

SOUTH AFRICA / JUDGMENT

Fishof 1207 CC v Rapiddough Properties 459 CC (8763/07) [2010] ZAWCHC 534 (8 November 2010)

[2010] ZAWCHC 534

COURT

Western Cape High Court, Cape Town

BEFORE

Veldhuizen

CASE / FILE NUMBER

8763/07

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IN

THE HIGH COURT OF SOUTH AFRICA
(WESTERN
CAPE HIGH COURT, CAPE TOWN)
CASE

NUMBER:

8763/07

DATE:

8
November 2010
In

the matter between:

FISHOF
1207 CC
.....Plaintiffand
RAPIDOUGH
PROPERTIES 459 CC
.....Defendant

JUDGMENT

VELDHUIZEN, J

Plaintiff sues the Defendant for the payment of commission on the sale of two properties. It appears from the pleadings that it is common cause that the Defendant on the 17 March 2007 granted an exclusive mandate to Fine and Country. The evidence before me shows that Fine and Country was a trade name under which the Plaintiff in terms of a franchise agreement did business as estate agents in real estate. It is common cause on the pleadings that the Defendant during the period of which the exclusive mandate was operative itself sold the properties for the amounts of R1.8 million and R2.2 million respectively.

Mr Peter Ford, whom I allowed to appear before me on behalf of the Defendant, raised various points, to be more specific, really only two. The first being that the mandate nowhere contains the name of the Plaintiff Fishof 1207 CC. As I mentioned, this should not stand in the way of the Plaintiff coming forward as the principal and suing the Defendant. It is trite law that the second point taken by the Defendant cannot succeed, that being that the Plaintiff was not the effective cause of the sale of the properties and that there was nothing in the agreement precluding the Defendant from marketing the property itself and itself concluding the binding sale therefore. It is true they may well do that, there is nothing to preclude them from doing that, but it is trite law that in the circumstances they will be liable for commission if they conclude such a sale during the period which the exclusive mandate was operative. That is exactly what happened here and on the evidence before me, I can see no reason why the Plaintiff should not succeed.

In my view they have, on a balance of probabilities proved their case and they are entitled to the commission set out in the agreement of 7.5% on the sale of the properties. The agreement also allows for value added tax to be added to the commission and, in my view, they would also be entitled to that.

Mr Ford on two days last week and the week before applied for the matter to be postponed and after hearing him, I last Friday refused the application for postponement and ordered that costs for the two wasted days in dealing with the application for postponement would stand over for later determination. It is clear to me that there was no merit in the application and that the Plaintiffs are entitled to their costs of the two days wasted. In the circumstances, it is my judgment that:

1. The Defendant be ordered to pay the sum of R300 000 plus VAT to the Plaintiff.
2. Defendant is further ordered to pay interest on the sum of R300 000 a tempore morae to date of payment.
3. And lastly, Defendant is ordered to pay the costs of the action including the wasted costs of the two days spent in the application

for postponement.

4. The costs include the qualifying fees of the Plaintiff's
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