

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**H.C.A. 2701 of 1998**

**BETWEEN**

**MARGARET ROOPSINGH**

**Plaintiff**

**AND**

**PREMIER CONSULTANTS LIMITED**

**First Defendant**

**AND**

**TIKASINGH'S REAL ESTATE AGENCY LIMITED**

**Second Defendant**

**Before the Honourable Justice R. Narine**

**Appearances**

Mr. H. Wooding instructed by Mr. D. Hannays for the Plaintiff

Mr. E. Mitchell for 2<sup>nd</sup> Defendant

No appearance of 1<sup>st</sup> Defendant

**JUDGMENT**

This is a claim for the sum of \$60,000.00 being a deposit paid by the Plaintiff to the First Defendant for the sale of a parcel of land. The second Defendant was appointed to act as agent of the First Defendant in connection with the sale, by letter dated 7<sup>th</sup> May 1996.

The Agreement for sale was executed on 29<sup>th</sup> October 1996. The sum of \$60,000.00 was paid by cheque to the First Defendant. The agreement provided for completion within 90 days, with a default clause, which provided for forfeiture of the deposit should the Purchaser fail to complete within the stipulated time.

On 5<sup>th</sup> February 1997, the Plaintiff signed a memorandum stating that she was no longer interested in purchasing the property, and that Mr. Visham Tikasingh of the Second Defendant had indicated to her that a refund will be given to her immediately.

By memorandum dated 7<sup>th</sup> August 1997 signed by Vishnu Tikasingh as Managing Director of the Second Defendant, the Second Defendant indicated that the First Defendant “has given an undertaking” that the sum of \$60,000 paid by the Plaintiff as a deposit “will be refunded upon re-sale of the property.”

By letter dated 30<sup>th</sup> July 1998, addressed to the Plaintiff, Attorney-at-Law for the First Defendant informed the Plaintiff that the First Defendant had exercised his right to forfeit the deposit under the agreement for sale, and that neither Vishnu Tikasingh nor the Second Defendant had any authority to give the undertaking contained in the memorandum dated 7<sup>th</sup> August 1997 on behalf of the First Defendant.

The Writ of Summons herein was filed on 27<sup>th</sup> November 1998. The first Defendant entered an appearance and filed a Defence in which he maintained that the Second Defendant had no authority to give such an undertaking. However, the First Defendant did not appear at the trial and was not represented. The Plaintiff, however, did not pursue any relief against the First Defendant at the trial.

It is important to note that all the documents referred to above were put in by consent, and no dispute was raised as to the contents of same. No oral evidence was lead by either side. The undisputed evidence in this case is contained in the documents.

Mr. Wooding submitted in essence that the Second Defendant had no authority to give the undertaking. However, in communicating the undertaking in the memorandum dated 7<sup>th</sup> August 1997, he impliedly warranted that he in fact had the authority to give the undertaking. In reliance on that undertaking the Plaintiff altered her position to her detriment. At that point she surrendered her interest in the property and decided to recover her deposit.

Mr. Mitchell submitted that the Court must determine an issue of fact as to whether or not the Second Defendant acted outside the scope of his authority when he gave the undertaking.

Mr. Mitchell referred to the Defence of the Second Defendant in which it is pleaded that the Second Defendant prepared and executed the memorandum dated 7<sup>th</sup> August 1997 upon instructions given to him by Mr. Bholu Nandlal, Managing Director of the First Defendant.

However, no evidence was led by the Second Defendant to support this plea. The evidence, as contained in the letter dated 30<sup>th</sup> July, 1998 from Attorney-at-Law for the First Defendant was that neither Vishnu Tikasingh nor the Second Defendant had any authority whether implied or otherwise to give any such undertaking on behalf of the First Defendant.

In addition to this the letter dated 7<sup>th</sup> May 1996 from the First Defendant appointing the Second Defendant as Agent stated:

**“It is expected that the entire project will be completed within a period of one (1) year of this date hence this authorization to act as Agents will remain in force within such period.”**

It follows from this that the contract of agency expired on 7<sup>th</sup> May 1997. There is no evidence that the agency was extended or renewed.

Having regard to the undisputed evidence, I find on a balance of probabilities that the Second Defendant had no authority to give the undertaking contained in the memorandum dated 7<sup>th</sup> August 1997.

The question of the liability of an agent who impliedly represents that he has authority, when in fact he does not, was considered in **Firbank’s Executors vs. Humphreys &**

**Ors. (1886) 18 QBD 54 at p.60.** Having reviewed the authorities, Lord Esher M.R deduced the correct principle to be as follows:

**“The rule to be deduced is, that where a person by asserting that he has the authority of the principal induces another person to enter into any transaction which he would not have entered into but for that assertion, and that assertion turns out to be untrue, to the injury of the person to whom it is made, it must be taken that the person making it undertook that it was true, and he is liable personally for the damage that has occurred”.**

At page 62, Lindley L. J. opined that:

**“Speaking generally an action for damages will not lie against a person who honestly makes a misrepresentation which misleads another. But to this general rule there is at least one well established exception, viz., where an agent assumes an authority which he does not possess, and induces another to deal with him upon the faith that he has the authority which he assumes.”**

The general principle is also stated in **Bowstead & Reynolds on Agency 16<sup>th</sup> ed. (1996) p.592 para 9-057;**

**“(1) Where a person, by word or conduct, represents that he has authority to act on behalf of another, and a third party is induced by such representation to act in a manner in which he would not have acted if that representation had not been made, the first-mentioned person is deemed to warrant that the representation is true, and is liable for any loss caused to such third party by a breach of that implied warranty, even if he acted in good faith, under a mistaken belief that he had such authority”**

Applying the law to this case, it is clear that the Second Defendant impliedly represented to the Plaintiff that he had authority to act on behalf of the First Defendant. Acting in reliance on the undertaking given by the Second Defendant on behalf of the First

Defendant, the Plaintiff decided to recover her deposit rather than pursue her interest in the land. The Second Defendant is liable for the loss caused to the Plaintiff by the breach of the implied warranty that he had such authority.

Accordingly the Plaintiff succeeds in this action against the Second Defendant

**ORDER**

1. There will be judgment for the Plaintiff against the Second Defendant in the sum of \$60,000, with interest thereon at the rate of 6% to judgment.
2. The claim against the First Defendant is dismissed with no order as to costs.
3. The Second Defendant will pay the Plaintiff's costs to be taxed in default of agreement.

Dated this 20<sup>th</sup> Day of May 2005

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Rajendra Narine  
Judge.