made the call. On being reminded (by his own Counsel) of the offer of the 5th August Mr. Billingsley amended his answer to say that it was obviously before the offer letter.

We are satisfied that Mr. Billingsley did telephone to the Purchasers. Mr. Lapidus denied that he asked him to do so, but said that he had told

Mr. Gill who was pressing him that Mr. Gill could telephone to find out. Mr. Gill in his evidence stated Mr. Lapidus had asked him to find out, that the Board refused to speak to him and that having asked Mr. Lapidus, who agreed, if he could telephone Mr. Billingsley he did so, as a result of which Mr. Billingsley reported back to him (Mr. Gill). This was, Mr. Gill says on about the 11th July.

During July Mr. Gill stated that there were persistent telephone calls from Mr. Billingsley over a period asking if he had settled with Mr. Lapidus, to which he had replied that an arrangement had been made with Mr. Tanguy; that the latter had said that the price would be £14.4 m. and that commission was based on that. Mr. Billingsley's answer, he said, was that that was not good enough.

As a result of these calls he felt forced to go to a meeting at Mr. Lapidus' house on the 20th July, when Mr. Lapidus stated that he did not believe any commission was payable as he had been grossly misled over the price Mr. Tanguy had indicated would be £14.4 m. Finally Mr. Lapidus had said he might make Mr. Gill and ex gratia payment of £100,000 and then got up and walked out. Mr. Lapidus' view was that Mr. Gill should reach agreement within the terms of what had been agreed. Mr. Lapidus stated that he had never said how much commission he (Mr. Gill) should get but accepted (in cross examination) that Mr. Gill had done enough to earn the commission provided for in the letter on condition that he cleared the other liabilities through the chain. His reason for telling Mr. Gill he was not entitled to commission on that day was that he had not received an offer and was put out that he was having to conduct the negotiations himself. Mr. A.D.H. Lapidus confirmed that Mr. Gill did ask for the meeting as he had stated that he had been telephoned by Mr. Billingsley who wanted to clear the air.

Following this meeting Mr. Gill stated he had received a telephone



call from Mr. Billingsley who asked him if he had sorted it out to which he had replied that if he did get £100,000 he would give Mr. Billingsley half. The latter replied that that was not enough and slammed the telephone down. Mr. Billingsley of course had confirmed in his facsimile of the 21st July that he knew that Mr. Lapidus had offered Mr. Gill £100,000; and stated in his evidence that Mr. Gill had offered him half which he thought disgusting.

On the 7th August Mr. Tanguy wrote to Mr. Gill claiming a commission of £125,000 in certain circumstances a letter which in itself Mr. Gill regarded as not taking matters much further forward and to which he did not reply. Mr. Billingsley's comment on this was that this was nothing to do with him, that Mr. Tanguy did not consult him and that this was not his case.

Meanwhile on the 5th August the purchasers made an offer, subject to contract and in due course the Hotel, plus three adjoining guest houses and RDF had been sold for a total of £14 m., the purchase considerations being apportioned as follows:-

The Hotel	£13 m.
The three guest houses	£ $\frac{3}{4}$ m.
RDF	£ $\frac{1}{4}$ m.

From the time of the first visit by the representatives of the Purchasers negotiations were entirely conducted (subject always to Mr. Billingsley's claims, supra) by Mr. Lapidus and his family. Mr Hunter stated that he had been advised that this was Mr. Lapidus' wish; and notwithstanding Mr. Lapidus complaints to which we have referred to above, we are entirely satisfied that this was a decision reached by the Vendors in what they considered to be their best interests. In support of this we note for example Mr. Lapidus' letter to Mr. Eaton of the Purchasers of the 8th July which contains, to say the least evidence of considerable personal involvement in the negotiations.

In our view little more remains to be said as to the facts. On the 8th September Mr. Billingsley sent a facsimile to Mr. Lapidus in the following

terms:-

"I am forced to send this message by fax since I believe that you have made yourself deliberately unavailable to my telephone calls and have failed to return my calls though you have had my telephone and fax numbers for many months.

Verbally on the telephone you have acknowledged to me that you recognised the enormous time, trouble and expense that I have put in to the negotiations for the sale of the Grand Hotel Ltd., including the introduction of the buyers, without which the sale would never have taken place.

