



## **Glentree Estates, Beauchamp Estates, and Savills -v- Favermead Ltd (21/12/2010)**

**The Message:** Commission agreements need to be carefully worded.

**The Case:** A long-running dispute over a £1 million commission claim on the sale of a Kensington house has finally been resolved.

In 1995, a company owned by Professor Khalili bought 18-19 Kensington Palace Gardens. It then sold it for £50 million in September 2001 to a trustee company representing the family of Bernie Ecclestone on the basis it would receive a share of any profit on a re-sale for a sum above £70 million. The house was eventually sold in 2004 to the Mittal family for £57 million.

In April 2001, the Claimants had been jointly instructed by Favermead, another company of Professor Khalili, to act as sole agents on the basis that they would receive a fee of £1 million on completion of the sale if one of the agents had introduced the purchaser. A reduced fee of £200,000 was payable if Favermead introduced the purchaser.

There was a dispute as to whether the Claimants were entitled to any commission on the 2001 sale as they did not introduce the purchaser. It was ultimately decided they had been entitled to £200,000 on this sale but had waived their right to this sum by agreeing to new arrangements in connection with the onward sale of the property thereafter. The case therefore centred on whether commission was payable on the 2004 sale?

In November 2001, the Claimants were instructed by Favermead in connection with an onward sale of the property. Notwithstanding the purchase by the Ecclestone trust, Favermead was still involved due to its profit share arrangement and it was looking to sell it on for £85 million. The Claimants were instructed to seek a purchaser on the same basis as to fees as had been agreed in April 2001.

In February 2004, Glentree drew the attention of Mrs Mittal to the property at the asking price of £85 million and it was then viewed by the Mittals who offered £65 million but this was rejected by Savills on the basis that any offer had to be over £70 million. The Claimants were then not further involved but they heard rumours the property had changed hands and learnt that the Mittals had purchased it for a sum below £70 million. They then claimed their £1 million commission but failed at first instance.

Favermead argued no commission was payable as the Claimants had to be an effective cause of the sale and they had not been. It also argued that commission was only payable if the Claimants secured a profit share for it by achieving a sale in excess of £70 million.

The Court will ordinarily hold that merely introducing a purchaser is not enough to earn an agent commission as the agent has to be the effective cause of the sale. This avoids any possibility of more than one agent claiming commission and normally means that the agent has to earn the commission by doing more than just making the introduction.

However, the Court of Appeal made clear that an agent does not have to be the effective cause if the commission agreement does not require this. It noted that the commission arrangements in this case were favourable to the Claimants as they were sole agents who would be entitled to a fixed fee whatever the price achieved. They even received commission, albeit at 20% of the £1 million, if Favermead introduced the purchaser. It would therefore be odd if they introduced the purchaser but did not even receive £200,000.

The Court noted this was an unusual commission agreement as Favermead no longer owned the house and could not control any sale or the price, as proved to be the case given it was sold for £57 million so that Favermead received no profit share.

The Court therefore held that the Claimants only had to have introduced the purchaser to earn their commission. In any event, the Court held that, notwithstanding another agent had been involved in finalising the sale and there had been some previous involvement with the Mittals, the Claimants were the effective cause given they had made the introduction that led to the sale and dealt with the viewings. Where an agent makes an introduction and a sale proceeds, the burden is on the paying party to establish the agent was not the effective cause.

Although Favermead received nothing from the 2004 sale, the Court held it had to pay the £1 million commission as it had never sought to introduce any term that any sale had to be at any particular price.

Clearly, vendors of property need to try to ensure commission is only payable where the agent is the effective cause of the sale. Otherwise, they could end up paying 2 sets of commission in certain circumstances.