



13 February 2019

PRESS SUMMARY

Wells (Respondent) v Devani (Appellant)
[2019] UKSC 4
On appeal from [2016] EWCA Civ 1106

JUSTICES: Lord Wilson, Lord Sumption, Lord Carnwath, Lord Briggs and Lord Kitchin

BACKGROUND TO THE APPEAL

The appeal concerns an estate agent, Mr Devani, who claims that commission became payable to him by Mr Wells, the vendor of a number flats, on the completion of the sale of the flats to a purchaser Mr Devani had introduced to Mr Wells.

In 2007 the vendor, Mr Wells, completed the development of a block of flats. By the beginning of 2008 seven of the flats were still on the market. On 29 January 2008 a neighbour of Mr Wells, Mr Nicholson, sent an email to Mr Devani, who was trading as an estate agent, informing him of the unsold flats. Later that day Mr Devani acknowledged receipt of Mr Nicholson's email and made a telephone call to Mr Wells. Both parties at trial gave different accounts of this telephone conversation. It was Mr Devani's evidence that he told Mr Wells that he was an estate agent and that his commission terms would be 2% plus VAT. Mr Wells maintained that Mr Devani made no mention of any commission. Mr Devani subsequently made contact with Newlon Housing Trust who agreed to purchase the remaining flats for £2.1m. The transaction proceeded to completion and Mr Devani claimed his commission. Mr Wells refused to pay, and so Mr Devani issued proceedings.

In the County Court at Central London the judge, His Honour Judge Moloney QC, held that there was a binding contract between the parties. However, as Mr Devani had only submitted his written terms to Mr Wells after he had made the introduction to the Newlon Housing Trust, the final award was subject to a one-third deduction to reflect Mr Devani's failure to comply with the requirements of the Estate Agents Act 1979 ("the Act"). On appeal, the Court of Appeal by a majority, allowed Mr Wells' appeal on the issue of whether there was ever a binding contract and unanimously dismissed his appeal in respect of section 18 of the Act.

There are two issues for the Supreme Court: (i) the first, raised on appeal by Mr Devani, is whether the agreement was complete and enforceable despite there being no express identification of the event which would trigger the obligation to pay the commission. (ii) The second issue, raised on a cross-appeal by Mr Wells, is whether, by reason of Mr Devani's failure to comply with the requirements imposed by section 18 of the Act, the trial judge ought to have dismissed the claim or discharged Mr Wells' liability to pay the commission.

JUDGMENT

The Supreme Court unanimously allows Mr Devani's appeal and dismisses Mr Wells' cross-appeal. Lord Kitchin gives the lead judgment (with whom Lord Wilson, Lord Sumption and Lord Carnwath agree). Lord Briggs gives a concurring judgment.

REASONS FOR THE JUDGMENT

(i) Was there a binding contract?

The question is whether, objectively assessed, the parties by their words and their conduct intended to create a legally binding relationship [17]. It may be the case that the words and conduct relied upon are so vague that the court is unable to identify the terms on which the parties have reached agreement. However, the courts are reluctant to find an agreement is too vague or uncertain to be enforced where it is found that the parties had the intention of being contractually bound and have acted on their agreement [18]. In this case it would naturally be understood that payment would become due on completion and made from the proceeds of sale [19]. In short, Mr Devani and Mr Wells agreed that if Mr Devani found a purchaser for the flats he would be paid his commission. Mr Wells found the Newlon Housing Trust and it became the purchaser on completion of the transaction. At that point, Mr Devani became entitled to his commission and it was payable from the proceeds of sale [19].

(ii) Implied term

It was therefore unnecessary for the judge to imply a term into the agreement between Mr Devani and Mr Wells. However, had it been necessary, there would be no hesitation in holding that it was an implied term of the agreement that payment would fall due on completion of the purchase of the property by a person whom Mr Devani had introduced [27]. The obligation to make payment of the commission on completion was required to give the agreement business efficacy and would not go beyond what was necessary for that purpose [29]. There will be cases where an agreement is so vague and uncertain that it cannot be enforced [33]. However, each case must be considered in light of its own particular circumstances [35].

(iii) The Estate Agents Act 1979

Section 18(1) of the Act provides that before any person enters into a contract, the agent must give the client certain information [37-39]. In this case, Mr Devani failed to comply with his section 18 obligation because, in particular, Mr Devani did not at the outset, or as soon as reasonably practicable thereafter, expressly inform Mr Wells of the event which would trigger his entitlement to commission; nor did he provide any of that information in writing [43]. However, in the circumstances of this case, Mr Devani's culpability was not so great as to justify dismissal of his application, and the trial judge made no material error in so deciding [54].

As to whether once the Court of Appeal found that the judge had made errors in the course of his assessment under section 18(6), it ought to have carried out the evaluation required by that provision afresh, the law does not require such an inflexible approach where, as here, the errors were of a minor kind and cannot have affected the conclusion to which he came. In these circumstances it is neither necessary nor appropriate for the appellate court to set that decision aside and embark on the evaluative exercise for itself [55-56].

Lord Briggs agrees with Lord Kitchin and with his reasons [58]. Lord Briggs adds that there are occasions, where the context in which the words are used tells you as much, or even more, about the essential terms of the bargain than the words themselves [59]. So it is with the contract in the present case [60]. Lord Briggs agrees that, like Lord Kitchin, he would have been prepared to find that a sufficiently certain and complete contract had been concluded between them, rather than just by the implication of terms [61]. Finally, Lord Briggs adds that none of these observations about the common law in any way under-rate the importance of the statutory duty in section 18 of the Act. On the contrary, it is precisely because the common law will recognise an enforceable liability to pay as arising from the briefest and most informal exchange between the parties that statute protects consumers by imposing a more rigorous discipline upon their professional counterparties [63].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.

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