

5/20/97

IN THE COURT OF APPEALS

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-01000 COA

CHARLES L. CHAMBERS, JR.

APPELLANT

v.

A.R. (ARTHUR) TAYLOR

APPELLEE

PER CURIAM AFFIRMANCE MEMORANDUM OPINION

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. PERCY LEE LYNCHARD, JR.

COURT FROM WHICH APPEALED: PANOLA COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT:

DANA J. SWAN

ATTORNEY FOR APPELLEE:

OMAR D. CRAIG

NATURE OF THE CASE: REAL ESTATE LICENSE REQUIRED TO SHARE FINDER'S FEE

TRIAL COURT DISPOSITION: CAUSE DISMISSED WITH PREJUDICE

MANDATE ISSUED: 6/10/97

BEFORE BRIDGES, C.J., HERRING, AND PAYNE, JJ.

PER CURIAM:

Charles L. Chambers, Jr. (Chambers) filed a complaint in the Tunica County Chancery Court on March 31, 1994, alleging, inter alia, that Arthur R. Taylor (Taylor) owed him approximately \$90,000.00 in finder's fees. The complaint alleged that Chambers, who is not licensed as a salesman, agent or broker by the Mississippi Real Estate Commission, made an oral contract with Taylor, a licensed agent and broker, to split a finder's fee for locating a buyer for certain land in Tunica County, Mississippi. Chambers alleged that he made demand on Taylor for his share of the fee in June or July 1991, and Taylor refused to pay. The action was subsequently transferred to Panola County Chancery Court where it was dismissed with prejudice. The chancellor based his decision upon sections 73-35-21(J), 73-35-31, and 73-35-33 of the Mississippi Code. There was never any testimony reached in this case, therefore no evidence of whether the contract was or was not made. Nevertheless, we find that the chancellor was correct in dismissing with prejudice Chambers' complaint. After reviewing the briefs and the record, we conclude that the trial court was correct for the reasons stated in its opinion:

The third and fourth grounds of the Motion to Dismiss ARE WELL TAKEN, which were that the alleged Contract required the Defendant to violate a criminal statute and which alleged Contract cannot be statutorily enforced. The performance by the Defendant would have been a violation of Section 73-35-21(J), Miss. Code of 1972, Annotated, Amended, subjecting the Defendant to criminal prosecution under Section 73-35-31, Miss. Code of 1972, Annotated, Amended. Further, the Plaintiff, not being a licensed real estate salesman or real estate broker, is statutorily prohibited from bringing this suit under Section 73-35-33, Miss. Code of 1972, Annotated, Amended.

IT IS THEREFORE, ORDERED AND ADJUDGED that this cause be and the same is dismissed with prejudice.

Section 73-35-21(J) of the Mississippi Code states that the real estate commission has the authority to refuse, revoke, or suspend a license in the event a licensed real estate broker or salesperson pays "any rebate, profit or commission to any person other than a real estate broker or salesperson licensed under the provisions of this chapter." MCA 73-35-21(J) (Supp. 1996). Additionally, section 73-35-31 of the Mississippi Code states that any person violating the provisions of this chapter may be criminally liable. Moreover, any person that receives compensation as a consequence of a violation of any provision of this chapter shall also be liable. MCA 73-35-31 (Rev. 1995). Finally, section 73-35-33 of the Mississippi code states that one suing for compensation must be licensed by the real estate commission:

No person . . . shall bring or maintain an action in any court of this state for the recovery of a commission, fee or compensation for any act done or services rendered, the doing or rendering of which is prohibited under the provisions of this chapter for persons other than licensed real estate brokers, unless such person was duly licensed hereunder as a real estate broker at the time of the doing of such act or the rendering of such service.

MCA 73-35-33 (Rev. 1995). *See also Quick Shops of Mississippi, Inc. v. Bruce*, 232 So. 2d 351,

353-54 (Miss. 1970) (holding that access to courts of Mississippi is denied those seeking commission or fee without proper license, and statute is highly penal in nature requiring strict construction). Accordingly, we find no error in the chancellor's decision.

THE JUDGMENT OF THE PANOLA COUNTY CHANCERY COURT DISMISSING WITH PREJUDICE CHAMBERS' CAUSE OF ACTION IS AFFIRMED. COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.

BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.