

SOUTH AFRICA / JUDGMENT

Neumann v Edelstein Farber Grobler Inc (66161/2012) [2025] ZAGPPHC 92 (5 February 2025) [2025] ZAGPPHC 92

COURT

North Gauteng High Court, Pretoria

BEFORE

Curlewis

CASE / FILE NUMBER

66161/2012

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION,

PRETORIA

CASE NO: 66161/2012

(1) REPORTABLE: YES

(2) OF INTEREST TO OTHER

JUDGES: YES

(3) REVISED: YES

DATE: 5 February 2025

In the matter between:

IN THE HIGH COURT OF
SOUTH AFRICA (GAUTENG DIVISION: PRETORIA)
WILLIAM
MARTIN NEUMANN
PLAINTIFF
and
EDELSTEIN
FARBER GROBLER INC.
DEFENDANT

JUDGMENT

CURLEWIS AJ:

Introduction:

- [1] In this action, the Plaintiff sued the Defendant for damages resulting from unsuccessful litigation by the Defendant against the Plaintiff's previous employer, Broll Gauteng (Pty) Ltd and Broll Property Management (Pty) Ltd (hereinafter collectively referred to as "Broll") in the Gauteng Division, Johannesburg with case number 13114/2007.[1] The Defendant represented the Plaintiff in the above matter as the attorney of record.[2]
- [2] The Plaintiff's claim against the Defendant in the present matter is as a result of the Defendant's alleged negligence in his duties as an attorney when the Defendant represented the Plaintiff in the above matter.
- [3] As per the order made in terms of Rule 33(4) to separate the issues, this judgment will only address whether the Plaintiff was entitled to commission and if so, how this commission is to be calculated.

Background:

- [4] The Plaintiff was previously employed by Broll as a property broker in terms of a contract concluded on or about 19 November 1998 ("the contract").[3]
- [5] Broll ensured, alternatively had a responsibility to ensure, that all of its brokers were holders of a valid Fidelity Fund Certificate in terms of Section 26(a) of the Estate Agency Affairs Act 112 of 1976

(Hereinafter referred to as "the Act").

- [6] In terms of the contract between the Plaintiff and Broll, the following paragraphs are of importance: [4]

"2.1 Where you have introduced both the Lessor and the Tenant (or Buyer and Seller) and have concluded negotiation with the parties to finality resulting in a binding contract, you will be entitled to 50% (the Broker's Share) of the net commission received by Broll Tvl (Pty) Ltd.

2.2 Where any other Broker of Broll was involved in the introduction of either party to a transaction or assists in the negotiations to conclude the transaction then the Broker's Share shall be divided in a share to be agreed upon. In the event of a dispute the decision of the Board of Directors of the company shall be final."

- [7] During 2002, the South African Revenue Services (hereinafter referred to as “SARS”) issued a request for information (referred to as RFI 08/2002) to property brokers and developers to search for a property to lease with a capacity of 12 000m² (Twelve Thousand Square Metres). [5]
- [8] On or about March 2003, Broll responded to the request and listed the Plaintiff as the broker as he had an existing relationship with that specific branch of SARS. Ms Teagle and Ms Human of Broll were listed as contacts to assist the Plaintiff in this regard.[6] It is, however, common cause that the Plaintiff was the broker contacted by SARS to assist and showed SARS properties in response to this request.
- [9] Between February 2003 and August 2003, Ms Teagle was provided a sole mandate for six (6) months in an oral, alternatively partially written, agreement with Eskom to find a tenant for the property referred to as Megawatt Park with an extent of 39 000m² (Thirty Nine Thousand Square Metres).[7]
- [10] It is apparent that RFI 08/2002 responded to by the Plaintiff and the sole mandate provided to Ms Teagle by Eskom are two separate requests.
- [11] Between March 2003 and November 2003, SARS had increased its required capacity in its mandate in respect of RFI 08/2002 from 12 000m² to 39 000m².
- [12] On 18 November 2003, a lease agreement was concluded between SARS and Eskom for Megawatt Park (the “ultimate lease”).[8] The present dispute arose from the conclusion of the ultimate lease between SARS and Eskom.
- [13] While not being able to take sole credit for the ultimate lease, the Plaintiff contends that he was the sole cause of an agreement being reached between Eskom and SARS because of his involvement with the initial request from SARS for a 12 000m² premises. The Plaintiff therefore argues he is entitled to the full commission on the 12 000m² portion of the 39 000m² and a share in the remainder.[9]
- [14] The Defendant argued that Ms Teagle and Ms Human were the sole cause of the lease agreement between Eskom and SARS and that the amount paid to the Plaintiff was a mere courtesy as the Plaintiff was not entitled to any commission and was at best entitled to a third of the full commission payable.[10]

