

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Common Law & Equity Division**

**2022/CLE/gen/01234**

**BETWEEN**

**DIANNE HOLOWESKO**

**Claimant**

**AND**

**FABIO MANTEGAZZA**

**First Defendant**

**AND**

**THE BOHEMIAN PTC LTD**

**Second Defendant**

**Before:** Her Ladyship The Honourable Madam Senior Justice Deborah Fraser

**Appearances:** Mrs. Lockhart Charles KC and Mrs. Syann Thompson-Wells for the Claimant

Mr. Chizelle Cargill for the First and Second Defendant

**Hearing Date:** 4<sup>th</sup> and 5<sup>th</sup> June, 2024; 27<sup>th</sup> August 2024

**Civil Procedure – Breach of Contract- Real Estate Commission – Agency Agreement –  
Fiduciary Duty – Whether Claimant entitled to Commission**

**JUDGEMENT**

## **FRASER, SNR J:**

### **INTRODUCTION**

[1.] This is the trial of an action commenced by Ms. Dianne Holowesko (“**the Claimant**”) against Fabio Mantegazza (“**the First Defendant**”) and The Bohemian PTC Ltd (“**the Second Defendant**”), for a breach of contract concerning an outstanding real estate commission. This matter was commenced by Originating Writ of Summons indorsed with a Statement of Claim filed on 16 December 2022. The Claimant’s claim is for the payment of commission due to the Claimant in accordance with terms agreed upon between the Claimant and the First Defendant and his trustees or representatives for the purchase of Harbour House and Beach front property located Lot 4, Block 33, and Lots 25 and 26, Block 34 in the Lyford Cay Subdivision, New Providence, The Bahamas (“**the Property**”).

[2.] The Claimant seeks the following relief against the First and Second Defendants namely:

- 2.1 A Declaration that the Claimant is entitled to a 4% commission on the purchase price of the sale of Harbour House to the First Defendants or their trustees;
- 2.2 An Order requiring the First Defendant to pay all sums due and payable as VAT on the said commission;
- 2.3 Damages for breach of contract;
- 2.4 Interest and costs.

### **Background Facts**

[3.] The parties have agreed a Statement of Facts and Issues which gives the general background and context for the dispute. The Agreed Statement of Fact and Issues filed on 29 May 2024 provides as follows:

- 3.1 The Claimant is a citizen of the Commonwealth of The Bahamas and is employed as a real estate agent.
- 3.2 The First Defendant is a citizen of Switzerland.
- 3.3 The Second Defendant is the Trustee of the Bohemian Trust (“**the Trust**”).
- 3.4 Ian Black is a professional director of Kratos Ltd, which is a Corporate Director of the Second Defendant.
- 3.5 Katie Booth is a professional Director of Peridot Services Ltd, which is a Corporate Director of the Second Defendant.

### *The Dispute*

- 3.6 The Claimant's claim is that the First Defendant and/or Second Defendant acted in breach of their contractual obligations by failing to pay to the Claimant the commission of 4% of the purchase price, upon the sale of the Property to the First and Second Defendant.
- 3.7 The Claimant alleges that her work, in her capacity as real estate salesman and agent, brought about the sale of Harbour House to the Defendants, and, as such, she was entitled to receive her commission which the Defendants have, in breach of contract, refused to pay.
- 3.8 The Defendants deny the claim for breach of contract and allege, inter alia, that:
- a. The Claimant was engaged in a very limited capacity to secure a sale for Harbour House, at a specific price, by a fixed time and on a fixed date.
  - b. The Claimant failed to fulfill the agreed terms of her engagement, and the agreement was ended as a result.
  - c. It was a condition precedent for payment of the commission to the Claimant, that the Claimant would secure the sale of Harbour House to the First Defendant on 8<sup>th</sup> April 2022, at a purchase price of \$57,000.000.
  - d. The Claimant, however, failed to secure the sale and purchase of Harbour House by the First Defendant on the agreed terms and within the agreed time limit. In the premises, the events entitling the Claimant to a commission, in accordance with the terms of the Limited Agent Agreement, did not arise.
  - e. Any commission agreed to be paid to the Claimant was a performance-based commission only.
  - f. Given that the Claimant failed to fulfill the agreed terms of her engagement, she is not entitled to receive a commission as claimed or at all.
  - g. Further, once the Claimant became aware that the First Defendant had a genuine interest in Harbour House, the Claimant owed a duty to the First Defendant to act exclusively in his best interest. The Claimant failed to fulfill this duty.
- [4.] The following is a chronology of events leading to the dispute.
- i. In March, 2022 the First Defendant is introduced to Harbour House by his friend Luc van Hoof, who recommends he contact the Claimant to arrange viewing of the property.
  - ii. On 4 April, 2022, the Claimant contacted the First Defendant via email, suggesting a viewing of the Harbour House and the adjacent beachfront property.

