

TEST YOUR INSTINCTS – THE LAW REPORTS

THE VEXED QUESTION OF EFFECTIVE CAUSE - WHO SHOULD GET PAID?

In this case an estate agent, let's call her Agent A, met prospective purchasers at a show house. They were keen to find a new home that had more space in that same area. While Agent A did not have anything suitable in that area, she had a mandate on a property in another area close by which she thought would suit these buyers perfectly. She therefore arranged a viewing.

The buyers loved the property and visited it twice. Unfortunately for Agent A however, the purchasers eventually decided against buying it. The decision not to buy was motivated purely by the price which they could not afford at the time.

Shortly thereafter the purchasers met another agent, let's call her Agent B, and they discussed the property they had seen with Agent A. During this discussion they mentioned that they liked the property they had seen with Agent A, but that it had been out of their price range.

Within a few months however, the sellers of this property had reduced the price and placed it back on the market with a new agent, Agent C. Agent B became aware of this and contacted the purchasers who had seen the property with Agent A. Agent B showed the purchasers the property again and the sale went ahead at the lower price, with the commission being shared between Agent B and Agent C.

It was only a matter of time before Agent A found out about the sale, and when she did so she was understandably upset. So upset that she decided to sue the sellers for her full commission.

The case went to trial in the high court, and then also on appeal, so it is clear that even the lawyers had conflicting opinions as to which agent should get paid. The case turned on the determination of which agent had been the "effective cause". In the end, who do you think won?

Let's hear your views.