You have further acknowledged that I am entitled to the commission of 1.5% of the sale price of the hotel, that is 1.5% x £14,000,000.00 which is £210,000.00.

I shall expect to receive this sum within seven days of the completion date on October 3rd. 1988. Failing which I propose to pursue my claim against you and Consolidated Hotels (C.I.) Ltd. for this sum."

In cross examination on this point Mr. Lapidus agreed that he had not been available as he did not want to take telephone calls. On being asked whether he accepted the contents of the facsimile he answered that when Mr. Billingsley had claimed on an occasion when he had telephoned him, that he had introduced the purchasers (with which claim he (Mr. Lapidus) had agreed) he (Mr. Lapidus) had told him he should look to Mr. Gill because if he were looking for commission he (Mr. Lapidus) had no arrangement with him.

Mr. Billingsley effectively repeated his message on the 20th October when he again claimed £210,000 from the Defendant.

On the 17th October however Mr. Gill was again approached by Mr. Tanguy who wrote to him as follows:-

"As I have had no approach from yourself following the purchase of the property in question by the company put forward by myself and my colleagues, I write to request that you make formal reply to this correspondence.

I wish to know whether or not you intend forwarding any commissions to myself, in order that I may make the necessary arrangements for their onward transmission to my colleagues. Such commission may be in respect of the written agreement that was never completely finalised by yourself, or in respect of your verbal alternative arrangement.

In either case, any sums proposed shall be subject to my agreement prior to their being considered as settlement.

We should we think, in fairness to Mr. Tanguy set out what he stated

his position to be which was that he had had no formal agreement with Mr. Billingsley whom he had known for many years, that he was not personally conversant with how these things worked and that he was satisfied with Mr. Billingsley's promise that he would get something.

In assessing the evidence, we should say at once that we treat that of Mr. Lapidus, unless supported elsewhere, with considerable reserve. It was clear to us that his main object was to ensure that if he had to pay any commission at all, he paid as little as possible. Furthermore, a conviction against him for making an untrue statement in an offer document with the intent to deceive was put to him. He agreed the charge which is set out in the Judgement of the Court of Appeal as under:-

"That by a statement which he knew to be false he attempted to induce persons to enter severally into agreements for disposing of securities, to wit that part of the issued share capital of Channel Hotels and Properties Limited not already owned by him," I interject that the word 'him' is an obvious mistake there for Mr. Kirch, "in that the offer to acquire the said shares contained the statement that save as disclosed herein there is no agreement, arrangement, or understanding between Mr. Kirch or any person acting in concert with Mr. Kirch for the purposes of this offer and any director or recent director or shareholder or recent shareholder of CHAP having any connection with or which is dependent or conditional on the offer."

Mr. Lapidus claimed before us that he did not believe that the statement was false. The Court of Appeal however had no doubt but that the statement in the offer document was untrue (@ p.5).

On the other hand Mr. Billingsley too has had his problems, though, we must hasten to add, not of the same nature. He stated that he did not wish to come over to Jersey which he had quitted after, unhappily, the break up of his marriage, some years before and that he had left considerable debts which he was still in the course of paying off. He was, in our view, not a man to wish to act without being paid: as he himself said, it was not true that he was not concerned about commission; he was very concerned.

So far as the other Plaintiff, Mr. Gill, is concerned, we should say now that where there is disagreement with the other protagonists, we prefer his view. We found him to be a consistent and truthful witness.

We will take, first, Mr. Billingsley's claim. In doing so, we should say at the outset that we are mindful of the authority put to us by Counsel in *John D. Wood & Co. v. Dantata* (1987) 2 E.G.L.R. 23 that it was, to put it no higher conceivable (or as Advocate Clapham put it, that the Court may take the view) that there were two contracts and that thus two commissions are payable. As Advocate Voisin put it, to find for Mr. Gill does not necessarily exclude Mr. Billingsley; and that it is not for him to shew that Mr. Gill is not entitled to commission. We agree with these comments.