- iii. On 5 April, 2022 the First Defendant was escorted to the Harbour House where he is given a tour by George Damianos. The First Defendant expresses interest in purchasing the property at the asking price and indicated that the purchase would be through a Trust.
- iv. On 5 April 2022 the Claimant sends the First Defendant an email with a Letter of Intent, detailing the costs including a 6% real estate commission fee;
- v. On 8 April 2022 Katie Booth informs the Claimant that the Trustees agreed to a 4% commission that is contingent upon her securing a sale at \$57,000,000.00 on the 8<sup>th</sup> April 2022.
- vi. 8 April 2022 the Claimant fails to conclude the sale by the deadline, and the Letter of Intent is withdrawn.
- vii. 9 April 2022 Ian Black negotiates a new agreement with George Damianos for the purchase of Harbour House at \$58,000,000.00, without the Claimant's involvement.
- viii. 11 April 2022 the First Defendant and the vendor sign a Letter of Intent for the purchase of Harbour House at \$58,000,000.00.

## **ISSUES:**

[5.] The following agreed issues arise for determination. The parties have listed five issues in their Agreed Statement of Facts and Issues they have been streamlined into two main issues for consideration, namely:

- a) Whether there was an intention to create legal relations between the parties and what were the terms of the contract between the parties?
- b) Whether the Claimant is entitled to a commission on the purchase of the Harbour House and beachfront property?

## **Claimant's Evidence**

*Dianne Holowesko*

[6.] Ms. Holowesko filed a Witness Statement on 22 May 2022 which stood as her evidence in chief at trial (4 June 2024).

[7.] In summary, Ms. Holowesko in her witness statement states that she found the Harbour House listed for \$42,500,000.00 while researching a Bahamian real estate website. She contacted Luc van Hoof for potential buyers and he referred her to Fabio Mantegazza. She also contacted George Damianos, the exclusive agent for the property and was told the sale price of the nearby beachfront property was \$16,000,000.00 and including the Harbour House the full price was \$58,500,000.00. She contacted Fabio and informed him that the owners were also selling their beachfront property, making the deal more appealing. On 5 April 2022, she met Fabio at Jet Nassau and escorted him to Lyford Cay, where he was given a tour of the property by George Damianos. After the tour, Fabio expressed interest in buying the property for the full purchase price. Ms.

Holowesko explained to Fabio that the purchase price excluded additional costs such as transfer tax and legal fees.

[8.] Ms Holowesko emailed Fabio an Offer Letter that contained a breakdown of costs inclusive of purchase price, transfer tax and real estate commission of 6%. Katie Booth a trustee of Fabio discussed the payment of her real estate commission fees. After further discussion Ms. Holowesko reduced her commission to 4%. On 8<sup>th</sup> April 2022 Katie advised her that the 4% commission was agreed subject to the satisfactory conclusion of the deal on that date (8<sup>th</sup> April 2022) at \$57 million. She had back and forth communication with the Defendants concerning the signed Letter of Offer. On 8<sup>th</sup> April 2022 at 6:37pm she was copied on an email from Ian Black to George Damianos, which conveyed that if the offer was not accepted by 10pm, it would be withdrawn. She was unable to secure the deal for Fabio before 10:00pm. On 10 April 2022, George informed her that he had spoken to Ian Black and relayed the seller's counteroffer of \$58 million. On 12 April 2022, George confirmed a Letter of Intent was signed by both the buyer and seller. She was informed by Katie Booth that Fabio and the Trustees had determined that she was not entitled to a commission because she had not closed the deal by 10:00pm 8 April 2022.

### **Defendants' Evidence**

#### *Fabio Mantegazza*

[9.] Mr. Mantegazza evidence in chief is contained in his Witness Statement filed on 22 May 2024 ("Fabio WS").

