

ROYAL COURT

24th October, 1991

155.

Before: P.R. Le Cras, Esq, Commissioner, and
Jurats Coutanche and Le Boutillier

Between: F. Le Gallais and Sons Plaintiff

And: Sandra Wakeham Defendant
(by original action)

AND

Between: Sandra Wakeham Plaintiff

And: F. Le Gallais and Sons Defendant

And: Phillips Son and Neale Third Party
(by counterclaim)

Judgment on the counterclaim
(original claim having been
settled, except for the
question of costs)

Advocate S. Slater for F. Le Gallais & Sons;
Mrs. S. Wakeham on her own behalf;
Advocate M. St. J. O'Connell for the Third Party.

JUDGMENT

COMMISSIONER LE CRAS: In or about 1981 Mrs. Wakeham, the Defendant, took a picture into F. Le Gallais & Son, the Plaintiff, in order to sell it in their auction rooms. It suffices at any rate, at this stage, to say that the picture has been lost. The circumstances of its loss are not before us, as Messrs. Phillips Son and Neale, the London firm of auctioneers, have accepted liability. The question which is before us, therefore, relates to the value of the picture.

During the rather complicated circumstances which followed the loss of the picture, the Defendant bought goods to the value of £5,962.07 from the Plaintiff. It was the latter's desire to obtain payment of their account that led them to institute proceedings. Since the proceedings were instituted, the Defendant has paid the account and at the opening of the hearing, as Le Gallais advised the Court, they would not seek interest on these monies despite payment having been withheld for some years. They reserve their position only as to costs, effectively leaving the hearing to be decided between Mrs. Wakeham and Phillips Son and Neale.

We should in fairness say at the outset that Mrs. Wakeham accepted that the reputation of Messrs. Phillips Son and Neale was impeccable and that she makes no imputations as to their fairness or honesty.

We turn now to the evidence which was put before us relating to the value of the picture. In essence, the evidence of Mrs. Wakeham is very simple. Her father and grandfather were antique dealers. She had worked with her father for some twenty years, and during those years they dealt in antiques of all sorts. There were always pictures for sale, it being a buoyant

market for those of good quality. Apart from other antiques which she had sold through Messrs. Le Gallais, she had sold other pictures through their offices. For this picture she approached Mr. Jones, the chief auctioneer at Messrs. Le Gallais. She took in the picture, which she states was an oil painting of a Venetian scene. Mr. Jones, she said, called it a picture of quality. Her evidence continued that she told Mr. Jones to put it to auction; she told him what she wanted and demanded that he should refer any decision to her. She wanted, as she said, to discuss a firm reserve. Her knowledge, it was said, coupled with Mr. Jones' enthusiasm and positive attitude that the picture would sell for nine to ten thousand pounds, had always led her to believe that this was the figure that they were talking about. Mr. Jones, she added, had put this figure on the picture when speaking about raising the maximum amount for it. She told him, she said, what she wanted and that any decision should be referred to her.

She saw the picture again in September, 1981, when she was given a receipt. She then waited; during 1982 nothing happened and in 1983 she found, she says, that Mr. Jones had sent it to England without her authorisation. There then appears to have been a further series of delays in 1983, during which year the Defendant was coping with a series of domestic problems. It was early in 1984 that the Defendant went to see Mr. Peter Le Gallais, the Chairman of the Plaintiff company and as a result a letter was written to Messrs. Phillips Son and Neale on the same day, 20th March. This letter refers to an instruction form JTK07 which I will call the dhobi form, which is undated and unsigned, and contains a reference to a picture which may be the one in question. It refers to "our mutual client", which, the Defendant says is not true. The letter contains the following paragraph, that is the second paragraph:-

"Mr. Libson discussed the sale of the picture with our client in the presence of the writer and informed her that before it went into a sale, a reserve will be placed on it and our client had in mind at that time, a figure in excess of £800 as it had ten years previously been valued for insurance purposes at £650."

The Defendant received, certainly by the end of the month a copy of this letter. On being asked if she taxed Messrs. Le Gallais about the figures she replied that she did not and still hoped to trace the picture. What she did do was to write to Mr. Peter Le Gallais on 30th April, when she did not refer to the very considerable discrepancy in the value between her estimate and that given by Mr. Jones in his letter but wrote, in the last lines of the letter:-

"I am sure that you will understand my anxiety over this matter; quite clearly this picture is of far greater importance than at first realised, having particular regard to the fact that you advised me to send it to a London sale room, as it was too important a picture for the local market".

