5  PRIVATE DEALS AND COMPETING AGENT SITUATIONS
In practice the question whether an estate agent is the effective cause of a trans-
action frequently arises in two situations, namely:
(a) where an estate agent introduces a buyer to a seller but the two parties even-
tually negotiate privately, that is, without the intervention of the estate agent
and without any of the parties assuming liability for payment of commission
(referred to below as the “private deal” situation); and
(b) where one estate agent introduces a prospective buyer to a property but the
latter eventually buys it through the intervention of another estate agent (re-
ferred to below as the “competing agent” situation, the first estate agent be-
ing the “introducing agent” and the second the “closing agent”).
In each of these situations more than one factor can usually be identified as a
causative factor in bringing about the sale and, as already explained, it is then a
question of fact whether or not a particular factor can be said to be the effective
cause of the transaction. Judgments based on a specific set of facts are, of course,
not binding authority for the future, but an analysis of the case law nevertheless
makes it possible to formulate certain general rules or guidelines to be applied in
an effective cause inquiry. These rules or guidelines are now examined in more
detail.

6  EFFECTIVE CAUSE: GENERAL GUIDELINES
6.1  The nature and effect of the estate agent’s efforts must be considered,
not the amount thereof
A commission agent is paid by results and not by good intentions or even hard
work.\(^1\) Accordingly, an estate agent may be held to be the effective cause of a
transaction regardless of the amount of work he put into earning it.\(^2\) An estate
agent frequently stands to earn a considerable commission for relatively little ef-
fort;\(^3\) on the other hand he runs the risk of receiving “nothing whatsoever for

\(^{\ast}\) See 2010 THRHR 414 for Part 1.
1  Aida Real Estate Ltd v Lipschitz 1971 3 SA 871 (W) 875H.
2  874C.
3  Silke De Villiers and Macintosh The law of agency in South Africa (1981) 389; Gluckman
v Landau & Co 1944 TPD 261 275; Basil Elk Estates (Pty) Ltd v Curzon 1990 2 SA 1 (T)
7F–G.
such energy or money as he may have expended in attempting to secure the desired result’. If he fails to prove that his endeavours constituted the causa causans of the sale, the fact that he incurred considerable expenses and devoted a lot of time and effort, does not avail him.5

Although the amount of an estate agent’s efforts is not a relevant consideration, the nature and effect of those efforts are important matters to take into account. One simple phone-call or the leaving of a card may constitute the effective cause of a sale;6 similarly, conveying an important piece of information about a property to a buyer (such as that a wall between two rooms can be knocked down in order to accommodate a snooker table) could be the decisive factor.7

6.2 The introduction of the purchaser is a very important factor, albeit not necessarily decisive

In Aida Real Estate Ltd v Lipschitz8 the plaintiff (an estate agency firm) had shown a house to C and his wife on three occasions in November 1968. C liked the house very much but some obstacle stood in the way of concluding the sale. In January of the following year C informed the plaintiff that he was no longer interested in purchasing the property. However, some three months later C contacted the seller (defendant) personally and concluded a sale, without the intervention of the plaintiff. It was common cause that the plaintiff’s contribution towards the sale was confined to the initial introduction of C in November 1968. What happened thereafter occurred without the plaintiff’s assistance, even without its knowledge. Nevertheless, the court held that despite the break in the negotiations the initial introduction remained the “overriding factor inducing the sale”; hence the plaintiff was entitled to commission.

Although an estate agent’s input in introducing a purchaser to a property is undoubtedly a significant factor to consider,9 it must be seen in context. No introduction is necessarily conclusive. There may well be other factors outweighing the introduction and these factors could be the effective cause of the transaction.10 Moreover, an estate agent’s “introduction” of a prospective purchaser to a property or a seller may take various forms, and not every introduction has the same weight when it comes to an evaluation of the factors that contributed to a transaction. An introduction is not confined to arranging a meeting with the seller, showing the property to the buyer or explaining to him the property’s features.11 Giving a prospective buyer the seller’s address or details of the location

4 Silke 389.
5 Basil Elk Estates (Pty) Ltd v Curzon 1990 2 SA 1 (T) 7.
6 7G; Aida Real Estate Ltd v Lipschitz 1971 3 SA 871 (W) 874C.
7 Munitz v Steer’s Trust Co (Pty) Ltd 1993 2 SA 369 (C).
8 1971 3 SA 871 (W).
9 See the dictum in Howard & Decker Witkoppen Agencies and Fourways Estates (Pty) Ltd v Desousa 1971 3 SA 937 (T) quoted in the text later. In Nach Investments (Pty) Ltd v Knight Frank South Africa (Pty) Ltd [2001] 3 All SA 295 (SCA) an estate agent was held to be the effective cause of the sale despite the absence of an introduction by the estate agent. The correctness of this can be questioned. It is submitted that, on the facts, the estate agent had in fact introduced the buyer in the sense that the word “introduce” is to be understood in commission cases.
10 Aida 873H.
11 DC Wylde & Co v Sparg 1977 2 SA 75 (E).
of the property offered for sale also constitutes an “introduction” in estate agency law. However, this does not mean that merely telling a person that a property is for sale is sufficient to entitle an estate agent to payment of commission. If an estate agent has done no more than to furnish a prospective buyer with the seller’s address or the location of the property, such introduction would entitle the estate agent to payment of commission only if a line of cause and effect can reasonably be traced from the introduction to the conclusion of the sale.\footnote{12} As was stated in \textit{Doyle v Gibbon}:\footnote{13} “It is not sufficient for the commission agent to say to a person, ‘such and such a house is for sale’ if in consequence of that representation nothing is done and on some subsequent occasion a sale takes place.”

According to \textit{Duncan}\footnote{14} one must look to the events that occurred after the original introduction to decide whether or not the estate agent who introduced the buyer is the effective cause of a sale; if there has been no “third party intervention” between the time of the original introduction and the sale, that introduction will be the most important single factor to take into account. This statement is perhaps too restrictively formulated since there could be other factors, independent of “third party intervention”, which could be more important than the initial introduction as such. It is only if the introduction is in all the phases leading up to the conclusion of the sale the “major positive force working towards the successful conclusion of the transaction”\footnote{15} that the estate agent would be regarded as the effective cause of the transaction.