[10.] Fabio WS states that, he is the beneficiary of the Bohemian Trust, with the Second Defendant as the Trustee. On March 18, 2022, he received an email from Luc Van Hoof, which included a forwarded email from Dianne Holowesko regarding the listing of the Harbour House property at a price of \$42.5 million. His first interaction with Dianne Holowesko occurred on April 4, 2022, through an introductory email about the Harbour House and beachfront property. On 5 April 2022 he traveled to Nassau to view the property, and met Dianne at the airport. She introduced him to George Damianos, who gave him a tour of the property. After the tour, Fabio expressed interest in purchasing the property. Dianne initially proposed a 6% real estate commission, but he was surprised, believing she was the seller's agent. She then reduced her commission to four percent (4%). He accepted the commission on April 8, 2022, with the condition that a deal would be finalized that day. The Letter of Offer was withdrawn due to a missed deadline. On 9 April, 2022, a new offer was made and accepted, without Dianne not involved in this process.

#### *Ian Black*

[11.] The Defendants' witness, Mr. Ian Black, Director, filed his Witness Statement on 21 May 2024 which stood as his evidence in chief at trial.

*Katie Booth*

[12.] The Defendant filed the Witness Statement of Katie Booth on 22 May 2022 and the Supplemental Witness Statement filed on 3 June 2024 which stood as her evidence in chief at trial.

### **Finding of Facts**

[13.] I have considered the testimony of all the witnesses who were extensively cross-examined. I had the opportunity to see, hear and observe them as they testified. On a balance of probabilities, I prefer the evidence of the First Defendant and his witnesses. I found both Mr. Mantegazza, Mr. Ian Beck and Ms. Booth evidence to be credible.

*Dianne Holowesko*

[14.] I found the evidence of Dianne Holowesko to be inconsistent and evasive regarding communication with Katie Booth and Ian Black and her understanding of the agreement terms or the conflict in representing two buyers for the property.

*Fabio Mantegazza*

[15.] Fabio came across as an experienced businessman knowledgeable in real estate transactions. I found him to be consistent and credible, and his evidence was not challenged during cross examination.

*Ian Black*

[16.] Ian's evidence was mostly unchallenged, he testified that it was not the Trust that was entering the agreement, and it was Fabio that had instructed Dianne to offer \$57 million for the property. He stated that the Trustees were acting as Fabio's agent with a view to signing at a later date. He explain that the \$57 million was the agency agreement that Katie discussed with Dianne which fell through at 10pm. He explained that on the 9 April 2022 he was contacted by George Damianos informing him that the offer was put forward and was not accepted. He testified that during his conversation with George, they negotiated terms for a new agreement, and that Dianne was not part of those discussions. Ian clarified that the new agreement with George depended on cancellation of the showing scheduled for April 9, 2022, so as to prevent a potential bidding war with another buyer. When questioned on why Dianne was expected to cancel the property viewing before an offer was accepted, he stated that it was a part of the negotiations. He explained that from his experience the price would be agreed verbally and then the offer letter would follow and that based on his understanding you do not need to have an offer letter before acceptance. He was asked why a 10pm deadline was imposed, he stated having just arrived in the UK and seeing the back and forth emails it appeared to him the parties were not on the same page and he determined 10pm was a reasonable time. He acknowledged he made the decision unilaterally and that he did not discuss it with Dianne. However, Dianne was given every opportunity to speak with the George Damianos before the offer expired at 10:00pm. I found him to be a credible witness.

*Katie Booth*

[17.] I found Katie's evidence credible, it was limited to her involvement and discussion with Dianne regarding her commission and the limited agency agreement. She testified that in the 8 April 2022 email sent to Dianne, it was agreed that Dianne would receive a commission subject to certain conditions.' She acknowledged that it did not have any reference to 10:00pm and that it just said "today". She stated that the Trustees did not want to go into Saturday and end up in a bidding war with Dianne other clients. When questioned about Dianne closing a deal before receiving an offer she stated that not having an offer letter *did not preclude Dianne from negotiating the offer with George*. She stated that Dianne had indicated that the vendors did not like to be pressured, and had mentioned that another buyer wanted to look at the property. She explained that the Trustees felt their offer was not receiving priority and they engaged Dianne on a limited basis making it clear the transaction needed to be closed on Friday. Katie stated that Dianne had ample time to close the transaction before 10:00pm and that the offer was withdrawn at 10:00pm because they did not want to get into a bidding war. She stated that Dianne showing the property to another client was viewed as a conflict of interest. She testified that the offer was in Fabio's name, with the contract intended to be for Fabio or his assigns. When questioned about the \$58 million agreement, she could not provide specifics as it was negotiated between Ian Black and George Damianos.

