

When will a Real Estate Agent be entitled to commission?

The High Court case of *LJ Hooker Ltd v WJ Adams Estates Pty Ltd* upheld a Supreme Court decision to dismiss a real estate agent's claim for commission.

The Court held that the real estate agent was not entitled to recover commission under the contract simply because it expended considerable time and energy in the interests of the Seller. The real estate agent must show that the sale was actually effected and establish the necessary causal relationship between its actions and the sale. The sale must have been brought about through its agency.

The recent case of *Real Estate Dynamics P/L v Wallrose P/L [2010]* also upheld the principles set out in the High Court case. In this case the agent had taken steps to advertise in print media for the sale of a business and prepared a document which was available for distribution to prospective purchasers. The agent signed a contract with two individuals but the contract fell through. The individuals still wanted to purchase the business and they communicated this to the agent. Eventually the individuals purchased the business in the capacity of their company as trustee. This second contract was not prepared by the agent. The seller and the agent's relationship had deteriorated prior to the execution of the second contract, but the agency was not terminated. The question arose as to whether the agent did introduce a person to the property and whether that person was the person to whom the property was ultimately sold during the agency.

The Court held that the agent's claim for commission should fail for the following reasons:

- Prior to signing the Form 21A, the individual prospective buyers had independently ascertained that the seller's business was for sale;
- The individual prospective buyers were clients of the seller's business;
- The individual prospective buyers contacted the agent personally;
- The agent did not introduce the purchaser;
- The agent's ongoing interactions with the individual prospective buyers after termination of the first contract equates to the mere attendance at negotiations between principals; and
- The agent therefore did not introduce the property to the ultimate purchaser and the agent's actions were not the effective cause of sale.

An older case (*Hooper v Bradbury*) highlighted the fact that the mere appointment of a person as a commission agent to sell a property does not entitle him or her to commission if the property is sold; he or she must show that he or she was the effective cause of the sale. An agent can show this by proving that he or she introduced a purchaser who is ready and willing to buy. A commission agent's mere attendance at negotiations between principals does not make him or her the effective cause of an agreement for sale made by the buyers.

Hooper v Bradbury was referred to in the later case of *Bradley v Adams* where it was held that the factors which stand in the way of a successful claim by the agent for commission are:

- failure of the initial contract, at which point the agent had failed to produce a ready, willing and able purchaser;
- the total failure of the agent to play any part in the subsequent negotiations and rearrangements; and
- the substantial difference between the eventual bargain, both in relation to mechanism and benefits of the respective parties when compared with that which the agent was retained to achieve.

The flip side of the above arguments was put forward in the relatively recent High Court case of *Moneywood Pty Ltd v Salamon Nominees Pty Ltd*. This case held in favour of the agent's claim for commission. In this case the initial contract failed and the subsequent contract (between the same parties) settled. Justice Callinan referred to the High Court case of *LJ Hooker Ltd v WJ Adams Estates Pty Ltd* by stating that the commission is not fully earned unless there is a sale which has resulted wholly or partially from the efforts of the agent. Here the agent's initial work in introducing the buyer to the land enabled the seller to enter into a contract on favourable terms with the buyer. Chief Justice Gleeson stated that "so much of the benefit of this work 'flowed through' to the second contract with the [same buyer] that it can be fairly said that [the agent's] work...can be said to be an effective cause of the [seller's] entering into the second...contract."

Justice McHugh held that "what the agent had done remained operative upon, and influential in the formation of the second contract between the same parties."

Summary

The pivotal theme as set out in these cases is that the agent must be the effective cause of the sale. It is not enough that the sale goes ahead. If there are subsequent contracts, an agent's entitlement to commission will depend on whether or not the initial work undertaken flowed through to the subsequent contract. These matters will be determined on a case by case basis.

For assistance with all your property needs, email info@mslawyers.com.au or visit our website www.mslawyers.com.au. Alternatively, contact the professional team at our Gold Coast or Brisbane office.



Gold Coast Office

9 Ouyan St
Bundall QLD 4217
PO Box 9073 GCMC QLD 9726
T +61 7 5597 8888
F +61 7 5597 8899

Brisbane Office

Level 10, 410 Queen Street
Brisbane QLD 4000
PO Box 3246 Brisbane QLD 4001
T +61 7 3226 9034
F +61 7 3226 9001

Please consider the environment before printing this newsletter. We do not waive any legal privilege, confidentiality or copyright associated with the contents of this newsletter. This newsletter has been prepared to provide general information only and does not constitute legal advice. Any material obtained from this newsletter should not be relied upon as a substitute for detailed advice. Liability limited by a scheme approved under professional standards legislation.