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## Torts—Conspiracy to Deprive Broker of Real Estate Commissions

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finger of public policy in the direction of more, not less, care to those who so assist the government. Further, the Court felt that the role of the Police Department was far from passive, since they had not only requested aid, but after having received it, acted on it, thereby establishing a special relationship requiring further affirmative action.

In principle, this extension of municipal liability appears just. The informer, in shedding his protective cloak of public anonymity, exerts special efforts in support of the public interest. It seems no more than proper to expect special consideration for thus exposing himself to possible danger. The added liability will prove a burden, but standards of reasonableness should prevent the burden from becoming oppressive, and the burden may well become illusory when considering the relative effects of encouraging further aid by the citizen.

#### CONSPIRACY TO DEPRIVE BROKER OF REAL ESTATE COMMISSIONS

The plaintiff in the case of *Bereswill v. Yablon*,<sup>59</sup> on receiving his real estate broker's license, succeeded to his brother-in-law's (one Thill) real estate business, the latter having been contacted by Yablon to look into the purchase of certain real estate owned by the Glennon Realty Corporation, without revealing defendant's interest to Glennon. Thill was then employed by Glennon to provide a purchaser at the usual rate of commission. As a result of his succession in interest, plaintiff then negotiated with Glennon who finally agreed to a price of \$90,000. Plaintiff quoted Yablon a price of \$94,750 which included his commission. Since this price was too high, negotiations between plaintiff and defendant ceased. Thereupon Yablon formed the Esbar Realty Corporation for the purpose of purchasing this land, with himself as the sole stockholder. Shortly thereafter, Yablon, in the name of Esbar, purchased the property for \$92,000 through another broker, one Fisher. Fisher did not know of plaintiff's previous efforts, neither did Glennon know that Fisher was acting for the same principal as was the plaintiff. In the City Court the plaintiff sued Esbar, Yablon and Fisher for conspiring to deprive him of his commission. The Court there found for the plaintiff against all defendants. The Appellate Division affirmed as to Yablon and Esbar but reversed as to Fisher because of his lack of knowledge concerning plaintiff's activities. On the defendant's appeal to the Court of Appeals, the plaintiff sought to argue that the gravamen of his complaint was the depriving of the plaintiff of his commission, the conspiracy language in the complaint serving only to tie the acts of the defendants together.

The Court of Appeals viewing the case as it was considered below, *i.e.*, one of conspiracy, ruled that the complaint against Fisher was properly dismissed for his lack of knowledge, and that the charge against Yablon and Esbar must also be since after Fisher's dismissal, the only defendants remaining were the Esbar Corporation and Yablon, its sole stockholder. Thus, a conspiracy be-

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59. 6 N.Y.2d 301, 189 N.Y.S.2d 661 (1959).

tween Esbar and Yablon was impossible, for the person and the entity were identical. The Court held that even if the plaintiff's revised argument was admitted, he still could not recover, because his failure to disclose to Yablon the true terms offered by Glennon was a breach of his fiduciary duty to Yablon.

The essentials of a conspiracy while phrased in various ways are an intentional participation by two or more separate persons (including corporations) toward a preconceived illegal end or design.<sup>60</sup> Since there can be no intent to do an act or participate in a conspiracy without actual or constructive knowledge that the act or conspiracy is being perpetrated, the case against Fisher appears to have been properly dismissed.

Likewise, the logic of dismissing the case against Esbar and Yablon as well, seems inescapable. For while corporations have long been recognized as being legal "persons," to say that a conspiracy can exist between a corporation and the person who owns all of its stock is pushing the personalization of corporations to an absurdity. A conspiracy requires two factually distinct or separate persons or entities. Thus, if Yablon had no interest in Esbar, a conspiracy between them would be clearly possible. The line would begin to blur, however, when Yablon held less than 100% interest in Esbar. The question not answered by the present case is the extent to which an interest in a corporation precludes a conspiracy between the person owning the interest and the corporation. Is 100% ownership required; or would 51% suffice?

Before a broker is entitled to a commission, he must do more than merely introduce the parties to each other.<sup>61</sup> The broker must, in addition, succeed in bringing the parties together on mutually acceptable terms, or at least be primarily responsible for such agreement.<sup>62</sup> Even if these requirements are met, the broker is still not entitled to his commission if, in the course of the negotiations, he fails to faithfully discharge his duties to his principal.<sup>63</sup> Failure on the broker's part to disclose all material information concerning the transaction, constitutes a breach of his fiduciary duties toward his principal and destroys his right to a commission.<sup>64</sup>

Thus, in the present case, while it is doubtful that the plaintiff was primarily responsible for the sale, there is very little doubt that the quotation of an erroneous price to his principal constituted such a breach of fiduciary duty<sup>65</sup> as would bar his recovery.

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60. *Ballantine v. Ferretti*, — Misc. —, 28 N.Y.S.2d 668 (Sup. Ct. 1941); *Burns v. Hayes*, 193 Misc. 491, 84 N.Y.S.2d 262 (Sup. Ct. 1948); *Cooper v. Maurer*, — Misc. —, 37 N.Y.S.2d 992 (Sup. Ct. 1942).

61. *O'Riordan v. Russel*, 6 Misc. 2d 103, 163 N.Y.S.2d 294 (County Ct. 1957).

62. *Globus Realty Co. v. Fleetwood Terrace*, 275 App. Div. 34, 87 N.Y.S.2d 141 (1st Dep't 1949); *Rosenthal v. Atlas*, 272 App. Div. 1022, 73 N.Y.S.2d 603 (2d Dep't 1947); *Verity v. Ottinger*, 223 App. Div. 344, 227 N.Y. Supp. 650 (1st Dep't 1928).

63. *Silberkraus v. Reinhard*, 221 App. Div. 615, 225 N.Y. Supp. 14 (3d Dep't 1927).

64. *Moffat v. Gerry Estates*, 259 App. Div. 403, 19 N.Y.S.2d 579 (1st Dep't 1940).

65. Since this discussion was prompted by an argument of the plaintiff which was not admitted by the Court, not having been raised below, it is merely dicta, but logically compelling nonetheless.