## **Submissions**

### *Claimant's Submission*

[18.] Mrs. Gail Lockhart Charles KC, Counsel for the Claimant, argued that the Claimant was appointed as an agent by the First and Second Defendants through a partly oral and partly written Agency Agreement to facilitate the purchase of the Harbour House property. Counsel argues that the Claimant's was the effective cause of the sale of Harbour House and the beachfront property and that her efforts as a real estate agent were essential to the sale of the property to the First Defendant or his trustees. Counsel for the Claimant submits that the Claimant was excluded from the deal she organized and was entitled to a fair remuneration or commission. Counsel supports this claim by relying on the cases of **C Christo & Co Ltd v Marathon Advisory Service [2015] EWHC 1971** and **Dennis Reed Ltd v Goody (1950) 2 KB 277**.

[19.] Counsel for the Claimant contends that she is entitled to a four per cent commission from the sale of the Harbour House and the beach front property based on the express and implied contractual terms. Counsel for the Claimant highlighted several key arguments in support of this position.

[20.] Firstly, Counsel asserts that she performed significant work, inclusive of bundling the properties into a bespoke package, disseminating sales and marketing information, and arranging the viewing with the First Defendants. Further, Counsel contends that these efforts established the

Claimant as the effective cause of the sale, triggering her commission entitlement. Citing **Dennis Reed Ltd v Goody (1950) 2 KB 277**, Counsel asserts that an agent introducing a purchaser who completes the sale is entitled to reasonable remuneration, even if the precise amount was not explicitly agreed upon.

[21.] Counsel for the Claimant cited **Kelly v Margot Cooper (1993) AC 205** emphasizing that even if a fiduciary breach had occurred, it would not automatically negate commission entitlement unless dishonesty was involved. Counsel therefore maintains that the Claimant fully disclosed competing interests and that her actions remained within the bounds of accepted real estate practices.

[22.] Furthermore, Counsel for the Claimant seeks to invoke **C Christo & Co Ltd v Marathon Advisory Service (supra)**, arguing that commission payments require clear and unambiguous language but that an agent who contributes meaningfully to a sale may still be entitled to reasonable compensation. Counsel asserts that the Defendant cannot therefore exclude the Claimant from the sale process and deny payment for services that directly led to the transaction.

#### *Defendants Submission*

[23.] Ms. Chizgelle Cargill, Counsel for the Defendants, argues that the court should reject the Claimant's allegations as the Claimant entered into a Limited Agency Agreement with specific terms, which she failed to meet. Counsel asserts that the Claimant was not the effective cause of the sale, as negotiations for the sale of the property occurred independently of her involvement, and therefore, no commission is owed.

[24.] Counsel submits that the Claimant is bound by her pleadings, and that her allegations of conspiracy or collusion were not adequately pleaded and should be dismissed, citing **Ferguson and Another v. Lignum Vitae Cay Ltd [2012] 2 BHS J No. 112**.

[25.] Further, Counsel submits that the assertion by the Claimant that she created a bespoke package by bundling Harbour House and the beachfront property is unsupported, as she merely replicated the Harbour House description from the Sotheby's brochure.

[26.] Counsel for the Defendants 'challenges the Claimant's commission entitlement on the grounds of conflict of interest, arguing that she breached her fiduciary duties by facilitating viewings for multiple prospective buyers. However, Counsel for the Claimant refutes this assertion, arguing that estate agents routinely act for multiple principals, and this practice does not automatically constitute a breach of duty.

[27.] Counsel for the Defendants avers that if the Court determines the Claimant is entitled to a commission, any such commission or any such entitlement is voided by her failure to act exclusively in the First Defendant's interest. Specifically, Counsel asserts that the Claimant did not prioritize the First Defendant interests after he indicated a desire to purchase the Harbour House and this failure disqualifies her from receiving any commission. Counsel also posits that the



Claimant violated Article 1 of the MLS Rules by continuing to engage with a second purchaser to directly compete with the First Defendant for the same property.

## LAW

[28.] The first requirement for the formation of a contract is that the parties must have reached an agreement (see **Chitty on Contracts, Volume 1, 30th Edition at paragraph 2-001**). A valid contract requires an agreement, an intention to create legal relations, and consideration.