Issues

to be determined:

- [15] In order to determine whether the Plaintiff had a successful claim against Broll the following must be determined:
1. Whether the Plaintiff is legally entitled to commission.

2. If so, how this commission must be calculated, alternatively how much commission the Plaintiff is entitled to.

Plaintiff's entitlement to commission:

- [16] In terms of the Plaintiff's contract with Broll, the Plaintiff was entitled to a 50% commission if he was the cause of a conclusion of an agreement. Alternatively, the Plaintiff was entitled to an agreed upon portion of the commission with any other brokers who assisted him in concluding the contract.
- [17] There are two issues argued between the parties with regards to the Plaintiff's entitlement, being whether the Plaintiff had a valid Fidelity Fund Certificate while performing his functions as a broker and whether the Plaintiff was an effective cause of the agreement concluded between SARS and Eskom.

Fidelity Fund Certificate:

- [18] With regards to the Fidelity Fund Certificate (hereinafter referred to as "FFC"), the Defendant argued that the Plaintiff was not holding a valid FFC while acting as a broker for the 12 000m2 deal during the period of March 2003 to May 2003.[11]
- [19] The Plaintiff called Miss Lisbeth Phalane (hereinafter referred to as "Ms Phalane"), who is a Registration Supervisor at the Estate Agents Affairs Board (the "EAAB"). Ms Phalane provided the court with the membership roll and records thereof which showed that the Plaintiff was a registered member with a valid FFC from 2002 to 2006.[12]
- [20] During cross-examination the Plaintiff confirmed that in 2003, he was only issued with his FFC on 18 October 2003 and thus did not have a valid FFC while doing work for the 12 000m2 deal during the period of March 2003 to May 2003.[13] The Plaintiff further confirmed that the reason for the delay was unknown to him and that this was a common occurrence.[14]
- [21] In terms of Section 26(1)(a) of the Act:
- "No person shall perform any act as an estate agent unless a valid fidelity fund certificate has been issued to him or her and to every person employed by him or her as an estate agent and, if such person is –*
- a) a company, to every director of that company; or
 - b) a close corporation, to every member referred to in paragraph (b) of the definition of 'estate agent' of that corporation."
- [22] The purpose of this Section and the establishment of the EAAB are to regulate the activities of estate agents and to maintain and promote the standards of conduct within the public interest.[15]

