

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
TERRITORY OF ANGUILLA
(CIVIL)
AD 2008**

CLAIM NO. AXAHCV/2006/0054

BETWEEN:

MICHAEL FLEMING

Claimant

AND

DOROTHY ISLES

Defendant

APPEARANCES:

Mr. Collin Meade for the Claimant

The Defendant by her lawful attorney Mrs. Rose Aimee-Jones (in person).

Date: 2008 30th July

ORAL JUDGMENT

[1] **GEORGE-CREQUE, J.:** Dorothy Isles lives in St. Maarten and owns a parcel of land in Island Harbour, Anguilla. The land is described on the land register as Parcel 148 Block 89319B East Central Registration Section. Mrs. Isles at all times acted through her daughter Rose Aimee-Jones (Mrs. Jones) who she later appointed as her lawful attorney. Mrs. Jones on 13th August, 2004, engaged Arlyn Consultants N.V. acting through Edgar Hubert Lynch ("Mr. Lynch") as the agent to sell the land. This engagement remained in force until December 13th, 2004. Mr. Lynch was to be the sole contact person with regard to the sale of the land. The broker's agreement envisaged a sale of the land for a price of US120,000 with \$8,000 being broker's commission. The Broker's agreement also stated

that the broker was not to accept any deposit on the land and that the broker was not allowed to make any reductions in the sale price without the consent of Mrs. Isles. Mr. Michael Fleming who was interested in acquiring the land travelled to St. Maarten. He was accompanied by Mr. Frederick "Daddy" Harrigan who knew where to locate Mrs. Jones. Mr. Fleming met with Mrs. Jones, and inquired whether the land was for sale. She confirmed that it was and sent Mr. Fleming to her agent Mr. Lynch. Mr. Fleming went and spoke to Mr. Lynch the same day. Later, Mr. Lynch confirmed the terms of sale of the land to Mr. Fleming as being \$112,000.00 with an additional sum of \$8,000 being paid to him by way of broker's fees. The broker's fee was reduced to \$6,000 with the actual price of the land being \$112,000. On 30th August, 2004, Mr. Lynch and Mr. Fleming executed a memorandum headed "RECEIPT" in which Mr. Lynch set out the terms of the sale agreement essentially as follows:

- Paid, on 30th August an amount of \$30,000 by cheque in favour of Dorothy Isles as a non refundable deposit towards the purchase of the property.
- Paid, on 30th August, an amount of \$6,000 by cheque as the broker's fee with an acknowledgment that the brokers' fee was thereby paid in full.
- The amounts paid as a deposit and as the brokerage fee to be forfeited to the seller and the broker if Mr. Fleming did not pay the balance of the purchase price by September, 14th, 2004.

[2] On 9th September, Mr. Fleming wrote to Mr. Lynch to inform that he was ready to pay the balance of the purchase price enclosing a copy of the cheque for the balance of \$82,000 and anticipated closing of the sale on 10th September, 2004. No closing took place on 10th September, as Mrs. Isles did not come to Anguilla for the closing. By 14th September, 2004, again Mrs. Isles or anyone on her behalf failed to close the sale. Mr. Fleming became concerned and gave further time to Mrs. Isles to close the sale. This did not occur and on 10th October, Mrs. Isles' lawyers in St. Maarten wrote to Mr. Fleming's lawyer indicating that Mrs. Isles is not prepared to sell under the conditions proposed by Mr. Lynch and Mr. Fleming.

[3] Mr. Fleming seeks specific performance of the Agreement made between Mr. Lynch (as agent for Mrs. Isles) and Mr. Fleming or alternatively, seeks damages for breach of the agreement for sale. Mr. Lynch has not been joined as a party to the action. Mrs. Isles contends that the agreement for sale is not binding on her because Mr. Lynch exceeded his authority in that he did not obtain her consent to alter the purchase price and to accept a deposit all of which he did in violation of the terms of the brokerage agreement.

The issue

[4] The issue for the court's determination is whether Mrs. Isles is bound by the agreement for sale between Mr. Lynch purportedly acting as her agent, and Mr. Fleming. This involves a determination of the following questions:

(a) whether Mr. Lynch exceeded his authority in entering into the sale agreement with Mr. Fleming.

(b) If Mr. Lynch exceeded his authority whether Mr. Fleming knew or was put on the enquiry and therefore ought to have known that Mr. Lynch was acting in excess of his authority when he entered into the agreement for sale in terms as he did;

[5] Mrs. Jones throughout her testimony accepted that she was acting on her mother's behalf. To this end, she engaged Mr. Lynch to sell the land. She contends however, that there were limitations imposed upon Mr. Lynch and he acted outside or in excess of those limitations when he entered into the agreement with Mr. Fleming in that he did not seek her permission to do so for a lesser price and to accept a deposit in respect thereof. She says that she had no knowledge that Mr. Lynch had so done until after he had entered into the agreement. She accepts that when Mr. Fleming met with her at her office she sent him to speak to Mr. Lynch but says that Mr. Lynch ought to have gotten back to her thereafter to obtain her approval and he did not. Thus she contends Mr. Lynch exceeded the authority given to him and thus Mrs. Isles is not bound by the agreement made by him with Mr. Fleming.