Mr. Billingsley's case is put in this way, that there was an actual or implied contract that he would receive commission and that this was based on the verbal discussions with Mr. Lapidus which Mr. Billingsley says took place; that he was entirely responsible for the introduction of the purchasers, that Mr. Billingsley would not have made contact without being authorised and without discussing commission; that for Mr. Lapidus to have put the package together is supportive of this claim; that he had spoken to Mr. Lapidus at the first meeting with Mr. Tanguy on the 16th or the 20th June; that on the 23rd June it was inconceivable that Mr. Lapidus failed to discuss commission with Mr. Billingsley on the telephone when Mr. Lapidus had the chance to reject the claim but did not do so; that Mr. Lapidus would fall over himself to meet the man who had introduced the prospective purchaser; that Mr. Billingsley was never shewn Mr. Gill's letter of the 25th June and never accepted it; and that he accepts that Mr. Gill offered an *ex gratia* payment. His case rests on an agreement with Mr. Lapidus.

Alternatively, it is put that there was an implied contract to pay

what the services were worth and that Mr. Lapidus' conduct was in any event such as to bind him, and cause there to be privity of contract.

We turn first to the meeting in London on the 11th June.

We have no hesitation in preferring Mr. Gill's account to that of Mr. Billingsley. Mr. Gill's account is in our view corroborated by not only by Mr. Lapidus' letter of the 10th June, but by Mr. Gill's letter to Mr. Hamilton of the 15th June. Furthermore we accept his account of the meeting as inherently more probable than that of Mr. Billingsley; and, in particular are satisfied that Mr. Billingsley did inform him that he was not to worry about his commission as he (Mr. Billingsley) would be paid by the buyers.

We accept, as we have said above, that Mr. Billingsley had previously been in touch with the buyers and that he went to see them on the morning of Monday the 20th June; and furthermore that it was from the meeting that the sale eventuated.

Next, we are satisfied that Mr. Tanguy's first meeting with Mr. Lapidus took place on the 20th June and not, as Mr. Tanguy placed it, on the 16th. We find that he was mistaken in doing so. The evidence of the diaries was, in our view inconclusive, and of course Mr. Tanguy had already, by some means, obtained the aerial photograph prior to the 20th and, almost certainly after the 11th. We regard the evidence of Miss Hughes as conclusive; and note also that Mr. Lapidus almost immediately set out his views which were communicated in his letter of the 23rd June. In our view it would not have been in character for him to have waited over the weekend to do so.

As we say, we find that this meeting took place on the afternoon of the 20th June. The meeting which Mr. Billingsley attended in Warrington finished in mid morning and, as we have stated earlier, we find that it

was there made clear to Mr. Billingsley that no commission would be forthcoming to him from the eventual purchasers.

We accept that at the meeting Mr. Tanguy did indeed approach Mr. Lapidus on Mr. Billingsley's behalf for commission. It is, to say the least, a curious coincidence that he should do so on the afternoon (as we have found) of the meeting in Warrington at which it was made clear that no commission was to be forthcoming from the Purchasers; and equally curious given Mr. Billingsley's claim that he had already reached, prior to the 11th June, a verbal agreement with Mr. Lapidus.

There is in our view no sufficient evidence before us to find that Mr. Billingsley telephoned Mr. Lapidus at that meeting. Given however Mr. Lapidus' general attitude, and in addition the terms of his letter of the 23rd June, we accept that it was very likely that he told Mr. Tanguy that he wished to pay only one commission.

There then followed the meeting of the 23rd June at which Mr. Billingsley's fax of the 23rd June was produced. We prefer the account given by Mr. Gill as to what took place. We accept that Mr. Billingsley did in fact telephone through to the house during the meeting. We recall Mr. Tanguy's comment that when Mr. Billingsley first telephoned Mr. Lapidus it was, he believed, their first contact. Given the surrounding circumstances, including the evidence that Mr. Lapidus' telephone number was ex-directory and thus not generally available (and that Mr. Tanguy had had to go to the hotel and enquire from Miss Hughes if she could telephone him) we find that this was indeed the first time Mr. Billingsley had telephoned Mr. Lapidus. We recall that Mr. Billingsley in cross examination withdrew his statement that he had told Mr. Lapidus that De Vere's were coming, having left it to Mr. Tanguy.

All three accept that the question of Mr. Billingsley's commission was raised at the meeting, Mr. Gill saying that he had asked for 2%. We are not

clear why Mr. Tanguy should have raised the question if it had already been agreed: and the facsimile, it will be recalled, asked for a "comfort level" to be obtained, which is not, in our view, the same as a request for written confirmation of an existing agreement.

