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NO COMMISSION AMOUNT WAS AGREED ON – WHAT NOW?

In the matter of Golden Rewards 120 CC t/a Remax Marine v M3 Holdings (Pty) Ltd the Court had to decide whether commission would be payable if no commission amount was agreed on prior to contract conclusion.

In the above matter Remax Marine claimed for commission they believed were payable to them from M3 Holdings (Pty) Ltd. The matter arose as M3 Holdings approached Remax Marine to find a tenant for a property that was owned by M3 Holdings (Pty) Ltd – for a period of 5 years at R170 000.00 per month. The mandate was completed but the commission clause was left as “to be negotiated”.

Mrs Fourie (“the agent”) introduced Mr Gray (“the potential tenant”) to the property and even facilitated talks to decrease the monthly rental amount. The potential tenant provided the agent with a draft rental agreement which the agent presented to M3 Holdings (Pty) Ltd for consideration. The agent later became aware of the rental agreement concluded between M3 Holdings (Pty) Ltd and the tenant which she was not included in – Mr Gray however was adamant that he was under the impression that the agent was aware of this. M3 Holdings (Pty) Ltd refused to pay commission to the agent as, according to them, there was no prior arrangement regarding the amount of commission.

The Court found in favour of the agent as they were in possession of valid FFCs and that, although no amount of commission was agreed upon, implied contract terms were applicable, and that consensus existed between the parties regarding the mandate. The agent also performed her task according to the mandate.

To determine the amount of commission payable the Court evaluated the usual amount of commission in the area and awarded that amount as commission to the agent.

Although the above worked in favour of the agent, it is always advisable to determine a commission amount in advance to avoid future disputes.