In situations where an estate agent does no more than to introduce the person who ultimately buys the property, and \textit{no} other intervening factor occurs influencing the bringing about of the sale, the estate agent’s introduction plainly constitutes the only factor that triggered the sale. Take the case where an estate agent introduces a cash buyer to a seller, shows the property to the buyer and explains in detail all its features, price and possibilities. The buyer is hugely impressed but for reasons of his own he eventually decides to buy the property from the seller privately, at the seller’s asking price, without any further intervention on the part of the estate agent. In this scenario it is safe to say that the estate agent’s efforts in introducing the buyer were the effective cause of the sale. However, contrast this with the situation where a person wishing to buy a four-bedroom house is merely given the address of a property by an estate agent, no more. It is left to the buyer to examine the property, meet the seller and negotiate the selling price. The property in fact comprises three bedrooms only but the buyer decides to buy having consulted an architect on how the house can be changed into a four-bedroom house and at what cost. On these facts it is clear that other intervening causes, and not the introduction, led to the sale.

These two examples illustrate opposite ends of the spectrum and are relatively easy to deal with in practice. The real difficult cases lie somewhere in between, such as where an estate agent’s introduction impacted significantly on the buyer’s decision to buy, but so did another intervening factor independent of the

\footnotesize{\textit{Aida} 874C. The Australian High Court has followed a similar approach: \textit{Moneywood Pty Ltd v Salomon Nominees Pty Ltd} [2001] HCA 2.}
\footnotesize{\textit{1919 TPD 220.}}
\footnotesize{\textit{Real estate agency law in Queensland} (1990) 199.}
\footnotesize{\textit{Aida} 874F–G.}
estate agent’s efforts. For example, assume that the buyer in the first scenario above was not a cash buyer and that he was unable to secure adequate mortgage bond finance to meet the seller’s asking price. Assume furthermore that the estate agent was unsuccessful in negotiating a reduced purchase price acceptable to both parties, and that a sale materialised only after the buyer succeeded in obtaining additional finance from a family member. Can it now be said that the estate agent’s introduction constituted the “major positive force working towards the successful conclusion of the transaction” or were the buyer’s own efforts the effective cause of the sale?

The answer lies in determining whether the intervening cause was “sufficiently weighty” to break the chain of causation between the agent’s endeavours and the eventual transaction. This depends on the facts of each case. The pressure put on a buyer by a spouse may sufficiently outweigh the impact of the estate agent’s introduction, as could a buyer’s improved financial position, aided by an unsuspected financial windfall. Obviously, the more weighty the estate agent’s introduction, the more weight would be required of the intervening cause to sever the chain of causation. Conversely, relatively little would be expected of an intervening cause to outweigh an introduction that was confined to merely telling a prospective buyer that a particular property was for sale.

There is no reason to attach more weight to an estate agent’s introduction in a case where the seller has mandated one estate agent only to sell a property, as opposed to the situation where two or more estate agents had been engaged to find a buyer. In both instances the fact that the estate agent introduced the buyer does not per se mean that the estate agent is deemed to be the effective cause of the transaction. As explained above, commission will be earned only if upon a consideration of all the facts and circumstances it can be said that the introduction constituted the main driving force that triggered the sale.

6.3 An estate agent’s mere attendance at negotiations between a buyer and seller does not make him or her the effective cause of a sale agreement concluded by them

In Hooper v Bradbury the owner of a property (A) had discussed the sale of the property with a prospective purchaser (B). The owner later instructed an estate agent (C) to auction the property. The auction was unsuccessful but C subsequently attended negotiations between A and B pertaining to a possible sale. This came to nothing, and A eventually sold to B without any further involvement by C. The Supreme Court of Queensland held that since C did not introduce the purchaser nor induce any offer, he was not the effective cause of the transaction. Merely attending negotiations between A and B did not constitute him the effective cause of the sale.

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17 Machonochie’s Executrix v Bidewell-Edwards 1892 9 SC 204.
18 Basil Elk Estates (Pty) Ltd v Curzon 1990 2 SA 1 (T).
19 A different approach has been put forward in the UK and Australia, influenced by the view that if only one estate agent has been mandated to find a buyer, commission is earned if such estate agent is an efficient cause as opposed to the effective cause of the sale. See the discussion in Part 1 of this article.
In the competing agent situation the first introduction is important but not decisive

In Webranchek v LK Jacobs & Co Ltd the Appellate Division made it clear that “where a property is listed with several agents and they compete in trying to conclude a sale by the principal to a particular third party, it is not necessarily the agent who first introduces the purchaser who is entitled to remuneration but the agent who is the effective cause of the transaction being completed”. The facts in Barnard & Parry v Strydom serve as a good example. Here estate agent A showed a house to a buyer who bought it some 48 hours later through estate agent B, who also had a mandate to find a buyer. The buyer testified that he regarded the financial arrangements made for him by B as the decisive factor enabling him to buy the house. The court held that B was the effective cause of the transaction, despite the fact that A had first introduced the buyer. The reasoning was as follows:

“Assuming that similar financial arrangements could easily have been made by agent A, if nevertheless it did not take such steps and if no sale would have come into existence had agent B not intervened, agent A would not have proved its case unless it showed that the actions of agent B resulted from A’s introduction of the property to the buyer.”

An estate agent who first stirs a prospective purchaser’s interest in a property has no “proprietary right” over that person, commission-wise, should he later buy. On the other hand, it cannot be denied that first impressions count a lot when it comes to buying a property. Purchasers frequently make up their minds about a property after inspecting it for the first time and then revisit it later only to confirm their first impressions. Sometimes the first introduction all but convinces the prospective buyer to buy, while a second introduction by another estate agent merely entrenches that conviction. Accordingly, from a sales technique point of view a lot hinges on the “quality”, that is, the nature and impact, of the first introduction. This also has a direct bearing on the question whether or not the first introduction can be said to be the effective cause of the sale. If the introduction was done thoroughly to such an extent that another estate agent could add nothing of substantive value during a subsequent introduction, the first introduction can readily be said to be the effective cause (assuming there to be no other intervening cause, such as the efforts of the seller or buyer). Take the case where estate agent A, during the course of a first introduction, explains in full all the features of the property to a cash buyer and provides him with all the information he requires to make an informed decision whether or not to buy. The buyer likes the property but wishes to view other properties with estate agent B before making a final decision. None of the other properties suit the buyer, and estate agent B eventually takes him back to the property he viewed with estate agent A. Estate agent B repeats the information conveyed to the buyer by estate agent A,

21 1948 4 SA 671 (A) 678.
22 See too Gluckman v Landau & Co 1944 TPD 261 268.
23 See the previous footnote.
25 A person may be introduced to a property on more than one occasion: Big Brother Movement Ltd v Richard Stanton & Sons Pty Ltd [1988] NSW Conv Rep 55; DC Wylde & Co v Sparg 1977 2 SA 75 (E) 79B.
following which the buyer makes a cash offer through estate agent B, which the seller accepts. In this scenario the first introduction is clearly the effective cause, even though the efforts of estate agent B may have been helpful in assisting the buyer to make up his mind.