[6] Mr. Fleming in his evidence says that he met with Mrs. Jones and they discussed the sale of the land and that she stated a price of \$112,000 with the condition that he pays all the

brokers' fees and sent him off to speak to Mr. Lynch. He then went to Mr. Lynch and told him of the conversation he had with Mrs. Jones. He says that Mr. Lynch, in turn stated that he would confirm with Mrs Jones and he later confirmed that the actual price of the land would be \$112,000 and in addition Mr. Fleming was to pay the brokerage fee of \$8,000 which fee was reduced by Mr. Lynch to \$6,000 at Mr. Fleming's request. There is no evidence that Mr. Fleming was aware of the limitations on Mr. Lynch's authority. Furthermore, there is no evidence that Mr. Lynch had not in fact conferred with Mrs. Jones when he confirmed the terms of sale to Mr. Fleming. There is no evidence that any fact or circumstance occurred or came to the knowledge of Mr. Fleming which put him on the enquiry as to whether Mr. Lynch had the authority to act in the manner as he did. After all, it is Mrs. Jones who sent him off to Mr. Lynch as being the person dealing with the sale of the land in the first place. From all appearances, Mr. Lynch's handling of the matter leaves much to be desired. It appears that he did not apprise Mrs. Isles of all aspects whilst at the same time making it to appear to Mr. Fleming that Mrs. Jones and thus Mrs. Isles, were fully aware and in agreement with his actions. Apart from the initial conversation between Mrs. Jones and Mr. Fleming in which she sent him to deal with Mr. Lynch, there was no other communication between them. The communication flowed between Mrs. Jones and Mr. Lynch on the one hand and between Mr. Lynch and Mr. Fleming on the other. Mr. Fleming, in my view, would have been entitled to rely on Mr. Lynch, to whom Mrs. Jones herself had referred him, as having the authority to enter into the agreement on the terms he did in the circumstances.

The law

- [7] *"Where a person, by words or conduct represents or permits it to be represented that another person has authority to act on his behalf., he is bound by the acts of such other person with respect to anyone dealing with him as an agent on the faith of any such representation to the same extent as if such other person had the authority that he was represented to have, even though he had no actual authority."*(see: **Bowstead on Agency** 14th Ed. pg. 235, **Hely- Hutchinson –v- Brayhead Ltd.** [1967] 2 All ER 14)

- [8] *“Where a principal, in conferring authority upon his agent to act on his behalf imposes conditions or limitations on its exercise, no act done by the agent in excess of the conditional or limited authority is treated as an act of the principal as regards such persons **as have or ought to have notice** (my emphasis) of such excess of authority or have had notice of an irregularity placing them upon inquiry as to whether the agent’s authority was being exceeded. In the absence of notice however, the principal cannot escape liability for acts done by the agent which fall within the apparent scope of his authority, by any particular instructions to his agent limiting his authority. (see: **Halsbury’s Laws 4th Ed. Vol. 1(2) para.135**)*

Conclusion

- [9] There were limitations in Mr. Lynch’s power to sell the land. However, Mr. Fleming was not aware of those limitations nor were the circumstances such as to put him on the enquiry, as to whether Mr. Lynch, in entering into the sale agreement on the terms stipulated, was acting in excess of his authority. Accordingly, I am constrained to conclude that the agreement for sale of the land entered into by Mr. Lynch with Mr. Fleming is binding upon Mrs. Isles.

The remedy

- [10] A substantial deposit has already been paid by Mr. Fleming on the sale of the land. He remains ready, willing and able to complete the terms of the agreement by payment of the balance of the purchase price. Specific performance is a remedy which is normally granted in respect of agreements for the sale of land, it being recognised that land may have a peculiar value to the purchaser and thus damages may not be an adequate remedy. Accordingly, I grant to the Mr. Fleming the relief of specific performance of the agreement. The court, being advised that the cheque representing the deposit of \$30,000.00 being no longer good due to lapse of time, Mr. Fleming is ready, willing and able to pay the entire sum of \$112,000.00 being the purchase price of the land. Therefore, upon payment by Mr. Fleming of the sum of US\$112,000.00 to Mrs. Isles, she is obliged to execute and deliver to him an Instrument of Transfer in respect of the land.

Costs

- [11] Mrs. Isles shall pay to Mr. Fleming his costs agreed in the sum of US\$10,000 to be paid within ninety days.
- [12] For completeness, I briefly address the issue of unconscionable bargain which was raised by Mrs. Isles in her pleaded defence. No mention was made of this in evidence and must be taken as not being pursued. I accordingly make no finding thereon.



Janice M. George-Creque
High Court Judge