We accept that (as Mr. Tanguy says) Mr. Lapidus wished to pay only one commission and we also accept that Mr. Tanguy did in fact mention a price of £14.4 m. As we say we accept that Mr. Billingsley did telephone during the meeting, and was told by Mr. Tanguy that no "comfort level" as to commission had been reached. We do not accept that any arrangement was made then and there on the telephone between Mr. Billingsley and Mr. Lapidus. In this regard we again prefer the evidence of Mr. Gill.

Our finding is that following the mention of a price of £14.4m., Mr. Lapidus did agree to increase the commission payable to Mr. Gill and that he would require Mr. Gill to settle with Mr. Tanguy. His letter of the 24th June is, in our view, entirely consistent with this, as is Mr. Gill's letter to Mr. Tanguy of the 25th June.

We recall that Mr. Tanguy had stated that he had informed Mr. Billingsley of the result of the meeting of the 23rd June and that the latter had agreed he should meet Mr. Gill.

Our view is that Mr. Gill's letter of the 25th June was accepted, and that this is confirmed by Mr. Tanguy's letter of that date; and that this too was consistent with our findings regarding the meetings and correspondence to date. We recall also Mr. Tanguy's evidence that after the meeting with Mr. Gill he telephoned Mr. Billingsley whose reaction was not so harsh as he expected and his comment that after the 25th June something was going on. It is perhaps otiose to say that we do not accept Mr. Billingsley's evidence on these points.

The Purchasers arrived on the 27th June, Mr. Lapidus took over the

negotiations and completed them.

It is our view that by this time, the work of either Mr. Billingsley (or, for that matter Mr. Gill) was complete, and their entitlement if any to an agency fee was by now fixed.

We have examined certain of the evidence following that date with a view to seeing if it sheds light upon or alters that which had taken place earlier.

We have to say that we find it strange that if Mr. Billingsley maintained that he had an agreement with Mr. Lapidus he should have written the facsimile of the 21st July, albeit to his lawyers, in the terms which he did; and equally curious, given his statement to us that he had no claim against Mr. Gill, that Mr. Gill gave evidence (which we accept) that Mr. Billingsley had been telephoning him in July asking for commission. We will accept however that Mr. Tanguy's letters of the 7th August and 17th October were not known to Mr. Billingsley who had, of course, claimed a commission of 1 $\frac{1}{2}$ % by his fax of the 8th September direct from Mr. Lapidus.

We have to say that we do not find a shred of evidence to support Mr. Billingsley's claim that he had a contract whether actual or implied with Mr. Lapidus: indeed to our mind, the evidence is all the other way. Nothing in his evidence nor in that of Mr. Lapidus nor the conduct of either of them support his contention. There is nothing, in our view in Mr. Lapidus' conduct which in any way binds him. We find that having found out that the Hotel was for sale, <sup>Mr. Billingsley</sup> he/first found a prospective purchaser and intended to receive his commission there; that when he was disabused of this notion, he attempted to obtain commission from Mr. Lapidus: that when that failed he attempted to raise it from Mr. Gill; and that when he failed to achieve what he regarded as a satisfactory settlement there he reverted to a claim against the Vendor.

We find that there was neither an incomplete agreement; nor do we find



that Mr. Billingsley acted in reliance on an agreement with Mr. Lapidus, for there was none.

The second leg of Mr. Billingsley's claim was based on a claim for quantum meruit, and for this he cited . . . . . a passage from Chitty on Contracts, 25th Edition, Vol. I @ para. 2050:-

"Quantum meruit to fix a price or remuneration. If no price for goods sold has been fixed in the contract of sale, the law will imply that a reasonable price is to be paid, and, in an action for quantum valebant, the court will, as "a question of fact dependent on the circumstances of each particular case," decide what is a reasonable price. Similarly, in a contract for work to be done, if no scale of remuneration is fixed, the law imposes an obligation to pay a reasonable sum (quantum meruit). The circumstances must clearly show that the work is not to be done gratuitously before the court will, in the absence of an express contract, infer that there was a valid contract with an implied term that a reasonable remuneration would be paid; this principle may extend to services performed in anticipation that negotiations will lead to the conclusion of a contract, provided that the services were requested or acquiesced in by the recipient.