The first introduction is therefore an important factor to consider, and its value is not necessarily lessened by the fact that another estate agent or the principals themselves conducted the final negotiations. Thus in Wakefield & Sons (Pty) Ltd v Anderson an estate agent introduced a buyer who was prepared to offer R11 200, the asking price being R11 500. The following morning the seller advised that he would accept R11 300. The estate agent conveyed this to the buyer but the latter informed him that he had bought another house. This was not true: in fact, on that very day the buyer had submitted an offer for R11 200 on the same property through another estate agent, which the seller accepted forthwith. The court held that on the day the buyer bought the property he was still satisfied by what the introducing agent had shown him the previous day and that this caused him to make the second offer. The introducing agent was thus the effective cause; the closing agent’s contribution, if any, was of no or negligible consequence.

In Eschini v Jones Watermeyer J (as he then was) made the following observation:

“[T]he only way in which an agent who finds the purchaser can succeed in proving that the finding of the purchaser was the effective cause of the sale, is by evidence that the purchaser was willing and able when found to buy on the seller’s conditions, and that the sale was bound to have gone through after the purchaser had been found, quite independently of any negotiations conducted by another agent.”

This is not correct. As was pointed out in Wakefield & Sons (Pty) Ltd v Anderson, a literal application of Eschini would place an unduly heavy burden upon an introducing agent who claims commission in a competing agent situation. It would mean that an introducing agent would only be entitled to commission if he can establish, on the hypothesis that the other estate agent never intervened, that a sale would inevitably have resulted following his introduction. Accordingly, the introducing agent will not be entitled to commission if another estate agent through some negligible contribution persuades the buyer to buy the property shown to him by the introducing agent, even though the introducing agent’s efforts contributed 95% towards the purchaser’s decision to buy. To succeed in his claim the introducing agent will have to prove that a sale would have followed his efforts, independently of the 5% effort on the part of the other estate agent. This would clearly be impossible since the purchaser would never have bought without the intervention of the second agent; common sense nevertheless dictates that the introducing agent was the effective cause of the sale. The correct approach is that an introducing agent will succeed in his claim for payment of commission if he can show on a balance of probability that the sale was attributable to his efforts, notwithstanding the intervention of another estate agent.

26 Howard & Decker Witkoppen Agencies and Fourways Estates (Pty) Ltd v Desousa 1971 3 SA 937 (T).
27 1965 4 SA 453 (N).
28 1929 CPD 18.
29 1965 4 SA 453 (N).
6 5 In the competing agent situation the closing agent may be the effective cause even if the buyer’s interest was aroused by the introducing agent and such interest had not disappeared at the time when the closing agent entered the picture.

In *Mano et Mano v Nationwide Airlines (Pty) Ltd.***, the Supreme Court of Appeal observed that “[a]lthough every commission claim depends on its own facts, second agents seldom seem to succeed: the introduction of a purchaser by the first agent usually remains the effective, or . . . ‘the dominant’ cause of the sale”. It is submitted that this statement is not to be interpreted to mean that second agents have an onerous burden to discharge in order to establish that their efforts were the effective cause of a transaction. There is no presumption against second agents being the effective cause, especially so if the second agent was also the closing agent. Accordingly, a second agent has to prove no more than that his efforts were the effective cause. In doing so the second agent is not required to show that “the interest aroused by the first introduction has evaporated, that is to say, entirely disappeared”. On the contrary, a second agent may be the effective cause of a sale even if the buyer became interested in the property through the efforts of the first agent and such interest was still very much alive at the time when the second agent commenced negotiations.

6 6 Cessation of negotiations between an estate agent and a prospective buyer about a particular property does not necessarily deprive the estate agent of entitlement to commission, but does impact significantly on assessing the value of the initial introduction.

From a business point of view an estate agent can be reasonably expected to maintain contact with a prospective purchaser introduced to a property, and to keep negotiations on the property open, until the purchaser has made a final decision not to buy. However, if the negotiations come to nothing and contact between the estate agent and the buyer is broken, cessation of further activity on the part of the estate agent does not necessarily deprive him of a commission claim. Should the buyer later buy the property without involving the estate agent, the initial introduction may still be the overriding factor inducing the sale despite the cessation of negotiations between the estate agent and the buyer. It is nevertheless clear that cessation of negotiations, although not per se terminating the influence of the initial introduction, is a material factor to consider in assessing the value of the introduction. An initial introduction may become exhausted if, after cessation of negotiations, the estate agent’s mandate expires and the property is taken off the market. Should the purchaser later buy the property without further intervention on the part of the estate agent, the estate agent may have some difficulty in showing that he is the effective cause of the transaction.

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30 2007 2 SA 512 (SCA) para 18.
32 See the facts in *Gordon v Slotar* 1973 3 SA 765 (A) 773C–D 774G–H.
33 *Schollum & Co v Lloyd* 1916 TPD 291.
34 *Aida* 874H.
35 *Basil Elk Estates (Pty) Ltd v Curzon* 1990 2 SA 1 (T).
36 *Schollum & Co v Lloyd* 1916 TPD 291 298; *Basil Elk Estates (Pty) Ltd v Curzon* 1990 2 SA 1 (T).
37 *Webbranchek v LK Jacobs & Co Ltd* 1948 4 SA 671 (A) 683–685.
Exactly what constitutes cessation of negotiations needs to be properly understood. A temporary suspension of active negotiations does not amount to a termination of negotiations. Accordingly, where a prospective buyer is keenly interested in a property shown to him by an estate agent but wants some private time to consider the matter, this clearly cannot be construed as cessation of negotiations. The same applies if a prospective buyer introduced by an estate agent liked the property very much and would have wanted to apply his mind to the possible purchase thereof but for an unfortunate event in his private life that temporarily prevented him from doing so. Placing further negotiations on hold until the buyer had sufficient time to overcome the unexpected setback does not mean that discussions about the property had ended permanently.  