[29.] As stated in **Halsbury's Laws of English Volume 9(1) Fourth Edition paragraph 620**:

**"In the ordinary case, the law does not require a contract to be made in any particular form, nor according to any particular formalities; it is sufficient that there be a simple contract. Such a contract may be validly made either orally or in writing, or partially orally and partly in writing. The term 'orally' should be taken to include all communications made other than in writing, ie by word of mouth or by conduct or both."**

[30.] The factors the Court will consider were comprehensively outlined by Charles Snr J (as then was) in **George Damianos D/D/A Damianos Sotheby's International Realty v Bank of the Bahamas Ltd BS 2022 S 164**. She stated at paragraphs 44 -46:

**"44 ...The Court, in its interpretative exercise must identify what the parties meant, "...through the eyes of a reasonable reader, and save perhaps in a very unusual case, that meaning is most obviously to be gleaned from the language of the provision:" Arnold v Britton [2015] UKSC 36 at para.17. This is trite law.**

**45 A landmark case which expounded the principles governing the construction of a document is Investors Compensation Scheme Limited v West Bromwich Building Society [1998] 1 WLR 896. Encapsulating, Lord Hoffmann stated: 'Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract' and "The meaning which a document ... would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean." The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous, but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax.' However, 'if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had."**

[31.] In **Devani v Wells [2020] AC 129** Lord Kitchin JSC discussed the principles governing contract formation and implied terms. At **paragraph 35** he stated that if a contract lacks an express term but would be unworkable without it, courts may imply the missing term:

**“Where, as here, the parties intended to create legal relations and have acted in that basis, I believe that it may be permissible to imply a term into the agreement between them where it is necessary to do so to give the agreement business efficacy.”**

[32.] In the locus case of **Luxor (Eastbourne) Ltd v Cooper [1941] AC 108** Lord Russell of Killoween discussed the challenges in formulating a general principle for estate agents' commission's contracts, at page 124 he stated.

**“Commission contracts are subject to no peculiar rules or principles of their own. ...In each case the rights of the agent or the liability of the principal must depend on the exact terms of the contract in question.”**

[33.] At page 120 Viscount Simon LC in the same case stated:

**“there is a third class of case...where, by the express language of the contract, the agent is promised his commission only upon completion of the transaction which he is endeavouring to bring about between the offeror and his principal. As I have already said, there seems to me to be no room for the suggested implied term in such a case. The agent is promised a reward in return for an event, and the event has not happened. He runs the risk of disappointment, but if he is not willing to run the risk, he should introduce into the express terms of the contract the clause which protects him.”**

[Emphasis Added]

[34.] In **Barton and other v Morris and another [2023] UKSC3** the Court reinforced the importance of contractual certainty and risk allocation preventing the court from rewriting agreements through implied terms or unjust enrichment claim. At **paragraph 96** Lady Rose JSC stated the following:

**“When parties stipulate in their contract the circumstances that must occur in order to impose a legal obligation on one party to pay, they necessarily exclude any obligation to pay in the absence of those circumstances; both any obligation to pay under the contract and any obligation to pay to avoid an enrichment they have received from the counterparty from being unjust.”.**

## **Discussion & Analysis**

***Issue A: Whether an intention to create legal relations existed between the Claimant and the Defendants, and if so what were the terms?***

[35.] The central issue in this matter revolves around contractual obligations and whether the Claimant is entitled to a four percent commission on the purchase price and whether the Defendants acted in bad faith by reneging on the agreement and excluding her from final negotiations. The thrust of the Claimant's case is that she was entitled to a four percent commission through an Agency Agreement. The Defendants' on the other hand argue that no binding agreement existed regarding commission terms and contend that the commission was contingent upon specific conditions which the Claimant failed to meet.

[36.] In determining whether a contract was formed, the Court must first assess whether the essential elements of a contract were satisfied. When construing contractual provisions, it is well established that the starting point for a court is to identify the intention of the contracting parties, in other words did the parties reach an agreement. A valid contract necessitates there being an offer, acceptance, an intention to create legal relations and consideration. It is settled law that a contract may be partly written or partly oral.

