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WHEN CAN AN AGENT CLAIM COMMISSION?

If a party fails to adhere to or unilaterally withdraws from a legally binding offer to purchase without just cause, they are considered to have breached the contract.

Typically, an offer to purchase includes a provision allowing the agent to claim commission in the event of a contract breach. In a recent case, Naidoo and Another v Wakefields Real Estate (Pty) Limited, the purchasers notified the agent, subsequent to signing the offer to purchase, of their decision to no longer purchase the property. They argued that they were unaware of the provision enabling the agent to claim commission.

The High Court found that all conditions for a valid contract had been met and applied the caveat subscriptor rule, which entails that by signing a written contract, a party, per their signature, consents to all its terms, regardless of whether they are in their favour or not. The burden is thus on the contracting party to ensure that they understand all the terms prior to signing the contract. The Court concluded that the purchasers had sufficient opportunity to peruse the offer to purchase and thus consented to its terms by signing it.

Based on this ruling, an agent may claim compensation from the breaching party if the contract is "perfecta."

When is a contract considered "perfecta"?

In South Era Resources Ltd v Fardell, Mpati explained that a contract is "perfecta" when there is consensus (agreement) on the item being sold, its price, and the fulfilment of all suspensive conditions.

In essence, if all stipulated conditions are met and all relevant parties have signed the contract, it is deemed valid and enforceable.

Conclusion

A contract is thus perfecta when all suspensive conditions, such as the approval of a mortgage loan, is met or in a cash sale, all parties have signed the contract. If a contract is perfecta and either party breaches the contract, the agent will have a claim for their commission.