IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
February 15, 2005 Session

CARRIE C. DOWLEN v. BILLY WEATHERS, ET AL.

Appeal from the Circuit Court for Hamilton County
No. 03C508 L. Marie Williams, Judge

No. E2004-00857-COA-R3-CV - FILED MAY 17, 2005

Carrie C. Dowlen ("the plaintiff") – a licensed real estate "broker/salesperson" – while working as an independent contractor for Re/Max Properties, LLC ("Re/Max"), a Chattanooga real estate broker, secured an Exclusive Listing Agreement ("the Listing Agreement")[1] on behalf of Re/Max to sell or lease property owned by a husband and wife ("the owners"). The property was later leased; however, the owners refused to pay the commission due under the Listing Agreement. The plaintiff, in her individual name, brought suit against the husband.[2] During the pendency of that suit, the owners and Mr. Weathers, acting on behalf of Re/Max, entered into an agreement, by the terms of which the parties released each other from "any claim of liability or cause of action of any kind stemming from [the Listing Agreement]." When the plaintiff learned of the release and recognized its probable effect on her "commission" lawsuit, she took a voluntary nonsuit as to her claim against the husband; she then filed this suit for breach of contract and inducement of breach of contract against Mr. Weathers and Re/Max. The trial court held that the defendants, by executing the Release, induced the owners to breach the Listing Agreement and, pursuant to the statute addressing damages for inducement of breach of contract, the court then awarded the plaintiff three times the amount of the commission due her. The trial court also granted the plaintiff's request for her attorney's fees. The defendants appeal. We hold (1) that, at the time the Release was executed, the real parties in interest with respect to the commission due under the Listing Agreement were the owners and the plaintiff; and (2) that, as to the commission, the defendants were nothing more than a pass-through or conduit of the commission for the sole benefit of the plaintiff. Accordingly, we affirm so much of the trial court's judgment as holds that the defendants are liable to the plaintiff for inducement of breach of contract. Finding no legal basis for an award of fees in this case, we reverse the trial court's award of fees.

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[1] The agreement is on a printed, fill-in-the-blanks form of the Chattanooga Association of Realtors, Inc.

[2] The record does not reflect why the wife was not also sued. Both of the owners signed the Listing Agreement. While only the husband signed the release, we treat his signature, as did the parties to this litigation, as binding both him and his wife. The fact that one was sued to the exclusion of the other is not material to our disposition of this case.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed In Part; Reversed in Part; Case Remanded

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and SHARON G. LEE, J., joined.

J. Scott McDearman, Chattanooga, Tennessee, for the appellants, Billy Weathers and Re/Max Properties, LLC.

Phillip C. Lawrence, Chattanooga, Tennessee, for the appellee, Carrie C. Dowlen.

OPINION

I.

The plaintiff is a licensed real estate broker/salesperson who worked as an independent contractor for Re/Max until May 16, 2001. Mr. Weathers is the principal broker/co-owner of Re/Max[3]. The terms of the relationship between Re/Max and the plaintiff are set forth in the parties' "Independent Contractor Agreement," which was signed by the plaintiff and Re/Max on April 13, 1999. Tennessee real estate law[4] requires that selling owners of real property pay their commissions to a broker agency rather than to the individual agent who works under the auspices of the broker agency. In the instant case, the agreement between Re/Max and the plaintiff provides that Re/Max, upon receipt of a commission associated with a transaction involving the plaintiff, will "transmit to [the plaintiff] promptly One Hundred Percent (100%) of all commissions received by RE/MAX as a result of the efforts of [the plaintiff]."

During her time with Re/Max, the plaintiff met Ray Haven and agreed to list property in Ooltewah owned by Mr. Haven and his wife ("the property"). The Havens entered into the Listing Agreement on August 18, 2000. The Listing Agreement designates Re/Max as the "BROKER (listing **agency**)." (Capitalization, bold, and underlining in original). It also provides that if the property is leased or sold, the owner will pay a 10% commission to Re/Max. The document was signed by the owners, and the plaintiff as the "Broker (or listing agent authorized by Broker)." An addendum to the Listing Agreement – the "Seller Agency Agreement" – provides that the owners employ Re/Max as their agent and authorize it to appoint the plaintiff as Re/Max's designated agent. This latter agreement is also signed by the owners and the plaintiff.

