

ANGUILLA

IN THE COURT OF APPEAL

CIVIL APPEAL No. 6 of 1997

BETWEEN:

MARK BANNISTER

Appellant

and

ANGUILLA CONNECTION LIMITED

Respondent

Before:

The Hon. Sir Dennis Byron
The Hon. Albert Redhead
The Hon. Ephraim Georges

Chief Justice
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Appellant in person
Mr. Courtney Abel for the respondent

2003: April 3;
2004: January 12.

- [1] **BYRON, C.J.** This is an appeal against the order of the Learned Magistrate that Mr. Bannister pays the sum of \$3135.00 including costs to Anguilla Connection Limited. It gives rise to a simple point of law as to circumstances under which the drawer of a cheque may stop payment on it. The main facts were not in dispute, the particular circumstance being whether an agent can enforce a right to commission from its principal against the third party.
- [2] The dispute arose by virtue of the fact that Anguilla Connection Limited was acting as agents for Mr. Andreas Webster in the rental of property to Mr. Bannister. Mr. Webster confirmed directions that the rent was to be paid directly to him and not to Anguilla Connection Limited. Mr. Bannister had drawn a cheque in the sum of US \$750.00 in favour of Anguilla Connection Limited on 23rd August 1995, and then stopped payment

before Anguilla Connection Limited negotiated payment through its bankers Caribbean Commercial Bank (Anguilla) Ltd. on 25th August 1995. Mr. Bannister paid the rent to Mr. Webster directly. This adversely affected the interests of Anguilla Connection Limited who had not collected all of its commission from Mr. Webster and intended to make deductions from the rent collected before making remittances. Instead of resolving its dispute with Mr. Webster, Anguilla Connection Limited sued Mr. Bannister on the cheque. It argued that under the rental agreement Mr. Bannister was obliged to pay the rent to it and not to the landlord.

- [3] The general rule is that the contract of an agent is the contract of the principal, and consequently the agent is not normally entitled to sue in his own name on a contract entered in a representative capacity¹. Thus Anguilla Connection would not normally be able to sue in its own name for the rental due. More particularly, it could not assert a superior title to the rent than its principal Mr. Andreas Webster. The fact that the rent was in fact paid to the landlord should establish that there was no consideration for the cheque that was issued to the agent.
- [4] The legal principles are set out in the respondent's skeleton argument. The drawer of the cheque would be entitled to stop it for total failure of consideration as discussed in **Halsbury's Laws of England 4th Edition Vol. 4(1) para 497.**
- [5] In this case the undisputed facts indicated that Mr. Bannister paid the rent that was due directly to the landlord. It clearly could not be said that he was obliged to pay the same rent, a second time, to the agent, merely because the agent and the landlord had an unresolved dispute about commission. Any dispute between the principal and the agent about commission is required to be resolved between them and the tenant is not a party to that dispute. It seems very basic law that when the tenant paid the rent to the landlord, the agent could have no further claim against the tenant in relation to that rental payment.

¹ See the discussion in Chitty on Contracts Volume 2, 28th edition para 32-082.

[6] I would therefore allow the appeal and set aside the order of the Learned Magistrate.

Sir Dennis Byron
Chief Justice

I Concur

Albert J. Redhead
Justice of Appeal

I Concur

Ephraim Georges
Justice of Appeal [Ag.]