



Foxtons Limited -v- Pelkey Bicknell

A recent case has changed the law on when an agent is entitled to commission for introducing a purchaser.

The decision of the Court of Appeal in the case of Foxtons Limited-v-Pelkey Bicknell and another could have a significant impact on when agents are entitled to commission for introducing a purchaser. The judgment decides that the phrase “a purchaser introduced by us”, standard in the majority of estate agents’ Terms and Conditions in fact means “a person who becomes a purchaser as a result of our introduction”. This is a subtle but significant change.

The facts of the case are relatively straightforward, and not particularly uncommon. Foxtons were appointed as sole agents by Mrs Bicknell on the sale of her house. Foxtons showed the property to a purchaser, a Mrs Low. A sale was not achieved and Mrs Bicknell subsequently brought the Sole Agency Agreement to an end, at which point she instructed Foxtons, together with a number of other agents, under a Multiple Agency Agreement.

Mr and Mrs Low were then shown the property again by a third party agent, Hamptons. Mrs Low subsequently agreed to purchase the property, following negotiations, for £1.15 million. Mrs Bicknell paid commission to Hamptons as the party that had introduced Mrs Low, but did not make any payment to Foxtons.

Foxtons subsequently found out that the property had been sold to Mrs Low and issued a claim for payment of commission. They relied upon their Terms of Business which had been provided to Mrs Bicknell. The terms were in a standard form and there was no dispute that they had been agreed.

At first instance the Judge found in favour of Foxtons. Mrs Low had been introduced initially by Foxtons, she had subsequently purchased the property and therefore she was a “purchaser” introduced by Foxtons during the period of their Sole Agency. The judge ordered Mrs Bicknell to pay Foxtons’ commission. Mrs Bicknell appealed.

The Court of Appeal found in favour of Mrs Bicknell. In a unanimous decision the Court of Appeal decided that the phrase “a purchaser introduced by us” in fact means “a purchaser who becomes a purchaser as a result of our introduction”. In this case, Mrs Low had not purchased the property because of the introduction by Foxtons. She had not initially carried on her interest beyond her first viewing. The Court of Appeal found that it was the subsequent introduction by Hamptons, which had actually led Mrs Low to purchase the property. Consequently, Mrs Bicknell was not liable to pay commission to Foxtons.

The Court of Appeal were heavily influenced by which agent was the “effective cause” of the transaction. They felt that Hamptons were the cause of the purchase. The Court went as far as to say that a clause requiring an agent to be the “effective cause” of the transaction would “very readily be implied” into an estate agency contract, especially in a residential context.

Comment and conclusion

This decision is somewhat surprising, and seems likely to lead to a whole host of difficult questions. When has a person purchased a property “as a result of” an introduction? The new definition would appear to exclude a whole raft of people who either found out about the property from a different source, or whose interest in a property cooled only to be resurrected later on.

The driving force behind the decision seems to have been a desire of the Court of Appeal to limit the circumstances in which a seller will be liable to pay commission to two different agent’s. The Court of Appeal has done that by trying to formulate a test to ascertain which agents work actually led to the sale taking place. The Court seems concerned to avoid the situation where the agent is paid commission despite the fact that they have played little active part in the eventual sale. This is a worrying development for agents who may find themselves doing a considerable amount of work for which they are not paid.

It remains to be seen whether Foxtons will seek to challenge this judgment in the House of Lords.

In practical terms, estate agents may well be able to give themselves some protection by amending their Terms and Conditions to make absolutely clear, circumstances in what they will be entitled to their commission. The judgment does hint at some scope for specific terms of that nature to be included.

If you would like to consider appropriate amendments to your Terms and Conditions, or further information generally on this matter, please contact:

Contact us

If you would like to consider appropriate amendments to your Terms and Conditions, or further information generally on this matter, please contact:

Steven Skiba

DD 0845 310 7247

E steven.skiba@berryman.co.uk

Berryman Park House Friar Lane Nottingham NG1 6DN

DX 10004 Nottm 1 **T** 0115 945 3700 **F** 0115 948 0234

W www.berryman.co.uk

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