

SUPREME COURT OF FLORIDA

Rotemi Realty, Inc. v. Act Realty Co., Inc.

911 So. 2d 1181 (Fla. 2005) · No. SC04-210 · Decided July 7, 2005

SUMMARY

The Florida Supreme Court held that a real estate brokerage agreement providing for a contingency commission on the sale of private property to a government entity is not facially against public policy. Such an agreement is unenforceable only if the sale was obtained through corruption or improper influence. The court also affirmed that competent, substantial evidence supported the trial court's finding that the brokers were the procuring cause of the sale and were entitled to their commission.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Cantero, J.; Pariente, C.J.; Wells, J.; Anstead, J.; Lewis, J.; Quince, J.; Bell, J.
JURISDICTION	Florida
DECIDED	July 7, 2005
DOCKET	SC04-210
DISPOSITION	quashed
PROCEDURAL POSTURE	The brokers petitioned for review of a Third District Court of Appeal decision that reversed a trial-court judgment awarding them a real estate commission. The Supreme Court of Florida accepted review based on express and direct conflict jurisdiction and addressed both the legality of the contingency-fee brokerage agreement and whether the brokers were the procuring cause of the sale.
STANDARD OF REVIEW	Whether a contract violates public policy is a legal issue reviewed de novo. A fact-finder's determination that a broker was the procuring cause of a sale is upheld when supported by competent, substantial evidence.
PRECEDENTIAL VALUE	Published Florida Supreme Court opinion; binding statewide precedent.
PARTIES	Rotemi Realty, Inc., Maria Martin-Hidalgo, Jose Perez-Urrutia v. Act Realty Company, Inc.

TOPICS

real estate

contracts

government contracts

statutory interpretation

appellate procedure

PRACTICE AREAS

real estate

contracts

government contracts

statutory interpretation

appellate procedure

QUESTIONS PRESENTED

1. Whether a real estate brokerage agreement providing for a commission contingent on the consummation of a sale of private property to a government agency violates Florida public policy.
2. Whether competent, substantial evidence supported the trial court's finding that the brokers were the procuring cause of the sale and therefore entitled to their commission.
3. Whether the statutory restrictions on contingency fees for specified professional-service contracts and lobbying fees applied to the brokers' ordinary real estate brokerage activities.

HOLDINGS

1. A real estate broker may be paid a contingency fee for the sale of private property to the government unless the sale was obtained through corruption, improper influence, favors, or other corrupt means. The brokerage agreement was not facially illegal and complied with Florida public policy because the record contained no evidence of corruption or improper influence.
2. The brokers were the procuring cause of the sale and were entitled to the agreed commission because competent, substantial evidence showed that they initiated negotiations through an affirmative act bringing the buyer and seller together and remained involved in the continuing negotiations.

KEY QUOTATIONS

"The general rule continues to be that "an employment in which compensation is contingent on success in securing contracts from public officials is not illegal on its face," but rather is illegal only if shown at trial to involve "favors or corrupt means."" (911 So. 2d at 1188)

"We quash the decision of the district court and hold that a real estate broker may be paid a contingency fee for the sale of private property to the government, unless the sale was obtained through corruption or improper influence." (911 So. 2d at 1190)

FACTUAL BACKGROUND

The Miami-Dade County School District sought land for a new high school and was interested in two adjoining parcels, including Act Realty's ten-acre tract. Rotemi's brokers entered into a written agreement with Act Realty providing for a commission consisting of sale proceeds exceeding \$1 million if they procured a sale to the School District. The brokers initiated negotiations, communicated with the School District and its appraisers, conveyed offers, and helped coordinate negotiations involving the two parcels. The School District ultimately purchased Act Realty's property for \$1,164,650.50, but Act Realty disputed the brokers' entitlement to the commission.

PROCEDURAL HISTORY

After a nonjury trial in an interpleader action, the trial court found that the brokers were the procuring cause of the sale and awarded them the agreed commission. The Third District reversed and remanded, holding that the brokerage agreement was void as against public policy because it provided for a contingency award connected to the procurement of public funds. The Supreme Court of Florida quashed the district court's decision and affirmed the trial court's ruling.

DISPOSITION

quashed

CASES CITED

- Act Realty Co. v. Rotemi Realty, Inc., 863 So. 2d 334 (Fla. 3d DCA 2003)
- City of Hialeah Gardens v. John L. Adams & Co., 599 So. 2d 1322 (Fla. 3d DCA 1992), review denied, 613 So. 2d 5 (Fla. 1992)
- Robert & Co. v. Mortland, 160 Fla. 125, 33 So. 2d 732 (1948)
- Edwards v. Miami Transit Co., 150 Fla. 315, 7 So. 2d 440 (1942)
- Wechsler v. Novak, 157 Fla. 703, 26 So. 2d 884 (1946)
- Dorsey v. State, 868 So. 2d 1192, 1199 (Fla. 2003)
- State v. Gray, 654 So. 2d 552, 554 (Fla. 1995)
- Tyson v. Mattair, 8 Fla. 107, 124 (1858)
- Grenitz v. Tomlian, 858 So. 2d 999, 1002 (Fla. 2003)
- Moonlit Waters Apartments, Inc. v. Cauley, 666 So. 2d 898, 900 (Fla. 1996)
- BellSouth Telecomm., Inc. v. Meeks, 863 So. 2d 287, 290 (Fla. 2003)
- Taylor v. Dorsey, 155 Fla. 305, 19 So. 2d 876 (1944)
- Ehringer v. Brookfield & Assocs., 415 So. 2d 774 (Fla. 5th DCA 1982)
- Siegel v. Landquest, Inc., 761 So. 2d 415 (Fla. 5th DCA 2000)
- Shuler v. Allen, 76 So. 2d 879, 883 (Fla. 1955)
- Sheldon Greene & Assocs. v. Rosinda Invs., N.V., 475 So. 2d 925, 927 (Fla. 3d DCA 1985)
- Osheroff v. Rauch Weaver Millsaps & Co., 882 So. 2d 503, 505 (Fla. 4th DCA 2004), review denied, 898 So. 2d 938 (Fla. 2005)
- Easton-Babcock & Assocs. v. Fernandez, 706 So. 2d 916 (Fla. 3d DCA 1998)
- Brickell Bayview Real Estate, Inc. v. Cooper, 691 So. 2d 1094 (Fla. 3d DCA 1997)
- Busot v. Busot, 338 So. 2d 1332, 1334 (Fla. 2d DCA 1976)
- Lee v. Clearwater Growers Ass'n, 93 Fla. 214, 111 So. 722 (1927)
- Citizens' Bank & Trust Co. v. Mabry, 102 Fla. 1084, 136 So. 714, 717 (1931)
- Rotemi Realty, Inc. v. Act Realty Co., 880 So. 2d 1212 (Fla. 2004)