Her answer under cross-examination when asked why she did not contradict the offer given at the outset was that she wished to convey to Mr. Le Gallais the fact that it was a valuable picture.

We find it most curious that where there is such a large discrepancy between the values, the Defendant did not bring this immediately to the attention of Messrs. Le Gallais.

On 24th July, 1984, Mr. Jones wrote to the Defendant, in the following terms:-

"As promised, I have again seen the head of the picture department of Phillips in connection with your oil painting and I have informed them that if I am unable to receive a satisfactory answer from them in connection with this, we will have to write claiming a figure on this picture and I would therefore be obliged if you could telephone me at

your convenience so that we can discuss the claim. We wrote this letter as a request to discuss what figure was to be put on the picture and envisaging a claim against Messrs. Phillips."

The Defendant claimed that she did discuss the claim and she tried to discuss the figure with Mr. Jones but that all he did was to discuss other pictures which had been lost. She then amended her answer to say that she was sure she had told him the amount she expected for her picture because as far as she was concerned the figure never altered. She was hoping, she said, that if she left it to Messrs. Le Gallais her property would be restored.

Between April and August, 1985, no doubt, by now, displeased at the loss of her picture, the Defendant spent £5,960 with Messrs. Le Gallais. She called on Mr. Peter Le Gallais on 1st August of that year but did not, she said, discuss a figure with him as she sought to enlist his help.

On 11th September, Messrs. Phillips Son and Neale wrote a letter addressed to Mrs. Wakeham at her home and said:

"Mr. Jones of F. Le Gallais & Sons Limited has passed on to me the earlier correspondence concerning the loss of the above painting.

I note that Mr. Libson, the water-colour specialist, received the painting from you at a figure of £800 in May, 1982, to be entered in the sale. As far as I can recollect, I do not remember seeing the painting and my colleague Miss Livesey has made extensive research under the above reference but no record of a sale is to be found. Under the circumstances I apologise for the delay and the loss of your painting. Naturally, we will have to consider the matter of the refund and respectfully ask you to consider a possible satisfactory figure that will be acceptable to yourself. Again, please accept our apologies".

It was signed by Mr. Coetzee, director of the picture department.

On 21st September, 1985, the Defendant replied to Mr. Coetzee. Again although she claims that £800 is totally unacceptable, she does not state the value that she puts on the painting but replies in fairly general terms.

"Thank you for your letter of 11th September, 1985. I was pleased that your department had contacted me at long last. However, I think you might have been misled regarding the estimated value of my lost painting. When I decided to sell my Venetian painting your representative confirmed my own long held belief that it was a work of considerable importance and that a definite reserve figure would be agreed at a later date. That was the last I heard but I must stress the figure of £800 is totally unacceptable. I have sold other valuable items here in Jersey and would not have agreed to my painting being taken to London had I not been assured that a very substantial insurance and reserve would be put on the painting.

I look forward to hearing from you and discussing a more realistic figure."

When questioned about this she replied that her letter was a fraud. The meaning was clear to her. She had meant to say that if it were to be sent she would put a figure on it for insurance and it would not have gone to auction without a reserve.

On 1st October, 1985, Mr. Coetzee wrote again to the Defendant (that is letter number twenty-seven):

"Dear Mrs. Wakeham,

Ref: JTK01 Italian view of Venice.

Thank you for your letter of 21st September, with reference to the above painting. From the earlier correspondence as far as I can gather from Mr. Jones, the figure of £800 is mentioned. However, I appreciate the fact that it was insured for £650 ten years previously.

I am obviously somewhat at sea, as I have never seen the painting and I therefore have to be guided to some extent by the previous history known to me, by Mr. Jones' view and by your own. May I therefore suggest a net figure to you,

taking into account all the deductions that would have been charged had it been through a sale, of £1,000.

I would very much appreciate your views if you think it may assist us in settlement. Maybe you would like to give me a telephone call."

This again was written by Mr. Coetzee.

