

BELYEU *v.* HUDSON.

Opinion delivered June 3, 1929.

1. **BROKERS—CONTRACT OF EMPLOYMENT.**—A contract employing an agent to find a purchaser of land need not be in writing, not being within the statute of frauds.
2. **BROKERS—RIGHT TO COMMISSION.**—Where a real estate agent employed to sell land introduces a purchaser to the seller, and through such introduction a sale is effected, the agent is entitled to his commission, though the sale is made by the owner.
3. **BROKERS—RIGHT TO COMMISSION.**—Where a real estate broker procures a purchaser ready, able and willing to buy the property, he is entitled to a commission.

4. **BROKERS—RIGHT TO COMMISSION.**—Evidence held to justify a finding that a broker procured a purchaser ready, able, and willing to buy the property, and was entitled to his commission therefor.
5. **BROKERS—RIGHT TO COMMISSION.**—A broker procuring a purchaser, ready, able and willing to buy two tracts of seven and two and one-half acres, respectively, was not precluded from recovering his commission on the sale of the first tract, although he had no authority to sell the second tract.

Appeal from Pulaski Circuit Court, Second Division;
Richard M. Mann, Judge; affirmed.

STATEMENT OF FACTS.

Winfield Hudson brought this suit against A. P. Belyeu to recover \$250, alleged to be due him as commission for the sale of real estate. A. P. Belyeu denied that Winfield Hudson was his agent for the sale of the land, or that he knew that he had anything to do with the sale of it.

According to the testimony of Winfield Hudson, he had a written contract with A. P. Belyeu for the sale of a tract of land, comprising about seven acres near Cabot, Arkansas, for \$2,500. Belyeu had another tract of land just across the road, comprising two and a-half acres, but Hudson was not the agent to sell it. After the time mentioned in the written contract for the sale of the seven-acre tract had expired, Hudson talked to Belyeu about it, and the latter told him to go ahead and sell it on the same terms if he could. After that time, Hudson carried J. L. Jones and showed him several tracts of land near Cabot, Arkansas, which he had an agency to sell. Among the tracts was the seven-acre tract of Belyeu. Hudson told Jones that the price of the seven-acre tract was \$2,500, and he only had a contract to sell that tract. Jones replied that he did not want this tract unless he could get the two and one-half acre tract across the road. Hudson told Jones that he was sure that Belyeu would sell both tracts for the sum of \$3,000. Jones asked Hudson to see Belyeu as soon as he could, and find out whether he would sell him both tracts. Jones wanted to purchase both tracts

or none. This occurred Saturday afternoon. On the following Monday morning Hudson went to see Belyeu about the sale, and found that he had already sold both tracts to Jones before his arrival. Jones had gone to see Belyeu on Sunday, and the terms for the purchase of the land had been arranged then. The sale was consummated upon the terms agreed upon on Sunday. Belyeu had agreed to pay Hudson ten per cent. of the purchase price as his commission, and this was the usual and customary price for selling land in that community. Belyeu told Hudson that he had first priced both tracts to Jones at \$3,000, but finally agreed to accept \$2,750 for both tracts, and this was the price Jones paid Belyeu for them.

According to the testimony of A. P. Belyeu, he did not renew his written contract with Hudson for the sale of the land or give him verbal authority to sell it for him. He only gave him verbal authority to sell to one man, and Hudson failed to make this sale. Belyeu did not know that Hudson had endeavored to sell the land to Jones for him.

According to the testimony of J. L. Jones, Hudson told him that his contract with Belyeu for the sale of the land in question had expired, and that he had no authority to sell it. For that reason Jones went to see Belyeu himself about purchasing the land.

There was a verdict and judgment in favor of the plaintiff for \$250, and the defendant has appealed.

L. A. Hardin, for appellant.

Fred A. Isgrig and *Philip McNemer*, for appellee.

HART, C. J., (after stating the facts). The plaintiff relies upon a verbal contract for his right to a commission. This was sufficient. This court has held repeatedly that it is not necessary that authority to sell land should be in writing. The reason is that a contract employing an agent to find a purchaser for land is not within the statute of frauds. *Blanton v. Jonesboro Building & Loan Association*, 176 Ark. 315, 3 S.

W. (2d) 964; *Vanenburg v. Duffey*, 177 Ark. 663, 7 S. W. (2d) 236.

According to the testimony of Hudson, he had verbal authority from Belyeu to sell the seven-acre tract of land for the sum of \$2,500. He showed this tract of land to Jones and got him interested in the purchase of it. It is true that the sale was consummated by Jones with Belyeu, but the law is settled in this State that, where a real estate agent, employed to sell land, introduces a purchaser to the seller, and through such introduction a sale is effected, the agent is entitled to his commission, although the sale be made by the owner. *Carpenter v. Phillips*, 157 Ark. 609, 249 S. W. 357, and cases cited.

Again, in *Sharp v. West*, 176 Ark. 616, 3 S. W. (2d) 692, the court held that, where a real estate broker procures a purchaser, ready, able and willing to buy the property, he is entitled to a commission.

Here the jury was justified in finding that Hudson procured Jones as a purchaser of the land, and that he was entitled to recover his commission, although the sale was consummated between Jones, the purchaser, and Belyeu, the owner of the land.

Counsel for the defendant, however, contend that the judgment must be reversed because the two and one-half acre tract across the road was included in the sale of the seven-acre tract, and that Hudson had no authority to sell the two and a-half acre tract. This did not make any difference. According to the testimony of Hudson, he told Jones that he only had authority to sell the seven-acre tract, and that Belyeu asked \$2,500 for it. Hudson further told Jones that he thought he could procure both tracts for \$3,000. Jones did in fact procure both tracts from Belyeu for the sum of \$2,750. If the jury believed the testimony of Hudson in this regard, under the instructions of the court, he was entitled to recover. Hudson, as broker, procured Jones as a prospective purchaser of the land. In other words, he was the procuring cause of Jones going to see Belyeu

about the purchase of the land. He had authority to sell the seven-acre tract. Belyeu voluntarily reduced the price of both tracts from \$3,000 to \$2,750. He consummated a sale with Jones on these terms, and Hudson was entitled to his commission at the rate specified in his agreement with Belyeu. Belyeu consented to the change in price and the addition of another tract of land in the sale to Jones, and Hudson's claim for commission could not be defeated by the fact that these changes were made. There is no evidence that Belyeu was compelled to modify the terms as to the seven-acre tract in order to consummate the sale. As far as the record discloses, he might have sold both tracts to Jones for the price of \$3,000, and the concession of Belyeu to sell at a reduced price was entirely voluntary. Hence Hudson was entitled to recover his commission of ten per cent. on the purchase price of the seven-acre tract at \$2,500. This amounted to \$250. *Stiewell v. Lally*, 89 Ark. 195, 115 S. W. 1134; *Hodges v. Bayley*, 102 Ark. 200, 143 S. W. 92; and *Chandler v. Gaines-Ferguson Realty Co.*, 145 Ark. 262, 224 S. W. 484.

We find no reversible error in the record, and the judgment will therefore be affirmed.
