TURNER & DEBENHAMS
SOLICITORS

CONVEYANCING

ESTATE AGENTS' COMMISSION

The sole selling agent

The normal rule is that an estate agent can only charge commission if they were the "effective cause" of the sale rather than just a "cause" of the sale.

However, the recent case of *Dashwood v Fleurets*[1] makes it clear that this rule may not apply in the case of agents with sole selling rights. The Estate Agents (Provision of Information) Regs 1991 require agents to provide specific information including a definition of terms. Here "sole selling rights" allow the agent to charge commission even if a sale concludes after the exclusive period of the sole selling agency, provided the agent "introduced" the buyer during the exclusive period. But the question remained: is entitlement to commission through "introduction" of the buyer subject to the overriding principle that the agent must also have been the "effective cause" of the sale?

In the case of *Dashwood*, the agent's standard contract for the sole selling agreement with the seller included a clause relating to the circumstances in which the seller would become liable for payment of commission which was substantially in the prescribed form contained in the Estate Agents (Provision of Information) Regulations 1991. As such, its contract negated the requirement for the agent to be the "effective cause" of the sale. All that was needed was for the agent to have "introduced" the buyer. In the case at hand, the agency had sole selling rights for a period running from September to March. In January, they had been contacted by a prospective buyer who did not proceed. New agents were instructed in April and the original buyer revisited the property in July having seen the new agent's board and proceeded with the purchase. It was held that the seller was liable to the original agents (as sole selling agents) because they had "introduced" the buyer, even though there was a six-month delay before he purchased the property. On the facts of the case, the agents were also the "effective cause" of the sale, but the court stated that they would have been entitled to their commission anyway, on the terms of the sole selling agreement.

A potential problem arises where the seller in such a situation ends up liable to both sets of agents, and to pay two lots of commission. It would therefore be worth insisting, when instructing a second set of agents, that they would not be entitled to any commission if the sale were made to someone "introduced" by an earlier sole selling agent.

---

[1] [2007] EWHC 1610 (QB)

Most disputes relating to estate agents' fees arise because vendors do not always fully consider the terms of their contract. Vendors sometimes fail to grasp that they may be required to pay commission even if the purchaser was not introduced through the agents. Vendors should think twice before dis-instructing agents or attempting to conclude a sale without the knowledge of the agent, as they may remain liable for the agent's commission not withstanding the contract having been terminated.

In order to overcome this, agents should ensure that their terms and conditions are drafted so that there is no requirement to show that they were the effective cause of sale. It is also relatively cheap and easy to find out to whom a property was sold, when and for how much by searching HM Land Registry. An agent would then be able to identify if it had any dealing with the eventual purchaser, and quite easily calculate a fee based on a percentage of the sale price. This could result in an unexpected invoice for the vendor, even where a subsequent agent has been paid.

For further advice and information, please contact Kate Greenwood on 01727 837161 or via email on kg@turnerdebs.co.uk

This newsletter has been published as general information on the interpretation and application of the law and in accordance with our website Terms and Conditions. It does not necessarily stand on its own and should not be relied upon as advice.