67 In the competing agent situation there is no rule of law that the closing agent is necessarily the effective cause of the sale

As stated above, an estate agent is frequently successful in negotiating the sale of a property to a buyer who has already viewed the property with another estate agent. However, the mere fact that an estate agent succeeded in finalising a sale while an earlier attempt by another estate agent came to nothing does not make the closing estate agent the effective cause of the transaction. In *Howard & Decker Witkoppen Agencies and Fourways Estates (Pty) Ltd v Desousa*[^39], a builder gave an estate agent a mandate to sell a property for R45 000. The agent thereafter introduced W to the property who inspected it extensively and displayed a keen interest in buying. However, W indicated that the price was perhaps higher than their financial resources permitted, but that the ultimate decision had to be made by her husband. It was then arranged that W's husband would inspect the property the next day and that the builder would make arrangements to unlock the house. However, when the parties arrived at the premises the next day there was no one to open up. They then proceeded to inspect the house by viewing its interior through the windows. The W's thereupon made an offer to buy the house for R43 000, subject to satisfactory answers being given to various questions. The estate agent conveyed the offer to the builder who intimated that he was not prepared to sell at the suggested figure but that he would accept R44 500. The W's could not make the necessary financial arrangements and they then severed his connection with the estate agent, despite the latter's efforts to get in touch with them. A month later the W's bought the property for R45 000 through another estate agent who managed to arrange the required financial assistance.

On the facts the court held that the introducing agent was the effective cause of the transaction, not the closing agent. The main reason for the finding was that it was not shown that the removal of the initial financial obstacles by the closing agent was the effective or dominant cause of the sale. The court stressed the importance of the first introduction.  

[^38]: See, however, *Basil Elk supra* where a prospective purchaser introduced to a house by an estate agent lost interest in buying the property, partly because of a miscarriage. She bought the house in a private deal nine months later, having overcome the unfortunate experience in the meantime. One of the reasons why the court refused the estate agent’s claim for commission was that negotiations about the property had ceased. Whether they were merely placed on hold was apparently not considered.

[^39]: 1971 3 SA 937 (T).

[^40]: 941F.
“Where one agent has introduced the property to a purchaser and another agent has finally negotiated the transaction and produced the written offer which the seller accepted, the question whether the first or second agent’s efforts were the effective cause of the sale is difficult to answer, but it is obvious that, save in exceptional circumstances, the first introduction will be an important factor.”

68 An estate agent can be the effective cause of a sale even if the principal (seller) was unaware of the estate agent’s role

An estate agent mandated to find a buyer has no duty at common law to acquaint the seller with each and every person introduced to the property. Accordingly, a seller who mandated an estate agent to find a buyer may be held bound to pay commission to that estate agent if he sells the property to a purchaser who, unknown to the seller, has been introduced to the property by the estate agent earlier. The effectiveness of the estate agent’s role is not lessened by the fact that he had not informed the seller of the buyer’s introduction to the property.

69 An estate agent can be the effective cause of a sale even though the eventual purchaser is not the person introduced by the estate agent, but a third party brought into the picture by the person whom the estate agent has introduced

Estate agents frequently encounter a situation where they introduce a person to a property who does not buy personally, but tells someone else about the property and the latter then enters into a sale agreement. This arises typically when an estate agent introduces a spouse to a seller and the sale is eventually concluded with the other spouse. The question in these cases is whether the estate agent is entitled to commission in view of the fact that he has not actually introduced the purchaser to the property. In *Goddard v Arnold* an estate agent (A) introduced a prospective purchaser (C) to the seller of a property (G) but no sale resulted. C later introduced one L to the property and a sale between G and L resulted. A then sought to recover his commission from G. He succeeded in the magistrate’s court but an appeal against the magistrate’s judgment was upheld. Wessels JP formulated his decision as follows:

“It is undoubtedly a fact that Arnold mentioned the business to Carton and that this introduction indirectly led to the negotiations between Lewis and Miss Goddard. The introduction of the business to Carton was the *causa sine qua non*. This as we have seen is not sufficient, it must also be the *causa causans*. Now here the introduction of the business to Carton was not the *causa causans*; the *causa causans* was the conversation between Carton and Lewis . . .

A broker cannot claim commission from a seller if he fails to prove a direct communication to the purchaser by himself or by his sub-agent, or an introduction by him or by his sub-agent. The broker can claim his commission even though the negotiation is completed between the principals, provided he can prove that he in fact introduced the principal or that the introduction took place through his effort to bring about the introduction, as for instance where he inserts an advertisement, and this advertisement is seen by an intending purchaser . . . In *Barnett v Isaacson* (4) TLR 645, Lord Esher said that the person introduced must become a purchaser . . .

41 *Doyle v Gibbon* 1919 PD 220, quoted with approval in *Van Zyl en Seuns (Edms) Bpk v Nel* 1975 3 SA 983 (N).
43 1922 TPD 167.
through the introduction of the broker and that in these cases the question is: ‘Did the broker introduce a person so that by that introduction the relationship of vendor and purchaser is established?’ If we apply this test we cannot say that Arnold introduced anybody to Goddard. Arnold made no introduction at all and therefore could not have been the efficient cause in bringing about the sale. No doubt indirectly Arnold may be said to have set the matter in motion which eventually brought Lewis to Goddard, but if a broker is to earn his commission when what he did or said is indirectly responsible for the result, where are we to stop? If a broker mentions a transaction to A, and A to B, and B to C, and C then concludes the business, can we say that the broker has earned his commission? In Gibbon v Crick the Exchequer Court decided unanimously that he cannot and I think that this is common sense and good law.”

In a concurring judgment De Waal J stated the following:

“In order to be entitled to commission an agent must show that he either personally or through a sub-agent introduced the purchaser to the seller. If, therefore, the plaintiff could have shown that Carton was employed by him as sub-agent to find a purchaser he would no doubt have been entitled to succeed on his claim, Carton’s introduction to the defendant of Lewis having resulted in the sale. But such a sub-agency must be clearly established, and of this there is here no proof whatever.”

This approach has not been consistently followed in our courts. In Nelson v Hirschhorn the defendant (N) gave the plaintiff (H) a mandate to sell a property. H introduced one M who, although he himself did not buy, mentioned the property to G who with M’s assistance formed a company which acquired the property. H succeeded in his claim for commission and an appeal against that judgment failed. Wessels JA said the following:

“It is not enough for Hirschhorn to say to Nelson: ‘I introduced you to Mackeurtan, and though Mackeurtan himself did not buy, he mentioned it to Guy and it was owing to Guy’s intervention that the Durban North Company eventually bought. But for my introducing you to Mackeurtan you would never have come across Guy and would not have sold.’ The respondent must go further, he must satisfy the Court that the introduction to Mackeurtan was not only an incident in the sale – an incident without which the sale may not have taken place – but that it was the real and effective cause which brought about the sale. In order to determine this we must examine closely all the circumstances surrounding the sale and from these conclude whether the introduction of Nelson to Mackeurtan was not only the causa sine qua non, but also the causa causans.”

