

ORAL MANDATES VALID BUT RISKY

Pather v Wakefields Real Estate (Pty) Limited (AR82/2016) [2020] ZAKZPHC 16 (29 May 2020)

The protracted skirmishes between a seller and estate agent evidenced in this judgment illustrate the difficulties that arise when a mandate is not reduced to writing, confirmed via email or text message, or recorded in any other way. It opens up arguments regarding what was agreed or not. Sellers and estate agents should both make sure to record the details of their discussions, however informal the interaction may have been.

The Judgment can be viewed [here](#).

FACTS

(The detailed facts of this matter are not recounted here and can be gathered from the judgment itself.)

In August 2012, Ms Gunpath (an agent at Wakefields Real Estate) entered into an oral agreement with Mr Pather in terms of which, according to her, she was granted a mandate to procure a willing and able purchaser for Mr Pather's immovable property; and, in the event of such introduction resulting in a sale, Mr Pather would pay her commission at the rate of 7.5% plus VAT thereon based on the purchase price of the property. They lived in the same street and knew each other from passing. Mr Pather knew that she was an estate agent and Ms Gunpath knew that Mr Pather had worked at an estate agency for a short while. On the relevant day, they had met informally at a street market. Subsequently, when Ms Gunpath took clients (Mr and Mrs Gajraj) to view a property situated just next to that of Mr Pather, she mentioned to them that Mr Pather's was also on sale and as a result, they visited Mr Pather's home.

Sometime later, Mr Pather and the Gajraj couple signed an agreement of sale, excluding any provision for commission to Ms Gunpath.

In court, Mr Pather denied giving any mandate to Ms Gunpath and denied her version of events. Neither of them called relevant witnesses and the Court had to make a deduction based on the credibility of each. The Magistrates' Court found in favour of Ms Gunpath (Wakefields) and Mr Pather appealed.

(Of importance in this summary was the notes the Court made in the outcome.)

HELD

- Ms Gunpath had established that Mr Pather, in communicating with her, knew that she was an estate agent, mentioned that he wanted to sell his property, and knew that estate agents charged a commission for performing the task of finding a willing and able purchaser. Mr Pather however denied throughout the trial that any mandate had been given to Ms Gunpath. Inherent in that denial was a denial of any agreement regarding the payment of commission. And indeed, Ms Gunpath never alleged an express agreement in respect of commission. However, Mr Pather was aware of the basis upon which commission was payable to estate agents in the normal course. In essence, if reference is had to his testimony, it appeared that he reasoned that as long as the mandate was not in writing, commission would not become due and payable.
- Ms Gunpath, having established the necessary facts to show that she was the effective cause of the sale, was therefore entitled to commission.

CONCLUSION

Mr Pather's appeal was dismissed.