[37.] The decision in **Devani v Wells (supra)** underscores that a binding contract is determined by the objective communications of the parties. In this case, the contractual terms were objectively established through Katie Booth's email dated 8 April 2022 and the subsequent email communication by Ian Black's where he imposed a 10:00pm deadline reinforcing that the commission was payable only if the sale is completed by the deadline, and any deviation from this condition would require express modification of the contract. Further, as emphasized in **Luxor (Eastbourne) Ltd v Cooper** commission agreements must be strictly construed. Viscount Simon LC opined that if an agent wishes to protect against non-completion, that term must be expressly stated in the contract.

[38.] In this instance case, the words and conduct of the parties were sufficiently clear for the Court to determine the parties' contractual intention. This is not a case where the terms were vague or uncertain that prevented the identification of agreed terms. I am satisfied that the agency agreement meets the requirement of a valid contract; it was partly oral and partly written, and the parties through their conduct, intended to create legal relations and were bound by the terms contained in Katie Booth's email dated 8 April 2022. This email, in my view, formed the basis of their contractual relationship.

[39.] In assessing the parties' contractual obligations, the Court, also, examined the terms outlined in Katie Booth's email dated 8 April 2022, which expressly stated that the Claimant's commission was *"agreed, subject to satisfactory conclusion of a deal today at \$57m."* The language of the email establishes that the commission was contingent upon the successful completion of the sale on that day, making it a condition precedent. The subsequent response from Dianne to Katie--*"I will certainly do my best to conclude a sale today,"* underscored an acceptance of the stated conditions. Dianne then emailed the Defendant's UK Counsel advising that *"no deadline for acceptance of the offer was specified...and restrictions or conditions on my commission were stated in the email"*. The UK Counsel responded to Dianne advising that *"Katie has made it clear that we expect every effort to be made today to get this deal agreed."* Following these communications, Ian Black's email introduced a firm deadline of 10pm. When strictly construing all the emails within their proper context, it is evident that for the Claimant to earn the commission, the deal had to be closed by 10:00pm. The deadline became the decisive term limiting the Claimant's performance and entitlement to commission. This did not happen.

[40.] The Claimant also alleges that the Defendant acted in bad faith and conspired by excluding her from the final negotiations. However, since the agency agreement had already expired upon

the Claimant's failure to meet the 10:00pm deadline, the Defendants were under no contractual obligation to involve her in subsequent discussions. Therefore, their decision to negotiate directly with the George Damianos does not amount to bad faith.

[41.] Based on the exchange of emails, telephone communications, and the actions of the parties, the Court determines that the terms in the binding agency agreement reflected a mutual intention to form legal relations. In applying these principles, it is my judgment that having regard to the conduct between the Claimant and the Defendants, the parties intended to create legal relations as evident and express in the agency agreement based upon the terms set out in the Katie Booth email of 8<sup>th</sup> April 2022.

[42.] On this issue, I don't find it necessary to imply a term into the agreement to give the contract business efficacy (**Devani v Wells (supra)**), as the terms of the agency agreement is clear, and the Court cannot imply terms beyond those agreed by the parties. Since the Claimant failed to finalize the agreement by 10:00pm on 8 April 2022, the Defendants rightfully withdrew their offer, thereby ending the contract as the Claimant had not fulfilled her obligations.

***Issue B: Whether the Claimant is entitled to a commission from the sale of the Harbour House and the beachfront property?***

[43.] The main issue is whether the Claimant is entitled to a four percent commission from the sale of the Harbour House and the beachfront property under the express and implied terms of the agency agreement. This determination depends on whether the Claimant was the effective cause of the sale and whether the commission terms were strictly conditional.

[44.] The Claimant argues that the Agency Agreement explicitly entitles her to commission for facilitating the sale of the properties and that she was the effective cause of the property sale. Counsel for the Claimant submits that her efforts in bundling the properties together, marketing the properties to interested buyers, and conducting viewings of the properties led directly to the eventual sale. To evaluate the Claimant's entitlement to commission, it is necessary to consider the relevant legal principles and precedents governing agency relationship and commission agreements.

[45.] As demonstrated in **Luxor (Eastbourne) Ltd v Cooper** unless an express term states otherwise, an agent's right to commission is strictly dependent on the completion of the transaction. Furthermore, the principal is not obligated to complete the sale merely to allow the agent to earn a commission. Similarly, in the case of **Devani** the dispute centered on whether an express agreement existed regarding commission payment terms. The court held that commission entitlement must be expressly agreed upon. Similarly, the Defendants' argued that the Claimant's commission was contingent on specified conditions being met, particularly the 10:00pm deadline, and that no implied term supports her claim for commission beyond this condition.