- [23] In the case of *Lek v Estate Agents Board*, [16] Trollip AJ held that the “application for a fidelity fund certificate is tantamount to an application for permission to trade, for without such certificate the appellant cannot carry on an estate agency business.” Trollip AJ confirmed this on appeal and stated therein that “...to get such a certificate he (the appellant) has to apply in the prescribed manner to the Estate Agents Board (s16 (1))...If the Board is satisfied that the requirements of the Act have been duly complied with, it must issue the certificate [...] A certificate shall not be issued, or if issued, be valid unless the provisions of the Act have been complied with (s16 (3))...” [17]. In essence, Section 26 of the Act is intended to ensure that the estate agent or its employer are compliant with the requirements as set out in the Act.
- [24] Coppin J confirmed this interpretation in *Crous International (Pty) (Ltd) v Printing Industries Federation of South Africa* [18] where he stated that although the provisions of the Act have been slightly amended, their meaning is the same.
- [25] Coppin J further stated that a strict or narrow interpretation of Section 26(1) (a) of the Act would not achieve a purposive or substantive approach that is called for by the court in terms of Section 39(2) [19] and Section 22 [20] of the Constitution of the Republic of South Africa, 1996. [21]
- [26] An estate agent is required to within the year that they are making the application for the certificate pay a levy in terms of Section 9(1)
- (a) of the Act as an annual contribution to the fund. [22] The estate agent must apply within the prescribed period and in the prescribed manner to the board for an FFC. [23]
- [27] But for the present matter which hinges upon the entitlement of the Plaintiff to commission and the quantum thereof if so entitled, neither party has taken issue and/or raised the Plaintiff’s compliance or lack thereof with the requirements found in the Act with regards to an application for a FFC to the EAAB.
- [28] There is no reason to deduce that the lack of the FFC was the fault of the Plaintiff but rather the fault of the EAAB.
- [29] Furthermore, in terms of Section 26 of the Act, it was the responsibility of Broll to ensure that all of its employees acting as estate agents are in possession of valid FFCs. The Plaintiff cannot be held at fault for Broll’s failure to comply with the EAAB.

Effective Cause:

- [30] The Plaintiff argued that he engaged with SARS extensively in order to obtain the lease mandate. [24] The Plaintiff testified that he was provided with a verbal mandate from his contact at SARS, Ms Panyane, to find office space to the size of 3 225m², this was later increased to 12 000m² and RFI 08/2002 was issued. [25] Ms Teagle and Ms Human confirmed that they were aware of the Plaintiff’s engagement with SARS but that they were not aware that the Plaintiff had received the mandate to find SARS leased premises, until the capacity

was increased to 39 000m2.[26] Further, Ms Teagle and Ms Human only became aware of the deal when the Plaintiff collected the tender documents issued by SARS.[27]

[31] The Defendant argued that Ms Human and Ms Teagle solely pitched for and obtained the sole mandate to market Megawatt Park for Eskom for a tenant.[28] Further, that when the 12 000m2 tender came out; the Plaintiff, Ms Teagle and Ms Human agreed to work together to prepare the tender documents.[29]

[32] During cross-examination the Plaintiff stated that he put forward Woodlands and Sandown Valley Crescent and that Ms Human and Ms Teagle put forward Megawatt Park for the tender. [30] Ultimately, Megawatt Park was chosen.

[33] It is apparent from the background above that the mandates given to Ms Teagle and the Plaintiff were two separate mandates. Ms Teagle's mandate was to find a tenant for Eskom's Megawatt Park and the Plaintiff's was to find 12 000m2 office space for SARS.

[34] Heever AJ stated in *Webranchek v IK Jacobs & Co Ltd*, that an agent can be considered an effective cause if "... the sale is chiefly attributable to the efforts of plaintiff; in other words that those efforts constituted dominant or an effective cause of the sale..."[31]

[35] The court in *Aida Real Estate Ltd v Lipschitz* stated as follows regarding whether an agent was an effective cause:[32]

"A proviso has been added to the effect that the introduction of the able and willing buyer must have been the effective cause

or causa causans of the sale. If a new factor intervenes causing or contributing to the conclusion of the sale and the new factor is not of the making of the agent, the final decision depends on the result of a further enquiry... did the new factor outweigh the effect of the introduction by being more than or equally conducive to the bringing about of the sale as the introduction was, or was the introduction still overridingly operative? Only in the latter instance is commission said to have been earned."