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[3] Mr. Weathers testified at trial that Re/Max is a limited liability company. He stated that he was the principal broker of the LLC, and that he co-owned the business with his wife. One of the documents in this case describes Mr. Weathers as the "president" of the LLC. An LLC is typically comprised of an organizer and its members. *See* Tenn. Code Ann. § 48-202-201, *et seq*. (2002). For ease of reference, we will sometimes refer to Mr. Weathers as the "principal" or "principal broker" of the LLC.

[4] *See* Tenn. Code Ann. § 62-13-312(11) (1997).

On the same day the parties executed the Listing Agreement, the plaintiff listed the property on the Multiple Listing Register. A number of interested parties responded. The plaintiff showed the property to Scott Steventon and introduced him to Mr. Haven. On April 17, 2001, the plaintiff met at the property with Mr. Haven and Mr. Steventon. At that time, the two gentlemen verbally agreed to execute a lease. On April 20, 2001, Mr. Steventon made a deposit on the lease.

The lease was executed in May, 2001. The owners, however, never sent the plaintiff a copy of the lease. By this time, the plaintiff was no longer working for Re/Max. A dispute arose between the plaintiff and the owners when the latter refused to pay the commission owed pursuant to the Listing Agreement. By letter dated October 1, 2001, the plaintiff made a written demand on the owners for the commission. When the plaintiff did not receive a response to her letter, she filed suit against Mr. Haven on October 30, 2001.

On January 18, 2002, Mr. Haven met Mr. Weathers at Re/Max and presented him with a mutual release of liability ("the Release"). The effect of the Release was to absolve the owners of their obligation to pay the commission. At trial, Mr. Weathers testified that, when he executed the Release, he had no knowledge of the suit against Mr. Haven and, in fact, had no knowledge of the lease. Mr. Weathers did not contact the plaintiff in an attempt to ascertain whether there was a factual basis to justify the execution of the Release; nor did he seek the plaintiff's advice or thoughts regarding the Release. Since the Release had the legal effect of extinguishing the owners' obligation to pay the commission, the plaintiff filed a voluntary nonsuit in her case against Mr. Haven.

On March 11, 2003, the plaintiff brought this action against the defendants. In her amended complaint, she averred that the defendants were liable for breach of contract and inducement of breach of contract. In their amended answer, the defendants raised as an affirmative defense that the plaintiff's complaint fails to state a claim upon which relief can be granted against Mr. Weathers. They also raised as an affirmative defense that they were entitled to a set-off of $2,500. The defendants averred that they, along with the plaintiff, were sued in an unrelated action because of the plaintiff's actions. Since Re/Max paid an insurance deductible of $2,500 in settling that claim, and since the Independent Contractor Agreement requires that the plaintiff pay all legal expenses and insurance deductibles stemming from her actions, the defendants argued that any award to the plaintiff with respect to her claim against them should be reduced by $2,500.

Following a bench trial, the court took this matter under advisement. In its memorandum opinion filed March 18, 2004, the court determined that the Release executed by Mr. Haven and Mr. Weathers had the effect of releasing the owners from their obligations under the Listing Agreement. The court held that Weathers, on behalf of Re/Max, had released the owners without first ascertaining whether there was a factual predicate justifying the execution of the Release. The court ruled that the "defendants' actions resulted in the extinguishment of the obligation by [the owners] to defendants which would have inured to the benefit of plaintiff had those obligations not been released." The court further found that Mr. Weathers was motivated by ill will in signing the Release. The court predicated its finding of ill will on its determination that Mr. Weathers knew that the plaintiff had secured a lease for the owners and thus was entitled to her commission under the

Listing Agreement and the Independent Contractor Agreement. The trial court awarded the plaintiff her 10% commission of $5,620, which amount the court tripled pursuant to the statute for inducement of breach of contract, codified at Tenn. Code Ann. § 47-50-109 (2001).[5] The trial court also decreed an award of attorney's fees to the plaintiff. With respect to the defendants' claim to a $2,500 setoff, the court held that the defendants failed to carry their burden of proof as to their right to the setoff. The court found credible the testimony of the plaintiff that the setoff previously had been secured by a deduction from another commission check due the plaintiff. The defendants appeal.

II.

The defendants state in their brief that "Re/Max's liability to [p]laintiff should be limited to [p]laintiff's actual commission owed." They challenge the trial court's application of Tenn. Code Ann. § 47-50-109 – the treble damages statute – to the facts of the case at bar. They argue that since Re/Max was a party to the Listing Agreement, and since Mr. Weathers was acting within the scope of his employment with Re/Max when he signed the Release, neither can be held liable for inducement of breach of contract. The defendants further contend that the trial court erred when it found the other necessary elements of an inducement of breach of contract claim. They argue that the proof fails to show that they had the requisite intent to breach the contract or that they acted with malice. Lastly, the defendants challenge the trial court's award of fees to the plaintiff.