The court may infer from the facts a contract to pay for services to be rendered, although this entails disregarding the actual intention of the parties at the time;"

The problem which he faces in relying on this point was answered by Counsel for the Defendant who first cited:- 4 Halsbury 1. Agency - para. 801:-

"Estate agent's commission. A contract by which an owner of property puts it into the hands of an agent for letting or sale amounts to a promise binding upon the principal to pay a sum of money upon the happening of a specified event through the instrumentality of the agent. It is not a contract of employment in the ordinary meaning of those words for, except where he is appointed as sole agent, the agent is under no obligation to do anything, and consequently no term can be implied in such a contract that the principal will not so act as to prevent the agent from earning his commission, as by disposing of the property himself or through another agent or by breaking off negotiations before the happening of the specified event. Once, however, an agent undertakes work and enters upon it, he has a duty to take reasonable care in connection with it. What the event is, on the happening of which the money is payable, must depend upon the construction of the contract and the clarity with which the event is defined by the contract and there are no special rules of construction applicable to estate agency contracts.

If the agent desires to bind the principal to pay commission, not only on sale but on the introduction of a person who makes an offer to purchase, as contrasted with one who actually buys, he must use clear and unequivocal language to that effect."

together with a further passage from Bowstead on Agency, 15th Edition,  
@ 213 and 214:-

"Quantum meruit where no contractual right. If services are rendered by the agent not pursuant to a contract, but they were freely accepted by the principal with full knowledge, the courts may, on principles of restitution, award a reasonable sum to the agent as remuneration on a quantum meruit. Thus, the original contract under which the services were rendered may have been a nullity, because for example, subsequently rescinded or made without authority (ratification being impossible), or it may have contained terms so vague or uncertain as to make the contract unenforceable, or the parties may have provided that remuneration shall be such as they shall subsequently agree but they thereafter fail to reach agreement. In these cases no contract will exist and there can therefore be no express or implied terms relating to remuneration. But quantum meruit is only available where remuneration was intended.

Contractual right. This situation must, of course, be distinguished from that in which P asks A to perform a service and A does so. Request and performance will normally create a contract and, subject to the consideration discussed above, reasonable remuneration will be payable pursuant to an implied term of that contract rather than give rise to a claim upon a quantum meruit in restitution. Equally, the contract may itself provide for reasonable remuneration where for some reason commission is not earned."

We should say at once that we are satisfied that, although Mr. Lapidus knew of the services which were being performed, he did not have full knowledge of the circumstances nor did he intend to give Mr. Billingsley any remuneration, because, as we have found, he intended to pay one commission (through Mr. Gill).

Advocate Voisin also relied on the statement in *British Bank for Foreign Trade Ltd. v. Novinex Ltd.* (1949) 1KB 623, 624 & 625:-

"The court approved the statement of the trial judge as to the law applicable to the first point:- "The principle to be deduced from the cases is that if there is an essential term which has yet to be agreed and there is no express or implied provision for its solution, the result in point of law is that there is no binding contract. In seeing whether there is an implied provision for its solution, however, there is a difference between an arrangement which is wholly executory on both sides and one which has been executed on one side or the other. In the ordinary way, if there is an agreement to supply goods at a price 'to be agreed' or to perform services on terms 'to be agreed' then, although, while the matter is still executory, there may be no binding

contract, nevertheless, if it is executed on one side, that is, if the one does his part without having come to an agreement about the price or the terms, then the law will say that there is necessarily implied, from the conduct of the parties a contract that, in default of agreement, a reasonable sum is to be paid."

and on Way v. Latilla (1937) 3 AER 759 (H.L.) where there was a contract of employment between the parties which clearly indicated that the work was not to be done gratuitously.

He then claimed that the instruction to send the documents to Mr. Billingsley constituted privity of contract. We have however already found against him on this point by preferring Mr. Gill's account as to how the papers found their way into Mr. Billingsley's hands, and as to Mr. Billingsley's statements at that time as to the source of his commission.