On the facts the Appellate Division held that N was in a hopeless plight when H had introduced him to M. M converted an impossible impasse into a successful ending, but the introduction remained the causa causans of the transaction.

44 See Lotz v Davidson 1928 CPD 514 and the other cases cited below.
45 1927 AD 190.
46 197–198.
47 See too Pretorius v Meyer 1975 3 SA 279 (T) where the person (K) introduced by an estate agent did not buy personally but got others interested in financing the transaction and to join him as shareholders in a company, which then bought the property for the purposes of developing it into a township. The court had little difficulty in deciding that the initial introduction remained the effective cause, based on the consideration that the parties must have contemplated that the person introduced as a possible purchaser would wish to find others to participate in financing the transaction, and that from a commercial point of view a company was the best vehicle to carry out the township development. Moreover, there was such a close connection between K and the company that it could not be held that the chain of causation was severed by the interposition of the company.
Somewhat surprisingly, the Appellate Division in Nelson v Hirschhorn did not specifically overrule Goddard v Arnold, a fact pertinently mentioned in Hubbard and Snyman v Kaplan. In the latter case an estate agent had introduced one H who wished to buy but was financially unable to do so. He introduced one M to the property and the latter then bought. The estate agent’s claim for commission failed. The court held that in view of Goddard the plaintiff could only succeed if it could prove that the relationship between H and M was of such a nature that a sale to M could be regarded as a sale to H. Since this could not be proved the plaintiff was not entitled to commission. Tindall J formulated the legal position as follows:

“Mr Millin argued that where A introduces B and B mentions the matter to C and thereafter C buys, the cases in which the agent A can claim commission can be classified in three categories: Firstly, where the relation between B and C is such that a sale to C is virtually a sale to B. Secondly, where B, in mentioning the matter to C, is acting as the agent of A. Thirdly, where B, at the time A introduced him, was in fact the agent of C. In the second and third categories it is, of course, clear that the test of causa causans is satisfied. If B, in mentioning the matter to C, was the agent of A, the effect is that A introduced C; and if B, when he was introduced by A, was the agent of C, the effect also is that A introduced C. It seems to me that in the first category the question whether the test is satisfied is one depending on the facts of each particular case. I may say further in regard to the first category that there seems to be great difficulty in expressing comprehensively the principle on which cases like Lotz v Davidson and Gunn v Showell’s Brewery Co were decided. But I do not think it necessary to decide whether the three categories mentioned state exhaustively the grounds of liability in cases of the kind under consideration. It is sufficient to apply the test which our courts have applied in previous cases, namely whether the introduction of (H) was the effective cause, the causa causans of the sale to (M).”

The approach in Goddard v Arnold was, however, expressly rejected in Joubert v Coster. An estate agent had showed a prospective buyer (C) a property. C was financially unable to buy but was extremely enthusiastic to do so. She got her father interested, and he later bought the property for his daughter in a private transaction with the seller. The court held the estate agent’s introduction of C to be the effective cause of the transaction. Although the estate agent was not involved in the negotiations and did not participate in drawing up the sale agreement, this did not preclude him from earning the commission. Regarding Goddard v Arnold Friedman J had the following to say:

“In my view, having regard to the authorities referred to above, and despite the decision in Goddard’s case, where A introduces B who in turn introduces C who ultimately buys, A is not precluded from earning commission if he cannot establish that B was acting as his agent in introducing C to the seller. Although . . . the Appellate Division did not in Nelson v Hirschhorn overrule Goddard v Arnold, it is significant that, despite the fact that Goddard v Arnold was relied on by appellant’s counsel in argument, Wessels JA chose . . . to formulate the test in a manner which is, in my judgment, irreconcilable with the much narrower view taken in Goddard’s case.”

On the facts Friedman J considered the case to fall into the first of the three categories referred to in Hubbard and Snyman v Kaplan; in other words the relation

48 1935 TPD 122.
49 1982 4 SA 540 (C).
between C and her father was such that the sale to the latter was virtually a sale
to C.

It is submitted that the three categories of cases mentioned in *Hubbard and Snyman v Kaplan* should not be seen as the only cases in which an estate agent can succeed in a commission claim where the eventual purchaser is not the person introduced by the agent, but a third party who was told about the property by the person whom the agent has introduced. The crucial question in every case is whether or not the estate agent can be said to be the effective cause of the sale. An estate agent can be the effective cause of a transaction even if the person introduced by him is not acting as the agent of either the seller or the buyer, and even if the relationship between that person and the eventual purchaser is not of such a nature that it can be said that a sale to one is virtually a sale to the other. This principle was, with respect, correctly understood and applied in *Edwards v Wynberg Club*, 50 where the facts were somewhat complicated. In May 1980 the defendant (“the seller”) gave the plaintiff estate agent an oral mandate to:

(a) exchange the seller’s property (erf 67877), for suitable alternative premises; or

(b) sell erf 67877 on condition that the seller was simultaneously able to buy suitable alternative property.

The estate agent thereafter introduced company F to the seller. Company F was the owner of erf 66705, Cape Town (commonly known as the Chelsea Arms). The estate agent’s case was that this introduction was the effective cause of the exchange of erf 67877 for erf 66705 and that, accordingly, the seller was liable to pay commission amounting to R10 000. Company F was at all material times represented by one Engelbrecht (E).

The seller’s case was that an exchange transaction in respect of erf 67877 and erf 66705 had been concluded in January 1984. This transaction was subject to a number of suspensive conditions that were never fulfilled and the transaction fell away. Subsequently, another estate agent introduced a consortium to E. The consortium then purchased company F and thereafter sold it to the seller (defendant). Simultaneously the consortium purchased erf 67877 from the seller. The seller argued that in these circumstances it was not liable to pay the estate agent any commission. He stressed that it was the intervention of the consortium that enabled him to exchange his property for erf 66705. He highlighted the fact that the estate agent did not introduce the consortium to E, nor to erf 67877. The estate agent was not involved in the negotiations between the consortium and E, which led to the consortium purchasing company F; nor was the estate agent involved in the negotiations between the consortium and the seller that culminated in the purchase by the consortium of the seller’s property. In short: the estate agent (plaintiff) introduced E to the property, but E did not buy; the actual purchaser was a party introduced to the property by someone other than the estate agent.

