

UK Supreme Court rules real estate agent entitled to commission

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On 13 February 2019, the United Kingdom's highest court, the Supreme Court, ruled (in a case of *Wells v Devani*) that a real estate agent was entitled to commission for finding a purchaser of flats for a purchase price of £2.1m, even though the agent and the vendor had not expressly identified the event which would trigger the obligation to pay such commission.

What does "find me a purchaser" mean?

Despite the fact that there was no discussion of the precise event which would give rise to the payment of commission, the five law lords unanimously held that it would naturally be understood that payment would become due on completion and made from the proceeds of sale. This is because it is the common understanding of people that, in the absence of express terms to the contrary, the commission of agents is to be paid out of the proceeds of sale. The Court did not have to imply a term in the agreement to reach this result. Rather, it held that where there is no such express term and the bargain is, in substance, "find me a purchaser" and the agent introduces a prospective purchaser to whom the property is sold, then a reasonable person would understand that the parties intended the commission to be payable on completion and from the proceeds of sale.

In reaching this result, the Court re-emphasized the following basic principles of contractual interpretation:

- To determine whether parties intend to create a legally binding relationship, their words and conduct are assessed objectively. A court is not concerned with what the parties subjectively think their words and conduct mean.
- When a court finds that the parties intended to be contractually bound and have acted on their agreement, it will be reluctant to find an agreement is too vague or uncertain to be enforced.

- However, there will be cases where the agreement is so vague and uncertain that it cannot be enforced; each case must be considered in light of its own particular circumstances.

Should a term of the agreement be implied?

In very limited circumstances, a court may imply a term in an agreement. In this case, the Court ruled that, had it been necessary (which it was not), there would be no hesitation in holding that it was an implied term of the agreement between the agent and the vendor that payment would fall due on completion of the purchase of the property by a person whom the agent had introduced. The obligation to make payment of the commission on completion was required to give the agreement business efficacy and would not go beyond what was necessary for that purpose.

Other ground of appeal

There was another ground of appeal that the Supreme Court considered, based on a section of the UK Estate Agents Act 1979 which provides that an agent should at the outset, or as soon as reasonably practicable thereafter, expressly inform a vendor of the event which will trigger an entitlement to commission, and that such information should be provided in writing. This topic is beyond the scope of this note. Suffice to note that the Court ruled that the agent's culpability in not complying with the requirements of this section was not so great as to disentitle his claim to commission.

Considerations

This ruling may have implications for developers, realtors and property owners engaged in or considering the sale of property in the Cayman Islands. Do you currently have an exclusivity agreement with an agent? Is your listing being handled by multiple agents? Are you selling on your own? All stakeholders may wish to review any standing written agreements and revisit all verbal communication regarding property sales and agent engagement which may actually be deemed a formal agreement.

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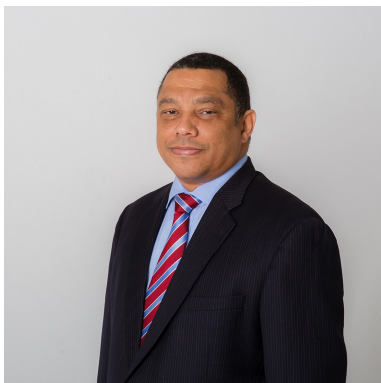
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