

Where is my Commission!!

There have been a number of recent commission claims by estate agents or other property consultants which have reached the courts.

A great number of the cases oversee the situation where the agent acts for a vendor but the case of MSM Consulting Limited v United Republic of Tanzania touches upon the less common one of an agent seeking a property for a potential purchaser.

The Tanzanian Government were seeking new High Commission headquarters within the London area. Ms Musaka, the owner of the Claimant company did not have a formal contract signed with the Defendant. Nevertheless meetings, telephone calls and correspondence between the parties followed in which Ms Musaka visited several potential properties in the company of Commission staff.

Number 3 Stratford Place, London, W1 was favoured but in November 2003 another purchaser made an offer and so attention shifted to number 15 Stratford Place. In February 2004 the Defendant appointed Knight Frank to find a property who later learnt the sale of number 3 had fallen through and subsequently negotiated the purchase of the property on the Defendants behalf. Payment of £40,000 was made to Knight Frank. The Defendant was then footed with a claim for £105,000 from the Claimant.

Most commission claims turn on two questions:

1. Whether an agreement to pay commission on the transaction in question was in place? and;
2. Whether introduction to the Purchase by the agent was the effective cause of the transaction.

The present case hinged on the claimant had been the *effective cause* of the transaction

Unfortunately for the Claimant the judge was satisfied that Knight Frank were the effective cause of the transaction.

Clarke J interestingly seemed to indicate that an agent saying “purchasing a property that we have introduced to a client” does not necessarily import the meaning “purchasing a property that we have introduced to a client, which property is purchased as a result of our introduction”. Therefore an agent that seeks a property might not necessarily have to be the effective cause of the sale. Watch this space !

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