

Monday Contemplation No 4

In this week's Contemplation, I discuss a very interesting court case.

Claiming commission when no one wants that "renovator's dream"

The recent case of Naidoo v Wakefields Real Estate (Pty) Ltd ZAKZPHC/2023/95 is most useful for both property practitioners, that one cannot just change their mind.

The facts of this case are briefly as follows:

The buyer contacted the property practitioner (PP) and requested to view a particular property, which the PP had described in the marketing of the property, as a "renovator's dream". The buyer viewed the property with the PP and whilst standing at their vehicles after the viewing and discussing the asking price, the PP indicated that the offer to purchase (OTP) document could be emailed to the buyer. The buyer then indicated that he did not want to wait to complete the OTP and wished to follow the PP to the agency's offices. The OTP was duly completed and signed by the buyer. The price offered by the purchaser was lower than the asking price. The PP agreed with the seller to reduce her commission. The seller signed the OTP, which the buyer then countersigned, due to the amendment of the amount of the commission.

The PP emailed the buyer indicating that the offer had been accepted. The following day, the buyer responded to the PP's email indicating that he wished to decline the OTP due to the fact that it would work out too expensive after accounting for the renovations that needed to be undertaken in the property. The PP responded that she would need to get legal opinion as she did not believe that the buyer could just withdraw from the contract.

In response to the PP's email, the buyer contended that he had asked that the offer be subject to his daughter's approval. The PP then responded, that if this was the case it would have been included as a special condition. The PP also indicated, that she had offered to email the OTP to the buyer for his perusal and that he was the one that wanted to complete the OTP in haste.

Clause 17 in the OTP did indicate that "...should the PURCHASER fail to carry out his obligations herein, Wakefields shall have the right to, but not be obliged to, recover their commission plus VAT from the PURCHASER..."

Due to the dispute with the buyer, the sellers elected not to proceed with the sale and subsequently sold the property to a different buyer.

The PP then sued the buyer successfully for the loss of commission. The buyer took the case on appeal. One of the points raised by the buyer in the appeal, was that the PP had failed in her ethical obligations as she had not explained each term of the OTP, in particular, Clause 17. The PP denied this and indicated that she had in fact explained each and every term of the OTP.

The Court on appeal dismissed the appeal of the buyer and the buyer was ordered to pay the commission as per Clause 17 of the OTP.

No questions this week.

In next week's Contemplation, I will provide more detailed analysis of this case and its implications and then some questions for discussion.