[36] In the case of *Wynland Properties CC v Potgieter and Another*,[33] the purchaser, one Mrs Durr, contended that the agent was not entitled to remuneration as Mrs Durr's sister-in-law renewed

her interest in the property shown to her by the estate agent and this lead Mrs Durr to contact the Seller directly and purchase the property. The court agreed with the court a quo in that the sale would have still materialised regardless of the agent introducing the purchaser to the property and the seller, as the sale materialised due to the sister-in-law's intervention which sparked Mrs Durr's interest again.[34]

[37] The Defendant contends that Ms Teagle and Ms Human would have become aware of RFI 08/2002 despite the Plaintiff obtaining it from his SARS contact. The Plaintiff, on the other hand, contends that Ms Teagle and Ms Human ultimately only became aware when the Plaintiff came to fetch the tender documents from SARS and would not have been aware of

RFI 08/2002 otherwise.[35] To my mind, the question at hand is whether Ms Teagle and Ms Human becoming aware of RFI 08/2002 when they did, is an intervening event as mentioned in Wynland Properties CC v Potgieter and Another.

[38] The Plaintiff did not introduce the clients (being SARS and Eskom) to one another, nor did the Plaintiff show Megawatt Park to SARS. However, the Plaintiff ultimately informed Ms Teagle and Ms Human about the tender for SARS in the first place which resulted in them tendering Megawatt Park to SARS when the request was amended from 12 000m2 to 39 000m2 and in the signing of the ultimate lease.

[39] To argue that the Plaintiff did not have an effective cause in the signing of the ultimate lease and that he did not see his mandate to its finality would be incorrect.

[40] The Plaintiff is entitled to commission.

Calculation of Commission:

[41] The second issue to determine with regards to commission is how the commission due to the Plaintiff must be determined.

[42] It is apparent that all three brokers had a part to play in the

conclusion

of the ultimate lease and there was a misunderstanding regarding how the commission should be split.

[43] According to the Plaintiff,[36] he should receive “his full working commission for which he had been mandated by SARS.”

[44] After the Plaintiff informed Ms Teagle and Ms Human about the tender for SARS, there was an informal meeting held between the three brokers. There is a discrepancy regarding what took place during this meeting. The Defendant argues that the Plaintiff tacitly agreed with Ms Teagle and Ms Human to a third of the commission on the transaction.[37] The Plaintiff argues that he did not agree with this decision and expressed this view.[38] Alternatively, the Plaintiff stated that if he was unresponsive within the meeting this did not mean that he tacitly agreed with the decision taken.

[45] The reasonable inference to be drawn is that the Plaintiff’s version is correct as the Plaintiff even went so far as to inform his boss, Mr Alcock,[39] that there was an issue between the three brokers regarding the split of the commission and that ultimately the board must decide as is Broll’s formal policy. Mr Alcock’s response was ultimately unhelpful and non-compliant with his duty as a director on the board and non-compliant with the contract signed between Broll and the Plaintiff which states at Paragraph 2.2 that in the event of a dispute as is seen in casu there is a duty of the board to make a final determination. Furthermore the Plaintiff has proceeded with litigation on a large

scale on the division of the commission.

- [46] The Plaintiff, much like the sister-in-law in *Wynland Properties CC v Potgieter and Another*[40], played a causal role in the finality of the ultimate lease. The meeting between the Plaintiff, Ms Teagle and Ms Human wherein the Plaintiff was informed by Ms Teagle and Ms Human of the tender in respect of the 39 000m² premises was a new intervening factor. However, ultimately the Plaintiff was the cause of Ms Teagle and Ms Human tendering Megawatt Park to SARS.
- [47] Without a clear decision between the brokers, and furthermore the board of directors of Broll with regards to the commission split it would be unfair to deny the Plaintiff what is ultimately due to him and what he has always argued for (which is the full commission on the 12000 m² and a third split of the remainder). .
- [48] Broll received the full commission on the ultimate lease representing the 39 000m² in the *Boruchowitz* judgment.[41] As a result of the relationship and contract between Broll and its brokers, 50% automatically of that amount awarded by the court vests in Broll. This leaves only the remaining 50% of the total commission paid over to Broll for distribution between the brokers. From that remaining amount, the Plaintiff is entitled to his 100% commission on 12000 m² out of the 39 000 m². Thereafter, the remainder of the commission on the 27000m² should be divided equally between the three brokers being (i) the Plaintiff, (ii) Ms Teagle and (iii) Ms Human. In final analysis, the Plaintiff should have received his 100% commission on the 12000 m² and a third of the commission on the 27000m².The Plaintiff is thus entitled to the difference between the amount paid to him by Broll and the amount to be calculated as indicated above.

