

Out of sight, should not mean out of mind – (Real Estate Brokerage Commissions)

A real estate broker entered into a non-exclusive listing agreement with a seller for a piece of Florida property. When the agreement expired, the broker continued to show the property to third parties with the seller's consent. Even though one of those introductions resulted in months of negotiations, no agreement was reached between the parties at the time. Sometime after those initial negotiations stalled, the parties began renegotiating with one another, this time without the broker. Approximately 14 months after the initial negotiations stalled, they reached an agreement. Upon learning of the deal reached between buyer and seller, the broker sued to recover his commission and for damages against both the buyer and seller.

Following a jury trial, the broker was awarded \$60,000 against the seller for breach of contract, \$50,000 against the buyer for tortiously interfering with the relationship between broker and seller, and \$20,000 against both the seller and buyer collectively for conspiring to deprive the broker of his commission. While the broker and seller settled the breach of contract claim for \$50,000, the trial judge entered a judgment for the broker and against the seller and buyer for the remaining amounts. The seller and buyer appealed.

On appeal, the court set forth the law as follows: “a broker with a non-exclusive listing will be entitled to a commission as the procuring cause, ‘[i]f the broker has brought the parties together and a sale is affected as a result of continuous negotiations inaugurated by him.’ In order to be entitled to the commission, the ‘continuous negotiations’ between the seller and buyer must be conducted and orchestrated by the broker. . . . If the broker abandons his attempts to bring the parties together and they later reach a deal on their own, the broker is not entitled to a commission. However, if the seller and buyer intentionally exclude the broker from the negotiations and then strike a deal, the broker is still entitled to a commission.”

Applying that law to this case, the court found that there was sufficient evidence for the jury to conclude that the broker had been excluded from negotiations and was entitled to his commission from the seller accordingly. However, that wasn't it – the broker was also entitled to recover his damages against the buyer for tortiously interfering with the relationship between broker and seller, and the amount now owed by the buyer was not reduced by the \$50,000 payment made by the seller in settling the breach of contract claim or by the amount the jury awarded related to that claim.

The broker didn't make out with everything he wanted though. Specifically, the court concluded that the claims for conspiracy were essentially the same as the broker's other claims for breach of contract and for tortious interference and therefore could not stand. Still, the outcome for the broker was evidence that out of sight should not mean out of mind.

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