<u>Claiming commission – Part 01</u> - 2 February 2026

Welcome back to our weekly posts.

Over the next few weeks, we will be discussing **the judgements in some recent court cases** relating to various aspects of claiming commission.

In this week's post, we look at the case of *Bianca Properties (Pty) Ltd v Matseba Mogomana*. The cause of action of this case occurred when the Estate Agency Affairs Act was still operational. The original **judgement was handed down in 2018** and the **judgement from the appeal case, in 2021.**

The facts of the case are as follows:

1. Bianca Properties (Pty) Ltd was the appellant and Matseba Mogomana the respondent.
2. The appellant conducted business as an estate agent. The respondent worked for the appellant. At all relevant times relating to the sale of the respective immovable properties (being the subject matter of the dispute, as you will see), the respondent was not in possession of a valid fidelity fund certificate issued to her in terms of the Estate Agency Affairs Act 112 of 1976. Hence the agency had an agent working for them without a valid FFC.
3. Section 26 of the Estate Agency Affairs Act (remember that this Act has now been repealed and replaced with the Property Practitioners Act No 22 of 2019) provided that no person shall perform any act as an estate agent unless a valid fidelity fund certificate has been issued to him or her and every person employed by him or her as an estate agent.
4. In addition, Section 34A of the Estate Agency Affairs Act provided that no estate agent shall be entitled to any remuneration or other payment, unless at the time of the performance of the act a valid fidelity fund certificate has been issued to that person.
5. The respondent's case as set out in her particulars of claim was that she concluded three property transactions with respective buyers and sellers pursuant to the conclusion of an oral employment agreement with the appellant. In other words, the agent had an oral agreement with the agency. The agent claimed that her claim was based on an agency contract with the appellant and not on an estate agent agreement with a prospective client, and therefore not governed by the provisions of the Estate Agency Affairs Act. In simple terms, the agent's case was that she was acting as a common law agent for the agency in terms of her oral agreement with the agency and not as an estate agent and hence did not need to comply with the provisions of the Estate Agency Affairs Act and hold a FFC.
6. The respondent was claiming an amount of R112 000 from the appellant.
7. The appellant was of the view, that because the respondent did not hold a FFC, that she was not entitled to claim any commission.
8. The judge in the original trial court was of the view that although estate agents are not entitled to remuneration if they do not possess fidelity fund certificates, commission paid on the basis of the underlying agreement is not invalidated by

virtue of a fidelity fund certificate not being issued. The judge reasoned that it is unconscionable that a certified estate agent (like the estate agency) allows an uncertified agent to execute a client's mandate and later then says, “Sorry, I cannot pay you since you do not possess a valid FFC”. The judge went on to say that although both the agency and the agent would have been acting in contravention of Section 26 of the Estate Agency Affairs Act, it would not be fair that one party could be enriched at the expense of the other and the agent is not entitled to commission.

9. The appeal court disagreed with the judge in the original trial court. The appeal court was of the view that respondent met the requirements to be defined as an “estate agent”. The appeal court said that as a valid fidelity fund certificate had not been issued to her at the time when she performed the acts for which she was claiming commission, that she was prevented from claiming any commission or remuneration from the agency.

The important lesson for Property Practitioners (PPs), is to ensure that you have a valid FFC regardless as to what agreement you may have with your agency.

No FFC, no commission!

And more importantly, no FFC and you are acting illegally!

Next week I will discuss the differences between the requirements of the Estate Agency Affairs Act 112 of 1976 and the Property Practitioners Act 22 of 2019 relating to claiming commission, before we move on to the next interesting court case.

You are welcome to email me on graeme@cpmd.co.za

Bianca Properties (Pty) Ltd v Matseba Mogomana.
South Africa: North Gauteng High Court, Pretoria

Link: https://www.saflii.org/za/cases/ZAGPPHC/2021/606.html