

NOTE OF ORAL JUDGMENT

Suit No. C.L. C023/1987

BETWEEN C.D. ALEXANDER COMPANY REALTY LIMITED PLAINTIFF
A N D UNITED GENERAL INSURANCE COMPANY LIMITED DEFENDANT

Mr D. Henery for plaintiff

Mr D. Morrison Q.C. and Mr P. Foster, for the Defendant

Heard 8th and 9th November 1994

Oral Judgment delivered on 16th November 1994

Mrs Marva Kean was employed to the C.D. Alexander Company in 1986. In about July of that year she was a Sales Agent in that Company.

The C.D. Alexander Company entered into an agreement with Central Fire and General Insurance Company Limited. The Contract was dated March 10, 1986.

Mrs Kean got information from the listing book of the C.D. Alexander Company that property situated at 3 Oxford Road was for sale. Prior to that she had been showing various properties to Avis Rent-a-car, that firm had been seeking for a property on which to carry on their business.

Mrs Kean called Mrs Sutherland who was then the secretary to the Managing Director and the Customer Service Manager - this she did on July 3, 1986 and told her about the property at 3 Oxford Road. According to Mrs Kean, Miss Sutherland was quite enthused and ran over to the property that same minute.

On July 7, 1986 Mrs Kean called Mr Blythe and informed him that Avis Rent-a-car was interested in the property at 3 Oxford Road, that was based on what Miss Sutherland told her.

On July 11, 1986 Mrs Kean collected a survey plan from Mr Blythe's secretary and delivered it to Avis Rent-a-car.

After numerous attempts to contact Mr Blythe, Mrs Keane went to his office on September 30, 1986 accompanied by her father, she saw and spoke with Mr Blythe.

An invoice was submitted to the Defendants in relation to the work done by Mrs Kean. The amount being claimed is the sum of \$150,000.00.

Mr Neville Blythe the Managing Director of United General Insurance Company gave evidence for the defence. In 1986 the Company was known as Central Fire and General Insurance Company.

The Company owned the property at 3 Oxford Road and they were desirous of selling the premises.

On 10th March 1986 a non-exclusive authority was given to the plaintiff's to sell the property (exhibit one (1)).

On 10th October 1986 the company entered into an agreement to sell the property to West Indies Car Rentals Limited at a price of \$3,000,000.00 (exhibit 4) (Avis Rent-a-car is a trade name).

Mr Blythe further states that -prior to signing the non-exclusive agreement he had discussions with one Mr Green of Avis Rent-a-car but at that time the management of Avis Rent-a-car was interested in leasing the premises but his company was interested in selling the land.

In March 1986 someone from the C.D. Alexander Company approached Mr Blythe and informed him that Mutual Life was interested in acquiring the property (exhibit 5). The discussion with Mutual Life did not bear fruit. Mr Blythe did not seek the services of the C.D. Alexander Company until he was approached by someone from the company.

The agreement for sale with West Indies Car Rental (exhibit 4) came about when Mr Blythe was approached by Mr Paul Matalon about leasing the premises, that was about six months after C.D. Alexander Company made mention of Mutual Life as a purchaser. Mr Blythe said that he told Mr Matalon that he was not interested in leasing the property but that he would consider selling the property. They started discussions relating to sale of the property and in due course they arrived at an agreement for sale to West Indies Car Rental.

The agreement was to sell for \$3,000,000.00 the intial asking price was \$350,500,000.00, the basis for the reduction was that there was no agent in the transaction.

Mr Blythe agrees that he was approached by Mrs Kean and that he was sent correspondence dated 11th October 1968, (part of Exhibit 6). This correspondence indicated that it was mailed on 24th September 1986. Mr Blythe appears to be saying that he never saw this document.

Mr Blythe further stated that he never saw Mrs Kean before he received the documents comprised in Exhibit 6 and that Mrs Kean was never part of the transaction. He has no recollection of Mrs Kean having spoken to him about any plans relating to the property and he has no knowledge of such plans having been collected from his office.

Further Mr Blythe said that he could not recall that Mrs Kean came to his office with her father. Mr Blythe said that he met Mrs Kean after the property was actually sold.

The central issue in this case is whether or not the plaintiffs were responsible for introducing Avis Rent-a-car to the property which was subsequently sold to West Indies Car Rentals Limited, the owners and operators of Avis Rent-a-car.

I find on a balance of probabilities that the plaintiffs did make such the introduction and that Avis Renta-a-car was ready and willing to purchase the said property at a price of \$3,000,000 and that they did in fact purchase the property. The letter from Avis Rent-a-car to the plaintiffs dated 13th October 1986, a copy of which should have been sent to Mr Blythe helps to support the finding that the plaintiffs made the introduction as alleged. (that letter is in evidence as exhibit 3).

The Defence has not answered Mr Kean's testimony in certain material points, for example, whether or not Mrs Kean visited Mr Blythe at his office and discussed the transaction. On many important points Mr Blythe said that he could not recall.

I accept Mrs Kean as a witness of truth her evidence was straight forward and to the point. I do not accept Mr Blythe as a reliable witness, his memory is obviously defective since he frequently said that he could not recall.

I give judgment for the plaintiff in the sum of \$150,000.00 with interest on the said sum at the rate of 18% per annum from 16th October 1986 until the date of payment, together with costs to be agreed or taxed.

I have considered the submissions made by Mr Henry to the effect that a higher rate of interest ought to be awarded and I have regard to the fact that a witness was called who testified as to the prevailing interest rates since 1986. Mr Henery sought an amendment to the Statement of Claim to vary the rate of 18% as claimed at paragraph (b) of the prayer. That application was made after the case for the plaintiff and the defence had been closed. In the circumstances I refused to grant the amendment since no evidence had been forth coming from the plaintiff in this regard.

A practice of awarding interest at 1% above the base lending rate has developed in the commercial courts in England but even there the practise can be displaced in appropriate circumstances. I have regard to comparable practice in the Jamaican Courts and I find that the rate of 18% as pleaded is reasonable in the instant case.

I am also mindful of the fact that the court is being asked to award damages for unjust enrichment. This, I believe is tantamount to a request for double compensation. I am of the view that an award of interest is a adequate compensation.

I adopt Mr Morrison's words. "This is an action for debt and has nothing to do with conscienciability of the Defendants action.

Execution stayed for six weeks.