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Contracts--Brokers' Commissions when Acting for Two Principals (Allan Fox Co. v. Wohl, 255 N.Y. 268 (1931))

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CONTRACTS—BROKERS' COMMISSIONS WHEN ACTING FOR TWO PRINCIPALS.—Plaintiff, a real estate broker, was employed by the defendant to secure a purchaser for certain property on an exchange basis, the commission to be an agreed percentage of the price. Plaintiff was likewise engaged by one Klein to secure a purchaser for his property on an exchange basis. Subsequently, through the efforts of the broker, the two parties were brought together and a contract executed, providing for the exchange of the respective parcels. Defendant thereafter repudiated the contract and refused to perform. Plaintiff, in his complaint sought the usual commission from defendant and in addition sought the commission he would have earned from the other party had defendant performed. *Held,* the commissions from both parties are not the natural or probable consequences of a brokerage exchange contract and were not shown to have been within the contemplation of the parties when the simple contract of employment was made. Allan Fox Co. v. Wohl, 255 N. Y. 268, 174 N. E. 650 (1931).

The principle on which damages are awarded for a breach of contract is that a party is entitled to the benefits of his contract.[1] So that one who repudiates a contract is liable to the injured party to the amount of the loss sustained, an amount commensurate with the benefits which would have been directly received from performance.[2] The ascertainment of the natural, certain and direct consequences of a breach, though following well-defined rules, is not altogether free from difficulty in the individual case.[3] The enlarged liability sought to be established here must be fixed at or about the time of the execution of the contract sued upon.[4] Subsequent conversations, whereby the broker is advised of the possibility of earning double commissions, but constitute a mere incident of plaintiff's employment and do not indicate that the parties at any time agreed that defendant would consummate the proposed exchange so as to enable plaintiff to earn a two-fold commission or that defendant would be liable therefor if the deal was never consummated by reason of his repudiation thereof.[5] Damages, in the legal sense, presupposes a breach of legal duty and since in the instant case Wohl owed Fox no duty in reference to the completion of the exchange contract with Klein, Fox was not damaged by its breach. The only contract whose breach affected Fox was the promise of compensation in the event that he procured a purchaser, ready, willing and able to perform on the stipulated terms. It is true that had the purchase

[1] 1 Sutherland on Damages (4 ed., 1916) p. 50.

[2] Wakeman v. Wheeler, Wilson Mfg. Co., 101 N. Y. 205 (1886).

[3] See note (1931) 5 St. John's L. Rev. 254, wherein is contained a detailed consideration of the problem of determining the measure of damages flowing from a breach of contract.

[4] Lillard v. Kentucky, D. & W. Co., 134 Fed. 168 (C. C. A., 7th, 1904); Leonard v. New York, etc., 41 N. Y. 544 (1870); Gross v. Heckert, 120 Wisc. 314, 97 N. W. 952 (1904).

[5] *Ibid.*

been effected, plaintiff would have earned commissions from Klein. Yet the defendant did not employ plaintiff until reference to his brokerage contract with Klein. The contract of employment was unilateral and Fox could have performed by producing anyone willing to buy on defendant's terms.[6] This case is distinguishable from the cases wherein the circumstances of the broker's employment enabled the court to find an express or implied agreement to be responsible for the loss of the commissions from a third party.[7] Thus where the prospect agreed with the owner's broker that he would buy the property if the agent could induce the owner to accept on certain terms, knowing all the time that the broker's only compensation would be the commissions received from the owner, he was properly held liable to the broker for the loss of those commissions occasioned by his refusal to go through with the purchase as agreed.[8] The loss of commissions was the natural, certain and direct consequence of the breach. From the very nature of the contract such would be the damage attendant upon its breach.[9] The principal case reiterates a rule which has received widespread judicial sanction.[10]

L. G. H.

CONTRACTS — LIABILITY OF ONE WRONGFULLY INDUCING BREACH.—Plaintiff was a real estate broker who was employed by his principal to bring about a sale of the latter's property. Plaintiff procured defendant who agreed to purchase on the seller's terms. The defendant then induced the seller to break his contract with the plaintiff broker and to consummate the sale unknown to the broker and thereby deprive him of his commission. Thereupon the buyer and seller distributed a sum of money between themselves in lieu of the broker's commission. The seller being insolvent, the broker

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[6] 1 Williston on Contracts (1920) Sec. 13.

[7] Pease & Elliman, Inc. v. Gladwin Realty Co., Inc., 216 App. Div. 421, 215 N. Y. Supp. 346 (1st Dept., 1926); McKnight v. McGuire, 117 Misc. 306, 191 N. Y. Supp. 323 (1921); Louis Starr, Inc. v. Blumenthal, 132 Misc. 222, 228 N. Y. Supp. 486 (1927).

[8] James v. Home of the Sons and Daughters of Israel, 153 N. Y. Supp. 169 (App. Term, 1915).

[9] Houser v. Pearce, 13 Kan. 104 (1874); Hexter v. Knox, 63 N. Y. 561 (1876); Beeman v. Banta, 118 N. Y. 538, 23 N. E. 887 (1890); Fox v. Everson, 27 Hun 355 (N. Y., 1882); New York Market Gardeners' Assn. v. Adams, 115 App. Div. 42, 100 N. Y. Supp. 594 (2nd Dept., 1906), *aff'd* 190 N. Y. 514, 83 N. E. 1128 (1907); Hammer v. Schoenfelder, 47 Wisc. 455 (1879).

[10] Anvil Mining Co. v. Humble, 153 U. S. 540, 14 Sup. Ct. 876 (1894); Gagnon v. Sperry Hutchinson Co., 206 Mass. 547, 92 N. E. 761 (1910); Lewiston v. Vulcon, 139 Minn. 180, 165 N. W. 1071 (1918); Dart v. Laimbeer, 107 N. Y. 664, 14 N. E. 291 (1887).