Order:

1. The Plaintiff is legally entitled to commission from Broll.
2. The manner in which the calculation of the commission which the Plaintiff is entitled to is to be done, is set out in par [48] of this judgment.
3. All other issues, including those relating to liability for damages (or not) and as claimed by the Plaintiff against the Defendant will be determined at a later stage.
4. Cost in favour of the Plaintiff for these proceedings.

ACTING JUDGE CURLEWIS

For the Plaintiff: Adv JC Klopper & Adv Mncube Instructed by: Tiaan Joubert Attorneys For the Defendant: Adv. R Sheptone Instructed by: Eversheds Sutherland South Africa Inc.

This judgment was handed down electronically by circulation to the parties' representatives via email and by uploading on case line

[1] Summons at Caselines 001-23 to 001-30.

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- [2] Ibid.
- [3] Annexure “WN1” POC, Caselines 008-09 at Paragraph 5.
- [4] Caselines at 008-25 at para 8.1.2.
- [5] Defendant’s Amended Plea, Caselines 001-43 at Para 4D.
- [6] Ibid at para 4E.
- [7] Ibid at para 4F.
- [8] Judgment in case 13965/2005 page 10 line 3-4, Caselines 08-293.
- [9] Plaintiff’s Heads of Argument, Caselines 027-18 – 27 at para 27-37.
- [10] Defendant’s Heads of Argument, Caselines 028-18 -27 at para 30 -70.
- [11] Ibid, Caselines 028-16 at para 26.
- [12] Caselines 003-143-145.
- [13] Ibid, Caselines 028-16 at para 26
- [14] Plaintiff’s Heads of Argument, Caselines 027-15 at para 19.
- [15] Estate Agent Affairs Act No 113 of 1976 at Section 7.
- [16] 1978
- (3) SA 160 (C)
- [17] Estate Agents Board v Lek 1979 (3) SA 1049 (AD).
- [18] (2012/34717)
- [2016] ZAGPJHC 391
- [19] “When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.”
- [20] “Every citizen has the right to choose their trade, occupation or profession freely”
- [21] Crous International (Pty) (Ltd) v Printing Industries Federation of South Africa (2012/34717) [2016] ZAGPJHC 391
- [22] Estate Agents Affairs Act at Section 15.
- [23] Ibid at Section 16(1).
- [24] Plaintiff’s Heads of Argument, Caselines 027-21 at para 29.2.
- [25] Defendant’s Heads of Argument, Caselines 028-22 at para 49.

- [26] Plaintiff's Heads of Argument, Caselines 027-21 at para 29.2.2.
- [27] Plaintiff's Heads of Argument, Caselines 027-22 at para 29.3.
- [28] Defendant's Heads of Argument, Caselines 028-20 at para 40 -41.
- [29] Defendant's Heads of Argument, Caselines 028-22 at para 45-46.
- [30] Defendant's Heads of Argument, Caselines 028-22 at para 45-46.
- [31] 1948
- (4) SA 671 (A).
- [32] 1971(3) SA 871(W).
- [33] 1999(4) SA 1265 (C) at 1274.
- [34] Ibid.
- [35] Plaintiff's Heads of Argument, Caselines 027-21 at para 29.2.2.
- [36] Plaintiff's Heads of Argument, Caselines 027-4 at para 4.
- [37] Defendant's Heads of Argument, Caselines 028-9 at para 11.9.
- [38] Plaintiff's Heads of Argument, Caselines 027-22 at para 29.4-29.6.
- [39] Plaintiff's Heads of Argument, Caselines 027-22 at para 29.5 and Caselines 008-259.
- [40] 1999(4) SA 1265 (C).
- [41] Index to Trial Bundle Volume 3, Caselines 008-284 at 55.

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