SPC Guiding Case No. 1: Shanghai Zhongyuan Property Consulting Co., Ltd. v. Tao Dehua (brokerage contract dispute)

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

Discussed and adopted by the Judicial Committee of the Supreme People's Court; issued on December 20, 2011.

Keywords

Civil / brokerage contract / second-hand housing sale / breach of contract

Holding

A clause in a housing sale brokerage contract prohibiting the buyer from using the listing information provided by the intermediary while bypassing that intermediary to sign a housing sale contract directly with the seller is lawful and valid. However, where the seller has listed the same housing with multiple intermediaries, and the buyer obtains the same listing information through other legitimate channels accessible to the public, the buyer is entitled to choose an intermediary offering a lower quotation and better service to facilitate conclusion of the housing sale contract. Such conduct does not make use of the listing information of the intermediary with which the buyer had previously contracted, and therefore does not constitute a breach of contract.

Basic Facts

The plaintiff, Shanghai Zhongyuan Property Consulting Co., Ltd. ("Zhongyuan Company"), alleged that the defendant, Tao Dehua, exploited housing sale information for a certain property on Zhuzhou Road, Hongkou District, Shanghai that had been provided by Zhongyuan Company, deliberately bypassed the intermediary, and privately signed a housing purchase contract directly with the seller, in violation of the Real Estate Purchase Confirmation Letter, thereby committing a malicious act of "jumping the intermediary." It requested that the court order Tao Dehua to pay Zhongyuan Company liquidated damages of RMB 16,500 in accordance with the contract.

The defendant, Tao Dehua, argued that the original owner of the housing in issue, Li XX, had commissioned multiple intermediaries to sell the housing, and that Zhongyuan Company neither exclusively held the listing information nor acted as the exclusive sales agent. Tao Dehua did not use the information provided by Zhongyuan Company, and no "jumping the intermediary" breach existed.

Upon trial, the court found as follows. In the second half of 2008, the original owner, Li XX, listed the housing for sale with multiple housing intermediary companies. On October 22, 2008, a certain Shanghai real estate brokerage company showed the housing to Tao Dehua; on November 23, a certain Shanghai real estate consulting company ("the Real Estate Consulting Company") showed the housing to Tao Dehua's wife, Cao XX; and on November 27, Zhongyuan Company showed the housing to Tao Dehua and, on the same day, signed the Real Estate Purchase Confirmation Letter with him. Clause 2.4 of the Confirmation Letter provided that, if, within six months after inspecting the housing, Tao Dehua or any person associated with him — including his principals, agents, representatives, or handlers — used the information, opportunities, or other conditions provided by Zhongyuan Company to reach a purchase and sale transaction with a third party without going through Zhongyuan Company, Tao Dehua would pay Zhongyuan Company liquidated damages equal to 1% of the actual transaction price of the housing sale. At the time, Zhongyuan Company quoted RMB 1.65 million for the housing, while the Real Estate Consulting Company quoted RMB 1.45 million and actively negotiated the price with the seller. On November 30, through the intermediation of the Real Estate Consulting Company, Tao Dehua and the seller signed the housing sale contract at a

transaction price of RMB 1.38 million. The parties subsequently completed the transfer formalities, and Tao Dehua paid the Real Estate Consulting Company a commission of RMB 13,800.

Judgment

On June 23, 2009, the Hongkou District People's Court of Shanghai rendered Civil Judgment (2009) Hong Min San (Min) Chu Zi No. 912, holding that the defendant, Tao Dehua, shall pay the plaintiff, Zhongyuan Company, liquidated damages of RMB 13,800 within ten days of the judgment taking effect. After the judgment was pronounced, Tao Dehua appealed. On September 4, 2009, the Shanghai No. 2 Intermediate People's Court rendered Civil Judgment (2009) Hu Er Zhong Min Er (Min) Zhong Zi No. 1508: (1) revoking Civil Judgment (2009) Hong Min San (Min) Chu Zi No. 912 of the Hongkou District People's Court of Shanghai; and (2) not supporting Zhongyuan Company's claim that Tao Dehua pay liquidated damages of RMB 16,500.

Reasoning

The effective judgment of the court held as follows. The Real Estate Purchase Confirmation Letter signed between Zhongyuan Company and Tao Dehua is in the nature of a brokerage contract. The agreement in clause 2.4 is a standard-form "anti-jumping" clause commonly found in housing sale brokerage contracts. Its purpose is to prevent a buyer from using the listing information provided by the intermediary while "jumping" over the intermediary to purchase the housing, thereby depriving the intermediary of the commission to which it is entitled. The clause does not exempt one party from liability, aggravate the other party's liability, or exclude the other party's principal rights, and should be found valid. Under that clause, the key to determining whether a buyer has committed a "jumping the intermediary" breach is whether the buyer used the listing information, opportunities, and other conditions provided by the intermediary. If the buyer did not use the information, opportunities, or other conditions provided by the intermediary, but instead obtained the same listing information through other legitimate channels accessible to the public, the buyer is entitled to choose an intermediary offering a lower quotation and better service to facilitate conclusion of the housing sale contract, without constituting a "jumping the intermediary" breach. In this case, the original owner listed the same housing for sale through multiple intermediary companies; Tao Dehua and his family members learned of the same listing information through different intermediary companies, and facilitated conclusion of the housing sale contract through another intermediary company. Therefore, Tao Dehua did not use the information or opportunities of Zhongyuan Company, did not constitute a breach, and Zhongyuan Company's claims were not supported.

Relevant Legal Provisions

Article 424 of the Contract Law of the People's Republic of China.

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