A magistrate’s court gave judgment against the estate agent but an appeal was upheld. The court pointed out that it was the estate agent’s introduction of E to the seller that was the effective cause of the seller becoming interested in erf 66705. The seller obviously regarded that erf as a desirable substitute for erf 67877. It was this factor – the seller’s desire to acquire the latter property, itself a

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50 1990 2 SA 429 (C).
consequence of the estate agent’s introduction – that remained operative throughout the negotiations that resulted in the eventual exchange of the two properties. Furthermore, although E was not the eventual purchaser of the seller’s property, it was due to E that the seller disposed of its property and acquired in its place the other property of which E was previously the effective owner. Accordingly, it was the estate agent’s introduction of E to the seller that was the effective cause of the exchange of erf 67877 for erf 66705.

In coming to this conclusion Hoberman AJ pointed out that although the court in *Joubert v Coster* found on the facts that the relation between the eventual purchaser and the person introduced by the plaintiff was such that a sale to the former was virtually a sale to the latter, that finding was not essential to the success of the plaintiff’s claim. The claim succeeded in the *Joubert* case because the introduction of C was the effective cause of the sale to her father. Hoberman AJ formulated the relevant legal principle as follows:

“In a case where the eventual purchaser is not the person introduced by the agent, but a third party brought into the picture by the person whom the agent has introduced, the agent’s entitlement to commission cannot, to my mind, depend solely on whether the relation between the eventual purchaser and the person introduced is such that the sale can be regarded as virtually one to the person whom the agent has introduced. That this cannot be the decisive factor is evident from the decision of the Appellate Division in *Nelson v Hirschhorn* . . . There was no suggestion, nor could there have been on the facts of the case, that the sale to the eventual purchaser could be regarded as being in substance a sale to the person whom the agent had introduced.”

**6 10 An estate agent can be the effective cause of a sale, even if the sale is concluded after expiry of the mandate**

In *Steyn v Joubert* an estate agent introduced a buyer to a property but no sale ensued because the buyer could not afford the purchase price. About a year later the seller revoked the estate agent’s mandate and then personally negotiated a sale with the buyer. The seller refused to pay the estate agent commission, arguing that at the time the property was sold the estate agent had no mandate.

On the facts the court found that at the time the estate agent’s mandate was withdrawn, the seller was actually negotiating with the buyer introduced by the estate agent. It was therefore clear that the estate agent’s efforts were the effective cause of the sale. The headnote to the reported judgment formulates the relevant legal principle as follows:

“An estate agent whose authority to sell on commission has been withdrawn is entitled to commission for a sale which was effected after such withdrawal, but through services rendered by him before withdrawal.”

**6 11 An estate agent can be the effective cause of a sale even if obstacles (financial or otherwise) standing in the way of a sale were overcome by one or both of the parties to the sale by independent effort, with or without the assistance of a third party**

It is not the law that an introducing agent can claim commission only if he has overcome all the obstacles that stood in the way of a successful sale. It makes

51 1923 TPD 275.

52 Munitz v Steer’s Trust Co (Pty) Ltd 1993 2 SA 369 (C) 392F–G.
no difference whether an obstacle has been removed by a rival agent or by the buyer himself, either on his own or with the help of family or friends: the introducing agent will be entitled to commission if his introduction persisted in influencing the purchaser to proceed to the point of purchasing, although the removal of the obstacle was in a sense necessary. The position is correctly summarised in *Aida Real Estate Ltd v Lipschitz*:54 “As regards the financial difficulties, it must be pointed out that almost every transaction brought about by an estate agent is preceded by protracted negotiations of a financial nature – namely, as regards the amount of the price as well as to the method and time of payment. Often success is only achieved through the intervention of third parties, and quite often the agent himself is not a participant in these negotiations. It would, however, be a mistake to say that the occurrence of these financial obstacles and their removal without the assistance of the agent necessarily go to show that the agent’s introduction was not effective in bringing about the ultimate sale. Obstacles in the way of the sale and the fact that the one or other or both of the parties by independent effort overcame them, may indeed support the very opposite view. It may be the measure of the wisdom and business acumen of the agent in introducing to each other a seller who is so keen to sell and/or a purchaser who is so keen to buy that even formidable obstacles in the way of a sale were overcome; or, to put it more crudely, the willingness and ability of the purchaser introduced by the agent were so great that nothing could prevent the sale taking place. In such a case the agent would be entitled to remuneration, no matter whether he selected the potential purchaser by chance or by foresight.”

Financial issues often constitute a major stumbling block. Is the estate agent who manages to address this successfully necessarily the effective cause of the transaction? Naturally each case must be decided on its own facts, but it is clear that in certain instances the financial obstacles may have been so formidable that it would be difficult to deny that their removal was the decisive factor. Thus in *Slabbert v Daubern*55 the seller wanted R45,000 for his property and nothing less because he needed the money to buy another property. Estate agent A introduced a buyer who made an offer for R43,000 which the seller refused. Estate agent B took the same buyer to the property and managed to conclude the transaction at R43,000, having succeeded in arranging financial assistance for the seller so that

53 See *Van Aswegen v De Clerq* 1960 4 SA 875 (A). In that case estate agent A introduced a buyer to a property but the buyer did not have sufficient funds to buy. The buyer then propounded a money-raising scheme (fraudulently inflating the purchase price) whereby he could buy the property. He then contacted a second estate agent (B) who was prepared to put the scheme into operation. The court found that it was A’s introduction which persisted in influencing the buyer to the point of purchasing and that B’s role, although in a sense necessary, was subordinate. In *Munitz v Steer’s Trust Co (Pty) Ltd* 1993 2 SA 369 (C) Farlam AJ was under the impression that it was held in *Wakefield & Sons (Pty) Ltd v Anderson* 1965 4 SA 453 (N) that *Van Aswegen* had impliedly overruled the passage in *Eschini v Jones* quoted in the text above. This was not specifically said in *Wakefield*. In *Munitz* Farlam AJ furthermore seemed to draw a distinction between a case where obstacles are removed by a second agent and cases where they are removed by the buyer himself, either on his own or with the help of family or friends: see the judgment 392F–H. With respect, this distinction is not warranted; it makes no difference who removed the obstacles (ie whether it was the buyer himself or through the efforts of a rival agent). The introducing agent must prove that his efforts were the effective cause of the sale, regardless of who removed the final obstacles standing in the way of the sale.

54 1971 3 SA 871 (W) 875E.