III.

In an appeal of a bench trial, our review of the trial court's findings of fact is *de novo* upon the record below. Tenn. R. App. P. 13(d). We accord a presumption of correctness to those findings, unless the evidence preponderates against them. ***Id.*** We accord no presumption of correctness to the trial court's conclusions of law. ***Campbell v. Florida Steel Corp.***, 919 S.W.2d 26, 35 (Tenn. 1996); ***Presley v. Bennett***, 860 S.W.2d 857, 859 (Tenn. 1993).

IV.

The defendants' primary argument on appeal finds it genesis in the general proposition that a party to a contract cannot be held liable for procuring that contract's breach. *See* ***Ladd v. Roane Hosiery, Inc.***, 556 S.W.2d 758, 760 (Tenn. 1977). Therefore, so the argument goes, Re/Max cannot be held liable for inducing the owners to breach their "commission" obligation under the Listing Agreement because Re/Max was a party to that contract; nor can Mr. Weathers be held responsible since he was acting within the scope of his employment with Re/Max.

In its memorandum opinion, the trial court stated as follows:

[5] It is not clear from the trial court's opinion against whom the judgment was entered. The parties, however, treat the judgment as if it was entered against both Re/Max and Mr. Weathers. We will do the same.

> The primary dispute between the parties arises out of [the Listing Agreement] concerning [the property]. The property ultimately was leased as established by [the lease agreement]. The commission for that lease was contested by [the owners]. The Court finds the efforts of [the plaintiff] and the obligations of the parties under the contract clearly establish a commission was owed under that agreement and the Court further finds a mutual release was executed by defendants and [the owners] releasing [the owners] from that obligation. No effort was made by defendants to ascertain the factual circumstances of any controversy which might give rise to the need for a release, no contact was made with [the plaintiff] concerning these issues, and there was no regard for her interest in this matter before the release was executed. Therefore, defendants' actions resulted in the extinguishment of the obligation by [the owners] to defendants which would have inured to the benefit of plaintiff had those obligations not been released. The Court finds the defendant was motivated by ill will towards plaintiff and acted with blatant disregard of her interests, having been advised by [the owners] of the contract between plaintiff and [the owners].
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> Defendant[s] assert[] that an inducement of breach of contract claim cannot be stated because under the authority of *Waste Conversion Systems v. Green Stone Industries, Inc*., 33 S.W.3d 779 [(Tenn. 2000)], there is a privilege against interference of a contract claim when there is a unity of interest between the interfering party and the breaching party. The interfering party must be a third party not closely tied to the operations of the breaching corporation for a cause of action to be stated. *The Court finds Re/Max had no interest or profit to be gained through this transaction* which would place them in the status of having such similarity of interest with the plaintiff that immunity arises. Plaintiff is an independent contractor and not an employee or principal of defendant.
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> The Court further finds a legal contract existed of which the wrongdoer was aware. Mr. Haven testified contrary to Mr. Weathers on this issue and the Court does not find credible Mr. Weathers' testimony that he did not know of such a contract. The Court finds the actions of Mr. Weathers resulted in damage to the plaintiff.

(Emphasis added).

The trial court awarded the plaintiff a 10% commission on lease payments of $56,200. The court subsequently tripled this amount pursuant to Tenn. Code Ann. § 47-50-109, which provides as follows:

> It is unlawful for any person, by inducement, persuasion, misrepresentation, or other means, to induce or procure the breach or violation, refusal or failure to perform any lawful contract by any party thereto; and, in every case where a breach or violation of such contract is so procured, the person so procuring or inducing the same shall be liable in treble the amount of damages resulting from or incident to the breach of the contract. The party injured by such breach may bring suit for the breach and for such damages.

When the trial court states, "Re/Max had no interest or profit to be gained through this transaction," we understand the court to be referring to the "commission" transaction. As far as the commission is concerned, the trial court held that the real "contract" was, *in effect*, between the owners and the plaintiff. The trial court seems to have meshed the Listing Agreement and the Independent Contractor Agreement into one, and determined that the *real* contract, from a beneficial standpoint, was between the owners and the plaintiff, with Re/Max being nothing more than a "nominal" party. It is this "contract" that the trial court determined was breached by the owners with the aid and assistance of the defendants.

