

Judgment Book

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. L-040 OF 2002

BETWEEN

LA MAISON PROPERTY
SERVICES LIMITED

CLAIMANT

A N D

CARIB ENGINEERING
CORPORATION LIMITED

DEFENDANT

Mr. Anthony Pearson instructed by Pearson and Company for Claimant

Mr. Garth McBean and Mrs. L. Dayes instructed by Dunn Cox for Defendant

Heard: 17th December 2002 and 5th March, 2004

Hibbert, J

Carib Engineering Corporation Limited, desirous of selling its real property situated at 82 Hope Road, Kingston 6 in the parish of Saint Andrew, in May 2000 commissioned La Maison Property Services Limited to do a valuation of the property. After this was done La Maison submitted a valuation report and received payment.

To facilitate the sale, Carib Engineering in or about August or September, 2000 listed the property with several real estate agents including La Maison. Acting on this no-exclusive listing, La Maison through its agents, erected "for sale" signs on the property directing enquiries to the offices of La Maison.

The chronology of events thereafter, according to the documents exhibited, is as follows:

1. By letter dated 22nd June, 2000 La Maison informs Carib Engineering that Jennifer and Lloyd Samuda had offered to

purchase the property for twenty million dollars (\$20M) and requested an indication of its willingness to accept.

2. A written offer to purchase for twenty million dollars (\$20M), dated 13th July, 2001 was signed by Jennifer and Lloyd Samuda as purchasers, and Edwin Wint, Managing Director of La Maison noted as listing agent.
3. By letter dated 19th July, 2001, Miss Judith Reid, Managing Director of Carib Engineering sought the authorization and instructions on the procedure of disposal of the property. This letter stated that the property was valued at between twenty one and twenty three million dollars (\$21-23M)
4. On 25th July, 2001 Carib Engineering advertises the property for sale in the Daily Gleaner.
5. By letter dated 25th July, 2001 Lloyd and Jennifer Samuda in response to the advertisement offered to purchase the property for twenty million dollars (\$20M).
6. By letter dated 20th August, 2001 La Maison advises Carib Engineering that it had introduced the property to John Crook Limited as a possible site for a dealership complex.
7. By letter dated 21st August, 2001 Carib Engineering advised Jencare Skin Farms Co. Limited operated by the Samudas, that their offer of twenty million dollars (\$20M) was favorable.

8. By letter dated 24th August, 2001 Carib Engineering confirmed to Jencare its acceptance of the offer of \$20M).

Consequent on the sale of the property La Maison claims that it is entitled to a commission of one million dollars (\$1M) representing five percent of the purchase price. Additionally La Maison claims the sum of one hundred and fifty thousand dollars (\$150,000) for G.C.T.

The law governing the entitlement to commission in these circumstances may be extracted from. **Bowstead and Reynolds on Agency – Sixteenth Edition**, on which Counsel for both parties relied. It states at Article 59 paragraph 7-027:

“Subject to any special terms or other indications in the contract of agency, where the remuneration of an agent is a commission on a transaction to be brought about, he is not entitled to such commission unless his services were the effective cause of the transaction being brought about”

At Paragraph 7-029 it states:-

“Thus if the agent introduces a person who becomes the purchaser ‘it is nothing to the point.....that that person would have become the purchaser without the intervention of the agent, or that the principal’s own efforts were also an effective cause of the sale’ But it is submitted that it is the word ‘effective’ which is the most significant. ‘Effective cause’ means more than simply ‘cause’. The inquiry is whether the actions of the agent really brought about the relation of buyer and seller”

That paragraph also states:-

“The agent will normally be entitled to his commission if he causes a person to negotiate with his principal, and contract, no substantial breach in the negotiations having taken place. It appears that the agent does not have to complete or even take part in the negotiations, nor arrange any meeting nor persuade either party to enter into the

contract.”

Further it states:-

The agent will not normally be entitled to his commission
If the third party who ultimately contracts has his attention
drawn to the possibility of contracting by means other
than those intended by the agent to bring about the
contract.”

The question to be resolved, therefore is: Were the efforts of La Maison the effective cause of the sale?

Mr. Wint gave evidence on behalf of La Maison. He stated that after La Maison erected its signs at 82 Hope Road several offers to purchase were made. Subsequently Mr. Samuda expressed an interest in purchasing. After several meetings between Mr. Samuda and himself Mrs. Samuda offered to purchase the property for twenty million dollars (\$20M). This offer, he stated, was communicated to Carib Engineering on the 22nd June, 2001. He explained that the letter was erroneously dated 2000 instead of 2001. Subsequently the Samudas, on the 13th July 2001 signed an offer to purchase. This he said he took to the offices of Carib Engineering and handed to Miss Reid. He Further stated that after receiving the offer, Carib Engineering requested that the offer be increased by one million dollars (\$1M) to cover the commission payable but the Samudas refused the increase. He insisted that La Maison acted as agents for Carib Engineering throughout the negotiations, having introduced the Samudas to Carib Engineering.

During cross-examination he denied ever being told in 2000 that Carib Engineering had decided not to sell the property. He also insisted that the letter dated 22nd June, 2000 was in fact written in 2001 and not in 2000.

Miss Reid gave evidence on behalf of Carib Engineering. She stated that after the valuation was done the new board of directors decided not to sell the property. The decision, she said, was subsequently reversed with the instructions that the sale be carried out without the services of agents. She stated that Carib Engineering advertised the property for sale on a number of occasions including an advertisement in the Daily Gleaner on the 25th July, 2001 to which the Samudas responded with their offer.

Although she agreed that the property had been listed with La Maison , she denied that the sale was contracted through them as agents.

During cross-examination she testified that only one advertisement was placed in a newspaper by Carib Engineering and explained that the other advertisements she referred to were the signs placed by La Maison and other agents. She admitted locating the letter dated 22nd June, 2000 and the offer dated 13th July, 2001 on the files of Carib Engineering but was unable to say when they were received. Although denying having any conversation with Mr. Wint concerning the sale of the property to the Samudas or that La Maison was acting as agents she admitted telling an attorney at Dunn Cox shortly before the agreement was made that Mr. Wint was dealing with the sale of the property.

In assessing the witness I found Mr. Wint to be a much more reliable witness than Miss Reid who seemed unsure of the events which led to the sale of the property. I accept that the letter which bore the date 22nd June 2000 was in fact written and delivered in 2001. This has to be so since an offer could not have been made in June 2000 when the listing was done in August-September, 2000. I also accept that Mr. Wint and Miss Reid had discussions concerning the offer made by the Samudas and that the amount of the offer disclosed to her before the advertisement on 25th July, 2001. It would

indeed be most remarkable that the Samudas would have made an offer to purchase for twenty million dollars (\$20M) on the same day of the advertising and that this offer was accepted without negotiation unless there were previous discussions. It is to be noted also that an offer was made by the Samudas mention is made of "additional information received".

In light of the evidence presented and my assessment of the witness I find that La Maison acted as agent throughout the proceedings, negotiated the sale price and effectively introduced the Samudas to Carib Engineering. In my opinion therefore the efforts of La Masion were the effective cause of the sale.

Although no written contract was exhibited, I accept that five percent (5%) is the standard commission payable and this seem to have been in the contemplation of Carib Engineering.

Accordingly judgment is hereby entered for the Claimant in the sum of one million dollars (\$1M) together with the sum of one hundred and fifty thousand dollars (\$150,000) representing G.C.T.

Interest at rate of 10% per annum to be paid on the sum of one million dollars (\$1M) from May 10th, 2002 until March 5th 2004.

Costs to Claimant to be taxed if not agreed.