The Defendant states that she rang him and told him she expected between nine and ten thousand pounds for her picture. She described his reaction as bewildered. This does not agree with the view expressed in the letter of 14th August, 1986, when Mr. Coetzee wrote to Mr. Jones, under the same heading saying:-

"I am in receipt of your letter to Mr. Hawkins, who is away, concerning the missing Venetian scene. I appreciate the fact that you wish this matter cleared up. I can only refer to our letter to Mrs. Wakeham of 1st October, 1985, where we offer her compensation. I have not heard whether this figure is acceptable, I feel that a reply would assist us in settling the matter, please keep me informed".

A copy of this letter found its way to the Defendant only this summer. When it was put to her, she agreed that she was surprised at it and surmised that she might have forgotten the telephone call.

Given the disparity between the figures, we find it surprising that this would not appeared to have registered with Mr. Coetzee.

On the 15th October, 1985, the Defendant visited Mr. Peter Le Gallais. We accept that by this time she was very angry, as anyone might be expected to be when two reputable firms have mislaid a picture, whatever the value might be.

Mr. Le Gallais made a note, which he stated to be contemporaneous. In this note he stated, in paragraph three:-

"I pointed out to her that from my recollection of our previous meeting we talked in terms of £800, as the painting was insured for £600. However, I was not prepared to comment further as I am not a valuer and did not wish to commit myself to any figure."

He could not, he said, recollect now what was said at the time. He thought that as he had written it down, the figures must have been those that the Defendant had mentioned. He had discussed the missing painting with Mr. Jones following the Defendant's first visit but not, he thought, prior to this one. Had Mr. Jones suggested a value, he would have accepted it; but he simply could not remember whether he had done so. He added, what was clearly apparent to us, that his firm had had a good working relationship with the Defendant.

This then brings us to the evidence of Mr. Jones. On a good many points he has asserted that he was unable to remember precisely what had happened after so many years, without having seen the papers for the last five years.

However, on the point at issue, that is the value of the picture, he was quite definite. He agreed that the picture should reach a good price, he agreed it was given to him to sell and he agreed that he was holding subject to instructions. He denied however that the Defendant had told him what figure she wanted and in particular that any firm reserve had been discussed. He went on to add that he had not sold any other picture of this sort for £10,000 at that time; the best price being then up to £3,000. He reiterated during his evidence that he thought it was a nice picture, worth perhaps six to eight hundred pounds but as he had not sold many of that type in the Island he thought he should obtain a second opinion and that the picture would sell well in London. The whole point of sending it to London was that he was not sure of the value himself.

So far as the dhobi form is concerned, although he wrote the name Libson on the top left-hand corner when it was returned to him, the body of the form detailing the goods was completed by a representative of Phillips. Mr. Jones claims that it was this representative who put in the estimate of three to five hundred pounds. He was quite firm in his denial that the value of the picture had fallen dramatically after it was discovered to have been lost and reiterated his denial that the Defendant had ever mentioned £10,000.

We heard evidence that there was a brief meeting at the Old Court House fairly early in the saga but apart from the fact that it took place, we are unable to draw any inference from it.

We have to say that despite the attack on Mr. Jones' credibility and what would seem to be his rather casual efforts to trace the picture, which no doubt contributed to the Defendant's suspicions of what had taken place. We accept his denial that the figure of £10,000 was mentioned to him by the Defendant.

It is of course for the Defendant in this instance to prove her claim on the balance of probabilities. We have to say that she has not done so. She relies on Mr. Jones' initial reaction which was, she claims, that it was worth £10,000. In our view she has failed to prove that allegation, or that she herself mentioned that figure to him. The figure is denied by Mr. Jones and is not mentioned in the dhobi form, indeed quite the contrary and the picture seems to have given rise to no special interest.

Furthermore, apart from her assertion, it is clear that the Defendant never mentioned this figure in the correspondence to which we have referred above, although, in our view it would

have been natural to do so, had £10,000 or thereabouts, always been the value placed on the picture by the Defendant or Messrs. Le Gallais. We should add that her assertions that she fixed the value by comparison with other pictures which she had and her knowledge of the antique trade add in the circumstances nothing to the weight of her evidence. We may perhaps add that we found the offer of £1,000 made some six years ago by Messrs. Phillips, on the evidence we have heard a reasonable even a generous offer. We have therefore to say that on the evidence before us we have no hesitation in dismissing the counterclaim brought by the Defendant and finding for the Third Party, Messrs. Phillips as requested by their Prayer, that their liability is limited to the sum of £1,000.

Judgment will be made accordingly.

Authorities

McGregor on damages: 15th Ed. p. 287-290