55 1975 1 PH A20 (T).
he could buy the other property even though he had to reduce his price by R2 000. On these facts the court had no trouble in deciding that estate agent B was the effective cause of the sale, having found a solution to the seller’s financial predicament.

6.12 The time lapse between the initial introduction and the eventual sale must be considered

A long time lapse between the initial introduction and the eventual sale serves to significantly lessen the role of the initial introduction and to highlight the importance of subsequent events.56 As was stated in *Webranchek v LK Jacobs & Co Ltd*:

> “Where the contract made by an agent with a prospective purchaser is broken off and after a long interval the same purchaser reopens negotiations to acquire the same property with the principal direct or through another agent, the interruption may justify the inference that a sale which eventuates after resumed negotiations arises out of a fresh intervening cause and is not due to the efforts of the first agent.”

It follows that an introducing agent may discharge the *onus* of establishing that he was the effective cause of a sale more readily where the sale followed hard upon his introduction, than where there has been a long interval between his introduction and the date of the sale.57

It is submitted that although the time lapse between the initial introduction and the eventual sale is an important consideration, the emphasis should fall not so much on the time lapse as such but on what happened during the intervening period. For example, if during the relevant period negotiations are broken off completely and the estate agent in question has not been in contact with the purchaser at all, the lapse of time becomes significant.58 On the other hand, if the initial introduction remains the motivating force leading up to the sale the introducing agent will be the effective cause of the transaction despite the lapse of a long period between the initial introduction and the conclusion of the sale agreement. Thus in *Joubert v Coster*59 the initial introduction took place in August 1977 and the eventual sale (a private transaction not involving the introducing agent) was concluded in October 1978, some 14 months later. The court held that the initial introduction had made such a favourable impression on the person introduced that, although she was unable to purchase the property herself, she had all along thereafter tried to obtain financial assistance for the purchase of the property. She eventually found an American friend who was prepared to advance half the funds. Having reached that stage, she attempted to interest her parents in providing the balance and these discussions led directly to her father deciding to buy

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56 Basil Elk 6E; Schollum 298.

57 Wakefield & Sons (Pty) Ltd v Anderson 1965 4 SA 453 (N) 457F. In this case the sale resulted within 24 hours after the introducing agent had introduced the purchaser to the property. A second agent concluded the deal but the court held the first agent to be the effective cause.

58 See Basil Elk *supra* where there was a lapse of nine months between the initial introduction and the eventual sale. The introducing agent had ceased all negotiations with the purchaser and the purchaser had an unexpected windfall making it easier for him to buy the property shown to him by the introducing agent. On these facts the court held that the introducing agent was not the effective cause of the sale.

59 1982 4 SA 540 (C).
the property. Friedman J\(^{60}\) had little difficulty in deciding that the introduction in August 1977 “continued to operate as a motivating force” which ultimately led to the sale some 14 months later.

613 The terms of the sale must be viewed against the selling terms conveyed by the seller to the estate agent mandated by him; discrepancies may indicate that the introducing agent is not the effective cause of the sale but the parties themselves or a third party

It has been said that when a seller conveys to an estate agent the terms upon which he is prepared to sell (“the selling terms”), those terms are strictly speaking not part and parcel of the estate agent’s mandate but merely necessary information conveyed to the estate agent to enable him to perform the mandate.\(^{61}\) However, in modern estate agency practice the selling terms are often embodied in the estate agent’s mandate and are very much part of the mandate, particularly so in the case of written sole mandates. Nevertheless, whether or not the selling terms are embodied in the introducing agent’s mandate, those terms must be viewed against the terms of the final sale agreement to determine whether or not the introducing estate agent was the effective cause of the sale. Generally, where the terms of the sale are different from the selling terms upon which the introducing agent was employed to find a buyer, this does not in itself mean that the introducing agent cannot be the effective cause of the sale.\(^{62}\) It is a question of degree. Where the terms and conditions of the final contract are negotiated by someone other than the introducing agent and those terms are completely at odds with the selling terms upon which the introducing estate agent based his negotiations with the purchaser, the inference may well be drawn that the introducing agent is not the effective cause of the sale.\(^{63}\)

The mere fact that the actual purchase price at which the contract was concluded is lower or higher than the asking price initially conveyed by the seller to the introducing agent does not exclude the introducing agent from being the effective cause of the sale.\(^{64}\) Thus in *Abel v Perks*\(^{65}\) a buyer instructed an estate agent to buy L’s hotel for £6 500. The estate agent introduced the buyer to L, who refused to sell at under £7 000. However, two weeks later the buyer (without revoking the estate agent’s mandate) approached a third party (N) who closed the transaction with L for £6 500. On the facts the court held that there was nothing whatsoever showing that the original introduction had ceased to operate; L agreed to accept the price originally offered, not because of anything N did or said, but because of the fact that his (L’s) health had deteriorated. The first agent was therefore the effective cause of the transaction. The position would be different, however, if the negotiations conducted by the introducing agent had broken down because the parties were too far apart in their respective views as to the value of the property, and only the efforts of a second agent could succeed in

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60 551C.
61 *Vanarthdoy (Edms) Bpk v Roos* 1979 4 SA 1 (A) 10H–11A.
62 *Le Grange v Metter* 1925 OPD 76 80; *Van Zyl en Seuns (Edms) Bpk v Nel* 1975 3 SA 983 (N).
63 Duncan 199.
64 *Doyle v Gibbon* 1919 TPD 220; *Van Zyl en Seuns (Edms) Bpk v Nel* 1975 3 SA 983 (N); *Vanarthdoy (Edms) Bpk v Roos* 1979 4 SA 1 (A) 10H.
65 1923 EDL 285.
bringing about a situation in which the parties could negotiate on a realistic price. The same applies where the mandate has made it clear that the estate agent would not be entitled to commission unless the property was sold at the specific price stipulated in the mandate.

614 An estate agent who reduces his commission in order to close a deal is not necessarily the effective cause of the transaction

In practice an estate agent given a mandate to find a buyer for a property invariably includes the commission in the price at which the property is marketed. This is referred to as the gross purchase price, ie the seller’s asking price plus the estate agent’s commission. A situation that arises frequently is where a prospective purchaser introduced to a property by an estate agent likes the property very much but cannot afford the gross price. An impasse is reached because the seller is not willing to lower his asking price and the estate agent is not prepared to take a reduced commission. The purchaser then approaches another estate agency firm, also having a mandate on the property, and the latter reduces its commission in order to trigger the sale. Is the second estate agent, by accepting a reduced commission, necessarily the effective cause of the sale?