Our attention was also drawn to the following passages from Luxor Ltd. v. Cooper (1941) 1AER @ 43 and 52 a case which has been previously followed in this Court:-

@ page 43:-

"A few preliminary observations occur to me. (1) Commission contracts are subject to no peculiar rules or principles of their own. The law which governs them is the law which governs all contracts and all questions of agency. (2) No general rule can be laid down by which the rights of the agent or the liabilities of the principal under commission contracts are to be determined. In each case, these must depend upon the exact terms of the contract in question, and upon the true construction of those terms. (3) Contracts by which owners of property, desiring to dispose of it, put it in the hands of agents on commission terms are not (in default of specific provisions) contracts of employment in the ordinary meaning of those words. No obligation is imposed on the agent to do anything. The contracts are merely promises binding on the principal to pay a sum of money upon the happening of a specified event, which involves the rendering of some service by the agent. There is no real analogy between such contracts and contracts of employment by which one party binds himself to do certain work and the other binds himself to pay remuneration for the doing of it."

and @ page 52:-

"The expression "implied term" is used in different senses. Sometimes it denotes some term which does not depend on the actual intention of the parties but on a rule of law, such

as the terms, warranties or conditions which, if not expressly excluded, the law imports, as, for instance, under the Sale of Goods Act and the Marine Insurance Act. The law also, in some circumstances, implies that a contract is to be dissolved if there is a vital change of conditions. However, a case like the present is different, because what it is sought to imply is based on an intention imputed to the parties from their actual circumstances. There have been several general statements by high authorities on the power of the court to imply particular terms in contracts. It is agreed on all sides that the presumption is against the adding to contracts of terms which the parties have not expressed. The general presumption is that the parties have expressed every material term which they intended should govern their agreement, whether oral or in writing. It is well-recognised, however, that there may be cases where obviously some term must be implied if the intention of the parties is not to be defeated, some term of which it can be predicated that "it goes without saying", some term not expressed, but necessary to give to the transaction such business efficacy as the parties must have intended. This does not mean that the court can embark on a reconstruction of the agreement on equitable principles, or on a view of what the parties should, in the opinion of the court, reasonably have contemplated. The implication must arise inevitably to give effect to the intention of the parties. These general observations do little more than warn judges that they have no right to make contracts for the parties. Their province is to interpret contracts. However, language is imperfect, and there may be, as it were, obvious interstices in what is expressed which have to be filled up. Is there, then, any reason in the present case for thinking that there is some defect in expression, or something omitted because it seemed too obvious to express. I cannot find any such reason."

We have no doubt but the passages cited for the Defendant are the more in point and we agree with his Counsel that Mr. Billingsley had not made out his contract; nor had he made out a sufficient case, or indeed in our view, any case, either for a Quantum Meruit or for an equitable payment.

Although we are not without some sympathy for Mr. Billingsley whose visit to Warrington was the immediate cause of the sale we therefore dismiss his claim.

We turn now to that of Mr. Gill. There is no doubt but that he received a letter of instruction. We have also found that when he met Mr. Billingsley in London on 11th June he was under the impression, communicated to him by Mr. Billingsley, that the latter was the agent of and acting for the

prospective purchasers whose identity was of course unknown to Mr. Gill. His claim may perhaps be summarised in this way, that he had set up a chain which brought him, as he understood in contact with the Purchasers through their Agent and that he has therefore done sufficient, as Mr. Lapidus concedes in his evidence, to be paid. His chain ran through Mr. Kitchen and Mr. Hamilton and is, he claims, completed when he met Mr. Billingsley.

So far as completing negotiations under the letter of the 16th May is concerned, we are quite satisfied, as we have said, that these were carried on by Mr. Lapidus, at his own wish, once the Purchasers had arrived in the Island.

Advocate Clapham relied (as did Advocate Michel) first on the well known passage from Chitty op. cit. Vol. II para 2311:-

"Summary of principles relating to estate agents. "First, when an agent claims that he has earned the right to commission, the test is whether upon the proper interpretation of the contract between the principal and the agent the event has happened upon which commission is to be paid. Secondly, there are no special principles of construction applicable to commission contracts with estate agents. Thirdly, contracts under which a principal is bound to pay commission for an introduction which does not result in a sale must be expressed in clear language."

Advocate Michel also cited to us a passage from para. 2312:-

"Agent must be effective cause of transaction. 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."

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."

