

CITATION: *West Property Solutions t/as Century 21 West Property Group v Lewis & Anor* [2015] QCATA 42

PARTIES: West Property Solutions t/as Century 21 West Property Group
(Applicant/Appellant)
v
Jason Hunter Lewis
Silvana Piccirillo
(Respondents)

APPLICATION NUMBER: APL532-14

MATTER TYPE: Appeals

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Senior Member Stilgoe OAM**

DELIVERED ON: 24 March 2015

DELIVERED AT: Brisbane

ORDERS MADE:

- 1. Leave to appeal allowed.**
- 2. The appeal is listed for an oral hearing on a date to be advised.**
- 3. Jason Hunter Lewis and Silvana Piccirillo shall file and serve a copy of the contract of sale that settled on 26 March 2014 by 1 April 2015.**
- 4. If either party wants to file additional fresh evidence, they shall file and serve an application, together with submissions addressing the criteria for the filing of fresh evidence by 8 April 2015.**

CATCHWORDS: APPEAL – LEAVE TO APPEAL – MINOR CIVIL DISPUTE – REAL ESTATE AGENT – where claim for commission on sale – where agency terminated – where buyer introduced before termination – whether effective cause of sale – where tribunal found nexus broken – whether tribunal applied correct test – whether grounds for leave to appeal

LJ Hooker Ltd v WJ Adams Estates Pty Ltd
 (1977) 138 CLR 52
Pickering v McArthur [2005] QCA 294
Newman v Anserdoro Pty Ltd [2008] NSWSC
 371

APPEARANCES and REPRESENTATION (if any):

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (QCAT Act).

REASONS FOR DECISION

- [1] In late October 2013, Mr Lewis and Ms Piccirillo appointed West Property Solutions t/as Century 21 West Property Group as agent to sell their property at Cashmere. On 12 February 2014, West presented a contract from Mr and Ms Bartlett, but Mr Lewis and Ms Piccirillo did not accept that contract.
- [2] West's appointment expired on 15 February 2014. On 24 February 2014, Mr Lewis and Ms Piccirillo signed a contract with the Bartletts through a different agent. The sale settled on 26 March 2014. West claimed commission on the sale. The tribunal dismissed West's claim.
- [3] West wants to appeal that decision. Because this is an appeal from a decision of the tribunal in its minor civil disputes jurisdiction, leave is necessary.¹ Leave to appeal will usually be granted where there is a *reasonable argument* that the decision is attended by error, and an appeal is necessary to correct a *substantial injustice* to the applicant caused by that error.²
- [4] West submits that the learned Adjudicator was in error because he did not assess what work West did which flowed through to the new contract. West submits that the learned Adjudicator relied heavily on Mr Lewis and Ms Piccirillo's submissions rather than focussing on the written evidence. It says the written evidence demonstrates that West was the effective cause of sale.
- [5] The High Court has determined that, if an agent introduces a person who ultimately becomes the purchaser, the agent has been an effective cause of the sale and the intervention of the seller, or another person, is irrelevant.³ That approach has been endorsed by the New South Wales Supreme Court in circumstances similar to this case.⁴

¹ QCAT Act s 142(3)(a)(i).

² *Pickering v McArthur* [2005] QCA 294 at [3].

³ *LJ Hooker Ltd v WJ Adams Estates Pty Ltd* (1977) 138 CLR 52 per Barwick CJ.

⁴ *Newman v Anserdoro Pty Ltd* [2008] NSWSC 371.

- [6] The learned Adjudicator found against West because he could not see a sufficient correlation between the contract West presented and the contract which eventually settled. He found that there was a cessation of negotiations because the terms of the West contract were unsatisfactory. The learned Adjudicator focussed on whether the nexus between West and the eventual sale was broken. The High Court shows that the proper test is whether West was the effective cause of the introduction of the purchaser which resulted in a sale. The learned Adjudicator was in error and leave to appeal should be granted.
- [7] Because the error involves questions of mixed fact and law, the appeal falls to be determined by the appeals tribunal. The appeals tribunal may decide the appeal with or without hearing fresh evidence.⁵ The learned Adjudicator did not have a copy of the second contract before him when he made his decision. The parties have addressed the appeals tribunal on the contents of that contract but it would be preferable for it to be in evidence so that the tribunal could make its own assessment.
- [8] Mr Lewis and Ms Piccirillo have filed fresh evidence with their submissions in response to the application for leave to appeal. That evidence, if accepted, raises new questions about the course of dealings with the eventual purchasers.
- [9] For these reasons, the appeal should be listed for an oral hearing. Mr Lewis and Ms Piccirillo shall file and serve a copy of the contract that settled, by 1 April 2015. If either party wants to file additional fresh evidence, they shall file and serve an application, together with submissions addressing the criteria for the filing of fresh evidence, by 8 April 2015. The appeal will be listed for hearing on a date to be advised.

⁵ QCAT Act s 147(2).