[46.] In **Barton and others v Morris and another** the parties agreed that Barton would receive a commission of 1.2 million if he introduced a purchaser who bought the property at 6.5 million.

However when the sale went through at 6 million. The vendor took the position that the threshold was not met and it owed Barton nothing. Barton claimed a reasonable sum for his services. The Court denied Barton's claim and held Barton had no right to any payment in contract or an unjust enrichment.

[47.] In **Dennis Reed Ltd v Goody [1950] 2KB 277** the issue was whether the plaintiff's estate agents were entitled to a commission under a contract where they were instructed to introduce "a person ready, able, and willing to purchase" the property. Lord Denning in interpreting the commission agreement affirmed that a commission is generally payable out of the purchase price, and held that if an agent wishes to be paid for mere introductions rather than completed sales, clear and unequivocal language must be used in the agreement. The Court held the plaintiffs were not entitled to commission as the buyer they introduced withdrew before a contract was finalized, and the Defendants were not at fault for the failure of the sale.

[48.] According to the terms of the agency agreement, the offer had to be accepted by 10:00pm on 8 April 2022 for commission to be paid. Since the offer was not accepted by the deadline, the Claimant failed to satisfy the strict express condition precedent, therefore the Claimant has no right or entitlement to commission. While this may put the Claimant in an unfortunate position, the fundamental tenets of contract law requires strict adherence to agreed upon conditions particularly in commission agreements.

[49.] The Claimant allegations that she was the effective cause of the sale is weakened by several factors: (i) She failed to satisfy the express condition precedent and the Defendants obligation to pay her commission hinged entirely on the acceptance of the offer by the 10:00pm deadline; (ii) Her marketing efforts were not independently obtained: during cross examination, she admitted that the property information came from The Bahamas Sotheby's website which was not her independent research; (iii) the 'bespoke package' argument is unsubstantiated as the details of the beachfront lot was readily available from the vendor's agent, in other words she did not create any unique marketing strategy that directly resulted in the sale; (iv) the commission discussion were limited to the agency agreement and there were no broader terms in the agreement imposing an additional commission beyond the 10:00pm deadline.

[50.] On the issue of conflict of interest, the Claimant was under a fiduciary duty not to place herself in a position where her responsibilities to the Defendants' conflicted with the Defendants interest. In applying the case of **Kelly v Cooper (supra)** which establishes that estate agents often act for multiple principals whose interest might conflict, the Privy Council held that estate agents must not place themselves in a position where their obligations to one client conflicts with those of another. In this instant case, it is clear that the Claimant was representing two buyers, although she had informed the Defendants' about an upcoming viewing by another potential buyer. The Court has to determine whether by her action she had prioritized her own interest over that of the Defendants. During cross examination, the Claimant refused to accept that representing two principals with competing interest could create a conflict. I agree with the Defendants' submission

on this issue and conclude that the Claimant's representation of two principals with competing interests amounts to a conflict of interest.

[51.] The Claimant argues that she is entitled to reasonable compensation under unjust enrichment, arguing that she introduced the Defendants to the sellers. She relied on **Barton v Gwyn-Jones** where Lord Legatt (dissenting) suggests that agents might have a default right to reasonable remuneration. However, the majority in **Barton** underscored that "*unjust enrichment mends no one's bargain*," in other words the doctrine of unjust enrichment cannot be used to rewrite a contract simply because one party received a less favorable outcome. As such the Claimant's reliance on unjust enrichment fails, as she provided no evidence of the market value of her services, and the Court agrees with the Defendants that she has failed to establish her claim.

### **Conclusion**

[52.] Based on the circumstances in the instant case and taking into account the express conditions in the contract, and the legal authorities. I find that there exist between the parties an intention to create legal relations. It follows in my view that the terms of the agency agreement were expressly clear that the Claimant's commission fee was subject to the satisfactory conclusion of the deal by 10:00pm on 8 April 2022, and that the Claimant's claim for unjust enrichment was not supported by evidence. Therefore, the Court finds that the Claimant is not entitled to a commission for the sale of the Harbour House and beachfront property.

[53.] I hereby order the claim filed on 16 December 2022 be dismissed and the Claimant shall pay the Defendants costs, to be taxed if not agreed.

**The Honourable Madam Senior Justice Deborah Fraser**

**Dated the 5<sup>th</sup> June, 2025**