

DISTRICT COURT OF APPEAL OF FLORIDA, FIFTH DISTRICT

Hinkley v. Gould, Cooksey, Fennell, O'Neill, Marine, Carter & Hafner, P.A.

971 So. 2d 955 (Fla. 5th DCA 2007) · No. No. 5D06-4245 · Decided December 28, 2007

SUMMARY

The Florida Fifth District Court of Appeal reviewed an award of attorney's fees and costs to a closing agent that had interpleaded a disputed real estate brokerage commission. The court held that the contractual fee provision could not support the award because the broker and sales associate were not parties to the real estate purchase contract, and it reversed the fee and cost award.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fifth District
WRITING FOR THE COURT	Thompson, J.; Palmer, C.J.; Lawson, J.
JURISDICTION	Florida
DECIDED	December 28, 2007
DOCKET	No. 5D06-4245
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from a final order awarding the interpleading closing agent attorney's fees and costs from an interpleaded brokerage commission.
STANDARD OF REVIEW	De novo review applies to entitlement to attorney's fees when entitlement depends on interpretation of contractual provisions or a statute as a pure question of law. Abuse of discretion generally applies to the amount of a fee award.
PRECEDENTIAL VALUE	published opinion
PARTIES	Martha Hinkley, d/b/a My Place Realty v. Gould, Cooksey, Fennell, O'Neill, Marine, Carter & Hafner, P.A.

TOPICS

- interpleader
- attorney fees
- contract interpretation
- appellate procedure
- real estate

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the closing agent was entitled to attorney's fees and costs under the attorney-fee provision of a real estate purchase contract when the broker and sales associate involved in the interpleaded commission were not parties to that contract.
2. What standard of review applies to the issue of entitlement to contractual attorney's fees.

HOLDINGS

1. When entitlement to attorney's fees depends on interpreting contractual provisions or a statute as a pure question of law, the appellate court reviews entitlement de novo rather than for abuse of discretion.
2. A contractual attorney's-fee provision cannot support an award to an interpleading closing agent when the broker and sales associate involved in the commission dispute are not parties to the real estate purchase contract.

KEY QUOTATIONS

"Because My Place Realty and Meyer are not parties to the real estate purchase contract, its provision for attorney's fees in favor of the interpleader cannot stand." (957)

"Hence the de novo standard applies." (956)

FACTUAL BACKGROUND

Martha Hinkley, doing business as My Place Realty, was the broker in a real estate transaction. A dispute arose between My Place Realty and its licensed sales associate, Ginger Meyer, who terminated her employment before closing. The closing agent, Gould-Cooksey, interpleaded the \$72,600 brokerage commission and sought attorney's fees and costs, relying on an attorney-fee provision in the real estate purchase contract; neither Hinkley, My Place Realty, nor Meyer was a party to that contract.

PROCEDURAL HISTORY

A dispute arose over a \$72,600 brokerage commission after a real estate sales associate terminated her employment before closing. The closing agent interpleaded the commission, and the circuit court approved the interpleader, ordered the funds placed in the court registry, and awarded the closing agent \$5,387.12 in attorney's fees and costs. The appellate court previously dismissed an appeal from the order granting interpleader for lack of jurisdiction, but reviewed the final fee award in this appeal.

DISPOSITION

reversed

CASES CITED

- DiStefano Constr., Inc. v. Fidelity & Deposit Co., 597 So. 2d 248, 250 (Fla. 1992)

- Gibbs Construction Co. v. S.L. Page Corp., 755 So. 2d 787, 790 (Fla. 2d DCA 2000)
- Allstate Insurance Co. v. Regar, 942 So. 2d 969, 971 (Fla. 2d DCA 2006)
- Brickell Bay Club Condominium Association, Inc. v. Forte, 397 So. 2d 959, 960 (Fla. 3d DCA 1981)
- Hastings v. Osius, 104 So. 2d 21, 22 (Fla. 1958)

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