He referred also to a passage in 4 Halsbury I @ para 800:-

"An agent employed to achieve a particular purpose will not be entitled to commission unless he is the effective cause of the purpose being achieved. An agent employed to sell property on commission who fails to do so but agrees to buy from his principal, does not earn his commission in the absence of express agreement. To be an effective cause the agent need not necessarily complete or take part in the negotiations."

and a further passage @ para. 802:-

"Transactions in respect of which remuneration may be claimed. Remuneration can be claimed only on transactions which are the direct consequence of the agency. It is not necessary that the agent should actually complete the transaction, but he must show that it was brought about as the direct result of his intervention. It is not sufficient to show that it would not have been entered into but for his services, if it resulted therefrom only as a casual or remote consequence. It follows therefore that, where several agents are concerned in negotiating a transaction between the principal and a particular third party, the agent entitled to remuneration is not necessarily the agent who first introduces the business to him, but the agent who is the effective cause of the transaction being completed.

The rule that an agent is entitled to remuneration when his intervention was the effective cause in bringing about the transaction between the principal and the third party is exemplified in cases where an agent has been held entitled to a commission upon sale to a purchaser introduced by him, or through him by other agents, although the sale was effected directly between the principal and the third party, at a lower price than the minimum stated to the agent, or on terms which the agent had advised the principal not to accept."

His case, he asserts, is that the introduction through Mr. Billingsley was not a casual or remote consequence. It was a direct, if not necessarily an immediate result of his agency (& v. Bowstead, op. cit. @ 177). There is, he says (& v. Coles v. Enoch, (1939) 1 AER 614 & 3 AER 327) no break in the chain of causation and no novus actus interveniens.

In our view the authorities serve to support the claim of Mr. Gill on the facts which we have found.

We therefore have no hesitation in finding for Mr. Gill on his claim and give Judgement accordingly.

Authorities cited:

- Bradley -v- Bates (1982) JJ 197.  
Broadland Estates -v- Chapman (18th July, 1989) Jersey Unreported.  
Channel Hotels & Properties -v- Parrish (1975) JJ 279.  
De Gruchy -v- Pirouet (24th November, 1989) Jersey Unreported.  
Intermed Services -v- Shield Investments (9th April, 1986) Jersey Unreported.  
Langlois Ltd -v- La Pulente Developments (1970) JJ 1497.  
Parrish -v- Channel Hotels & Properties (1974) JJ 91.  
Prator -v- Hales (10th November, 1984) Jersey Unreported.  
Prestige Properties -v- Styles (13th March, 1989) Jersey Unreported.
- Coles -v- Enoch (1939) 1 All ER 614 & 3 All ER 327.  
Alpha Trading -v- Dunshaw Patten (1981) 1 All ER 482.  
Bentleys Estate Agents -v- Granix (1989) 27 EG 93.  
British Bank for Foreign Trade Limited -v- Novinex Limited (1949) 1 KB 623.  
Bruner -v- Moore (1904) 1 Ch. 305.  
Chesterfield -v- Zahid (1989) 29 EG 75.  
Christie Owen -v- Rapacioli (1974) 2 All ER 311.  
Davis -v- Trollope & Sons (1943) 1 ER 501.  
De Bussche -v- Alt 1878 8 Ch. D. 286.  
Dennis Reed Limited -v- Goody & Anor (1950) 2 All ER 277.  
George Trollope & Sons -v- Martyn Brothers (1934) 2 KB 436.  
Green -v- Bartlett (1863) 14 CB (NS) 682.  
Hampton & Sons Ltd -v- George (1939) 3 ER 627.  
John D. Wood -v- Dantata (1987) 2 EGLR 23.  
John Meacock & Co -v- Abrahams (1956) 1 WLR 1463.  
Luxor (Eastbourne) Ltd -v- Cooper (1941) 1 All ER 33 at p.p. 43 and 52.  
Way -v- Latilla (1937) 3 All ER 759 (H.L.).  
W.J. Alan & Co -v- El Nasr Export (1972) 2 QB 189.
- Bowstead on Agency 15th Ed. Chapter 7 p.p. 172-207, and p.p. 210-233, 240-244.

Chitty on Contracts 25th Ed. Vol. 1: Incomplete Agreement paras. 109-122;  
Contractual Intention paras. 123-133; Implied Terms 849-850; Discharge  
by Agreement 1495-1502.

Chitty on Contracts 25th Ed. Vol. 2: Recompense paras. 2047-2050;  
Specific Contracts 2306-2320.

Halsbury's Laws of England 4th Ed. Vol. 1 paras. 752-755; 799-807.

Hardy Ivamy, Casebook on Agency, 3rd Ed. 1987 p.p. 23-47.

"The Nature of Estate Agency" J.R. Murdoch (1975) 91 LQR 357.