



Anthony Lorenz

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My loss in court will make agents more paranoid about fees

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PROFESSIONAL OPINION

In his précis of my High Court case, Jonathan Ross of Forsters only covered the secondary issue of whether my friend, Kim Richardson, acted as an agent for Fox-Davies Capital – not whether Fox-Davies, by its conduct, had established a contract with the Lorenz Consultancy.

After four decades in the industry I know that you win some and you lose some. In this case I lost – not only as claimant, but also as expert witness and advocate. However, I believe the result of this trial could have huge ramifications on how fee agreements are structured and confirmed in the future.

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Here are the facts. In March 2009, Kim Richardson was looking for 5,000 sq ft of offices in the course of his acquisition of Fox-Davies. We sent him a list of offices with our usual retaining clause. He forwarded it to Fox-Davies, which started looking at the premises.

All the usual processes were handled with Fox-Davies, which had been forwarded our original details with the fee agreement. It selected the top floor of 23 Savile Row in London. Heads of terms were agreed, and Fox-Davies was to be the tenant.

Lawyers were instructed, and by 10 June 2009 the lease was in an agreed format. There was an underbidder and we had to sign that day, so Fox-Davies signed: deal done. Two days later, Fox-Davies aborted the corporate deal, so it now had unwanted premises and asked me to dispose of them but, in the event, it found its own assignee.

So it came to billing. First choice was Richardson, but he had not taken the offices – so no contract. Then Fox-Davies, which had been forwarded details with a retainer. Although its actions created an agency relationship, in my opinion, it was not a friendly recipient of a major bill, having lost money on acquisition, redisposal and abortive corporate sale costs.

I sent a draft bill to Richardson, hoping he would help us get paid – which in court became my downfall. He replied as expected, saying: “No signature, no fee.” I billed Fox-Davies, who responded:

“*No written agreement, no fee.*” After a three-day trial, the judge found against us, inferring that the client was actually Richardson. Perhaps I lost the case because I was unwilling to sue a friend – there was no doubt we had done all the work, and that someone should pay for it

Today’s loss, tomorrow’s gain

This decision will affect all fee agreements. Every acquiring agent will need to confirm their fees to cover any associated companies or recipients of details about taking premises as a result of their introduction.

There can quite often be three or four companies involved in a corporate acquisition, and who knows who the eventual tenant will be? So, like a game of pass the parcel, the agent would have to confirm his or her fees with each prospective tenant as its identity surfaces.

Clients will see agents as having a fee paranoia, which is not good for business. In my case, if the corporate deal had not fallen through, our fees would have been paid. So have I won or lost? That is for you to judge, and for me to value the benefits of this experience over the next decade.

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