St. John's Law Review

Volume 24, November 1949, Number 1 Article 6

Agency--Broker's Commission--Procuring Cause (Dahlgren v. Olson, 37 N.W.2d 438 (Minn. 1949))

St. John's Law Review

RECENT DECISIONS

AGENCY — BROKER'S COMMISSIONS — PROCURING CAUSE. — Defendant, owner of certain farm land, orally engaged plaintiff, broker, to effect the sale of said land at $40.00 per acre, plaintiff to receive $500 in cash as commission. Plaintiff procured one George Olson who, after seeing the farm, was prepared to meet the terms of the defendant. Plaintiff referred him to defendant who, after learning that he had been sent by plaintiff, told Olson that he could have saved money had he not seen plaintiff at all. Thereupon, without inquiry as to whether Olson was willing to meet the original terms, even though in fact Olson would have paid $40.00 per acre, defendant sold him the farm at a lesser price of $37.50 per acre. Defendant then refused to pay plaintiff's commission claiming that plaintiff was not the procuring cause of the sale and that the agreement had been terminated. Plaintiff institutes this action to recover his commission.

From a verdict of the jury for defendant, plaintiff appeals. *Held,* judgment reversed. Defendant cannot escape liability for broker's commission by completing the sale himself at a lesser price, where the purchaser has been produced by the broker. *Dahlgren v. Olson,* — Minn. —, 37 N. W. 2d 438 (1949).

It is a general rule that a broker is entitled to commission upon showing that he was the efficient cause of bringing to the vendor a purchaser ready, willing and able to purchase on terms stipulated in the agreement between vendor and broker.[1] A real estate agent is the efficient cause of a sale or trade, when the sale is traced to his introduction of the purchaser to the owner or principal.[2] The broker's duty to introduce the prospective buyer to the seller does not mean that he must become the introducee who makes the parties personally acquainted,[3] nor does the fact that he was not present at the time of making the sale constitute a sufficient reason for refusal to pay his commission.[4] A broker procures a customer if he informs him of the property and of the fact that it is for sale so that as a result the purchaser is led to the seller.[5] When the seller accepts a

[1] Mattingly v. Pennie, 105 Cal. 514 (1895); Desmond v. Stebbins, 140 Mass. 339, 5 N. E. 150 (1885); Schimmelpfennig v. Gaedke, 223 Minn. 542, 27 N. W. 2d 416 (1947); Hubachek v. Hazzard, 83 Minn. 437, 86 N. W. 426 (1901); Saum v. Capital Realty Development Corp., 268 N. Y. 335, 197 N. E. 303 (1935).

[2] Jackson v. Brower, 22 N. M. 615, 167 Pac. 6 (1917).

[3] Moore v. Griffith, 234 Iowa 1024, 14 N. W. 2d 644 (1944).

[4] Horton v. Colbron, 60 Wyo. 263, 150 P. 2d 315 (1944).

[5] Williams v. Walker, — N. H. —, 61 A. 2d 522 (1948).

buyer procured by his broker, thereafter all acts and all negotiations between the accepted prospect and landowner constitute an endless chain up to the culmination.[6] It is immaterial whether the owner sold at the same price,[7] or at a lower figure than the one given to the broker, provided that the buyer would have been ready, willing, and able to pay the original price, for the broker would still remain the efficient cause of bringing the parties together.[8] The question of "efficient cause" is one of fact.[9] Like other questions of fact, it must, where the facts are in dispute or where more than one inference may reasonably be drawn, be a question for the jury to determine.[10] However, where the facts clearly show that the broker did in fact find the customer and cause the customer and his principal to come together on the sale, the broker is entitled to a peremptory instruction that he has procured the purchaser and earned his compensation.

In the instant case, the plaintiff had informed the purchaser of the fact that the property was for sale; he had led the purchaser to the seller; the purchaser was ready, willing and able to pay the original price desired by the defendant seller; in fact a sale was consummated between the purchaser and the defendant. From these facts the court was manifestly correct in holding that, as a matter of law, the broker was the efficient cause of bringing the parties together. Injustice would have resulted if the seller could have circumvented payment of the commission to the broker by suggesting that the sale be at the asking price minus that sum to which the broker would have been entitled.

V. R.

ARBITRATION—RES JUDICATA AS TO ALL MATTERS REASONABLY COMPREHENDED IN DISPUTE.—In this action the vendor protested the vendee's attempt to arbitrate on the ground that the vendee's breach of warranty claim was precluded by a previous judgment. The previous judgment relied upon was the result of an original arbitration proceeding in which the vendor was awarded the full contract price for twill goods delivered in accordance with contract. The instant attempt at arbitration by the vendee was on the theory of breach of warranty arising from alleged defects in the material—the same grounds upon which payment had been refused at the outset. *Held,* motion to stay arbitration granted. Judgment entered

---

[6] McMonigal v. North Kansas City Development Co., 233 Mo. App. 1040, 129 S. W. 2d 75 (1939).
[7] Jacobs v. McKelvey, 130 Pa. Super. 417, 197 Atl. 494 (1938).
[8] Hubachek v. Hazzard, *supra* note 1.
[9] Wilson v. Sewell, 50 N. M. 121, 171 P. 2d 647 (1946).
[10] MECHAM, AGENCY 2435 (2d ed. 1914).