

WALFORD AND OTHERS V MILES AND ANOTHER

HOUSE OF LORDS

[1992] 2 AC 128, [1992] 1 All ER 453, [1992] 2 WLR 174, 64 P & CR 166, [1992] 11 EG 115, [1992] 1 EGLR 207

HEARING-DATES: 6, 7 November 1991, 23 January 1992

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CATCHWORDS:

Contract -- Enforceability -- Contract to negotiate -- Lock-out agreement -- Agreement to purchase business and land subject to contract -- Collateral contract to continue negotiations and to terminate negotiations with any third party -- No specific time limit on duration of collateral agreement -- Whether implied term that defendants would continue to negotiate in good faith for reasonable period -- Whether collateral contract enforceable.

HEADNOTE:

The respondents owned a company, together with premises which were let to the company where it carried on a photographic processing business. In 1986 the respondents decided to sell the business and the premises and received an offer of £1.9m from a third party. In the meantime the appellants entered into negotiations with the respondents and on 12 March 1987 the respondents agreed in principle to sell the business and the premises to them for £2m and warranted that the trading profits in the 12 months following completion would be not less than £300,000. On 7 March it was further agreed in a telephone conversation between the parties that if the appellants provided a comfort letter from their bank by a specified date confirming that the bank had offered them financial facilities to enable them to make the purchase for £2m the respondents 'would terminate negotiations with any third party or consideration or any alternative with a view to concluding agreements' with the appellants and that even if the respondents received a satisfactory proposal from any third party before the close of business on 20 March 1987 they 'would not deal with that third party and nor would [they] give further consideration to any alternative'. The appellants duly provided the comfort letter from their bank in the time specified and on 25 March the respondents confirmed that, subject to contract, they agreed to the sale of the property and the shares in the company at a total price of £2m. On 30 March the respondents withdrew from the negotiations and decided to sell to the third party because they were concerned that their staff would not get on with the appellants and that a loss of staff would put the warranted £300,000 profit in jeopardy. The appellants brought an action against the respondents for breach of a 'lock-out' agreement, collateral to the negotiations which were proceeding to purchase the business and the premises subject to contract, under which the appellants had been given an exclusive opportunity to try to come to terms with the respondents. The appellants alleged that it was a term of the collateral agreement necessarily to be implied to give business efficacy to it that, so long as the respondents continued to desire to sell the business and the premises, the respondents would continue to negotiate in good faith with the appellants. It was contended that the consideration for the collateral contract was the appellants' agreement to continue negotiations and the provision of the comfort letter from their bank. The judge upheld the claim but on appeal the Court of Appeal held that the collateral agreement alleged was no more than an agreement to negotiate and was therefore unenforceable. The appellants appealed to the House of Lords.

Held -- Although a lock-out agreement, whereby one party for good consideration agreed, for a specified period of time, not to negotiate with anyone except the other party in relation to the sale of his property, could constitute an enforceable agreement, an agreement to negotiate in good faith for an unspecified period was not enforceable and nor could a term to that effect be implied in a lock-out agreement for an unspecified period since the vendor was not obliged under such an agreement to conclude a contract with the purchaser and he would not know when he was entitled to withdraw from the negotiations and the court could not be expected to decide whether, subjectively, a proper reason existed for termination of negotiations. It followed that the alleged collateral agreement was unenforceable and the appeal would therefore be dismissed.

Courtney & Fairbairn Ltd v Tolaini Bros (Hotels) Ltd [1975] 1 All ER 716 approved.