In Webranchek v LK Jacobs & Co Ltd the seller had given several estate agents a mandate to find a buyer for his property. The asking price was £40 000. Estate agent A introduced a buyer to the property and had aroused the buyer’s interest to such a stage that a sale was about to be concluded. However, the buyer wanted to haggle and to this end contacted estate agent B, who also had a mandate on the property. After intense negotiations B eventually agreed to reduce his commission, making it possible for the sale to be concluded at £39 500 gross. Estate agent A sued for commission, and succeeded. The court held that many causes contributed towards the sale, including the seller’s own efforts and the fact that estate agent B was prepared to sacrifice a portion of his commission. Nevertheless, it was still estate agent A’s introduction and efforts that were the effective cause of the transaction: it was through his efforts that all sales resistance had broken down and the right situation created to crystallise into a sale. The buyer continued to haggle only because it was his habit to try at the last moment to beat down commission.

It is submitted that once a buyer introduced by an estate agent has actually made up his mind to buy the property in question, the fact that the buyer simply wants a better deal cannot prevent the introducing agent from being the effective cause of the sale. Accordingly, if the buyer negotiates the sale through another estate agent who is willing to reduce his commission, this does not make the closing agent the effective cause. In other words, the mere fact that an estate agent closes a transaction because he is willing to reduce his commission does not necessarily make him the effective cause of the transaction. Clearly, if this is not the law an introducing agent will always be at risk: all that a prospective purchaser would need to do to beat down the price would be to find a rival estate agent who is prepared to do a quick deal at a reduced commission.

66 Gordon v Slotar 1973 3 SA 765 (A) 773D–F.
67 Vanarthdoy (Edms) Bpk v Roos 1979 4 SA 1 (A); Van Heerden v Retief 1981 1 SA 945 (A).
68 1948 4 SA 671 (A).
This does not mean that the reduction of commission should not be considered in an evaluation of what really brought about a sale. It is obviously an important factor, sometimes even of overriding significance. What must be kept in mind, however, is that the estate agent who cut the commission is not thereby automatically the effective cause of the transaction: the facts may show that the introducing agent would also have been quite willing to reduce his commission had he been confronted by the purchaser to do so in order to save the transaction. On the other hand, there may well be cases where the estate agent who reduces his commission would be the effective cause of the transaction. Take the case where a buyer makes it perfectly clear to an estate agent that he cannot pay more than a certain amount for a property. The estate agent nevertheless introduces the buyer to a property priced in excess of what the buyer can afford. The seller is not willing to lower his price and the estate agent knows that a sale would be impossible unless the commission is reduced. If the introducing agent nevertheless refuses to cut his commission and a sale is later negotiated through another estate agent who is prepared to do so, it could be argued persuasively that the reduction of commission was the decisive factor. However, in such instances the buyer’s evidence must be carefully weighed because experience shows that purchasers often buy at a higher price than which they initially told the estate agent they could afford. If a seller is unwilling to lower his price, a purchaser is often quick to put pressure on the estate agent to reduce his commission despite the fact that the purchaser is able to afford the asking price, albeit with some difficulty.

615 If a buyer introduced by an estate agent decides not to buy but to rent and later buys the property in a private deal, the introducing agent may be the effective cause of the sale

Often a prospective buyer introduced by an estate agent likes the property very much but wants to rent it for a few months first before finally deciding whether or not to buy. Sometimes the person introduced does not wish to buy at all and is only looking for temporary accommodation. The seller agrees to a short lease, given tight market conditions. However, before the lease expires the tenant’s position changes and he decides to buy the property. Will the introducing agent be entitled to commission if the parties themselves negotiate the sale without the agent’s intervention?

In Curry v Mandy it was held that the estate agent who had shown the buyer/tenant the property was entitled to commission on the private sale concluded with the seller. However, it is not clear from the facts of the case what period had lapsed between the signing of the lease and the date of the sale. What is clear is that the house was still for sale at the time when the tenant bought it. It is submitted that no hard and fast rules can be laid down in this regard. There are no general principles of law specifically applicable to cases of this nature; accordingly, the question is simply whether the estate agent’s efforts surrounding the negotiation of the lease agreement are the effective cause of the subsequent sale of the

69 See Munitz v Steer’s Trust Co (Pty) Ltd 1993 2 SA 369 (C) 395H. In that case the closing agent reduced his commission from R29 100 to R25 000, but the court found that the introducing agent would also have been prepared to cut commission if the need to do so had arisen to make a sale possible.

70 1968 1 PH A35 (T).
property to the tenant. Whether or not the estate agent has maintained regular contact with the respective parties and promoted the liaison between them will be important considerations.

In practice a letting agent negotiating a lease in the circumstances described above will invariably include a clause in the lease agreement to the effect that sales commission will be payable should the tenant purchase the property during the currency of the lease or thereafter. Whether or not the effective cause requirement is excluded depends on the wording of the clause.

6 16 An introducing agent can be the effective cause of a sale even though the parties themselves, without the estate agent’s participation, negotiated the terms that made the sale possible

The courts have applied this principle consistently.\(^{71}\) It is the logical outcome of the common law rule that an estate agent mandated to find a buyer is under no duty to negotiate the sale or to attend to the formation of the sale agreement or the execution thereof.\(^{72}\)

7 FINAL OBSERVATION

Whether or not an estate agent is the effective cause of a sale is a question of fact. The difficulty lies in making an assessment based on the available facts. Although certain guidelines exist, each case has to be evaluated on its own. A legal practitioner engaged to advise an estate agent whether or not to institute a commission claim will often find that his client is convinced, subjectively, that his efforts were indeed the effective cause of the relevant transaction. However, suing a seller for payment of commission on the grounds that an estate agent was the effective cause of a sale is a calculated risk, since the full picture of what actually led to the transaction will usually only surface in court. For this reason an estate agent is often well advised to rather accept a settlement than to sue for the full amount. In the competing agent situation the best solution in many instances would be that the estate agents share the commission equitably, based on independent third party’s assessment of the value of each agent’s efforts.

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\(^{71}\) See Goddard v Arnold 1922 TPD 167; Le Grange v Metter 1925 OPD 76 80; Doyle v Gibbon 1919 TPD 220; Mano et Mano v Nationwide Airlines (Pty) Ltd 2007 2 SA 512 (SCA) para 20.

\(^{72}\) Van Zyl en Seuns (Edms) Bpk v Nel 1975 3 SA 983 (N) 986F.