

YOU AND YOUR PROPERTY

IN EACH ISSUE RESIDENTIAL PROPERTY LAWYER MICHAEL HOFMANN-BODY COMMENTS ON A RESIDENTIAL PROPERTY CASE WHICH HAS COME BEFORE THE COURTS. IN THIS ISSUE HE LOOKS AT THE CASE OF HERON FAMILY TRUST LIMITED V BARFOOT & THOMPSON LIMITED, A DECISION OF THE HIGH COURT ON AN APPEAL DEALING WITH AN AGENT'S ENTITLEMENT TO COMMISSION WHERE THE VENDORS ENTERED INTO A PRIVATE AGREEMENT WITH A PURCHASER INTRODUCED BY THE AGENT.



The Heron Family Trust Limited had appointed Barfoot & Thompson Limited to sell their property in Bayswater under a sole agency. The sole agency expired in January 2006 but continued as a general agency subject to cancellation on seven days' notice. Without cancelling that general agency in August the Trust gave a new sole agency to Bayleys. In September a Barfoot's salesperson introduced a Mr Liu to the Trust as a prospective purchaser. In October the salesperson advised the Trust Mr Liu had "gone cold". The Trust subsequently cancelled Barfoots agency. In November 2006 the Trust entered into a contract for the sale of the property to Mr Liu. They did so without reference to either real estate agent using their solicitor to prepare the agreement. It transpired Mr Liu had contacted them directly some time after the initial introduction by the Barfoot's salesperson.

Liability for a real estate agent's commission does not automatically follow from their having introduced a purchaser to a vendor. There must be a causative link between the introduction and the sale. In this case the Court held it was clear there was no break in the chain of causation between the

introduction of Mr Liu and the subsequent agreement signed with him. Barfoots were held to be entitled to their commission and the judgment they had obtained was upheld.

Here we have a case of a vendor seeking to avoid payment of commission by dealing direct with a purchaser. It became an expensive exercise. Not only was the Trust unsuccessful in avoiding commission, it also had to meet its legal costs of defending the

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original litigation and appeal together with interest and Court costs awarded against it.

It did not end there. It is recorded in the judgment the Trust was also facing a claim from Bayleys for its commission entitlement under its sole agency agreement. Sole agency agreements can confer an entitlement to commission if a sale is effected irrespective of who introduces the purchaser.

The messages to be taken from this case are clear. The terms of the agency agreements you sign with a real estate agent are important. If you subsequently attempt to enter into a contract with a purchaser introduced by an agent where a contract of agency is in place you may still be liable for commission, even if the agency has been cancelled. Where you have used more than one agent and one of them has had a sole agency agreement you need to be alert to the risk of a double commission liability. In either case you should get legal advice before committing to a contract in the expectation no commission or a commission to one agent only is payable.

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