The Listing Agreement form sets forth the relationship between the "Broker" and the "Owner." Re/Max is designated as the "Broker" or "listing agency"; Ray Haven and his wife, Teal Haven, are designated as the "Owners." With respect to the commission to be paid, the Listing Agreement provides that "Owner . . . agrees to pay Broker the commission in cash at the time of the closing if Owner sells, leases, exchanges or contracts to sell, lease, or exchange the property." That document is signed by the owners. The plaintiff's signature is on a line with the following language under the line: "Broker (or listing agent authorized by Broker)." The Seller Agency Agreement, which was attached to the Listing Agreement, provides that the owners employ Re/Max as its agent to sell/lease the property, and that they authorize Re/Max to appoint the plaintiff as its designated agent. This latter document was also signed by the owners and the plaintiff.

When considering the terms in the Listing Agreement pertaining to the subject of commissions, we must keep in mind the relationship between the plaintiff and Re/Max as set forth in the Independent Contractor Agreement. That agreement provides, in relevant part, that

> *RE/MAX shall transmit to Contractor promptly One Hundred Percent (100%) of all commissions received by RE/MAX as a result of the efforts of Contractor*, subject only to the rights set forth in Paragraphs

> 6 and 10(C)[6] of this Agreement. Such payment process will facilitate the orderly handling of commissions in the RE/MAX office. *Compliance with state laws, rules and regulations require that commissions and referral fees be paid to the brokerage firm or broker rather than to the sales agent directly*.

(Emphasis added). Under the terms of the Independent Contractor Agreement, the plaintiff remitted to Re/Max fees on a monthly basis for management, shared office expenses, miscellaneous shared expenses, institutional advertising, and personal expenses, in addition to paying annual membership dues. It is clear – and we believe this is very significant – that, under the Independent Contractor Agreement, *Re/Max did not stand to benefit in any way from any commission due the plaintiff in connection with the lease transaction secured for the owners by the plaintiff*. Therefore, although the terms of the Listing Agreement are between the "Broker," *i.e.* Re/Max, and the "Owners," the commission owed under the Listing Agreement, while payable to Re/Max under the terms of that agreement, would pass through, *in total*, to the plaintiff. Consequently, Re/Max was essentially only a conduit for the money to which the plaintiff was entitled.

The trial court found, in effect, that when Re/Max, through Mr. Weathers, released the owners, all of the mutual obligations under the Listing Agreement had been fully performed, save the owners' obligation to pay the stated 10% commission. Thus, at the time Re/Max released the owners, Re/Max had no further obligations under the Listing Agreement and, more significantly, was not then due any benefit from the performance by the owners of their sole remaining obligation – to pay the contractually-mandated commission. As found by the trial court, the owners then owed the commission and the plaintiff was entitled to 100% of that commission. As far as the contractual obligation to pay the commission is concerned, the real parties in interest as to that obligation were the owners and the plaintiff. Re/Max was simply a conduit; it had no "dog in the fight." Yet, despite this nominal role, Re/Max saw fit to execute a Release effectively preventing the plaintiff from receiving the commission to which she was entitled. It did that at a time when the plaintiff was no longer associated with the agency and at a time when, as found by the trial court, Re/Max, through Mr. Weathers, harbored ill will toward the plaintiff.

Tenn. Code Ann. § 47-50-109 is designed to prevent third parties from interfering with the contractual rights of others by way of inducing one of the parties to breach its obligation to another party. That is exactly what happened here. The defendants, by agreeing to the terms of the Release, equipped the owners with a legal basis for not doing that which they were otherwise contractually obligated to do. That remaining obligation was, in effect, between the owners and the plaintiff. The defendants, with ill will toward the plaintiff, interfered with the fulfillment of that obligation.

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[6] Paragraph 6 of the Independent Contractor Agreement addresses "Nonpayment Remedies," which permits Re/Max to deduct expenses owed by the plaintiff from commissions received. Paragraph 10(C) addresses what happens if the plaintiff fails to give notice that she is extinguishing the contractor-agency relationship. That provision requires the plaintiff to pay certain fees in lieu of the notice. Neither scenario is present here.

Since Re/Max was merely a conduit for the commission, we decline to hold that Re/Max and Mr. Weathers, as the principal of Re/Max, are immune from the treble damages penalty for inducement of breach of contract as set forth in Tenn. Code Ann. § 47-50-109. The Release entered into by the owners and Mr. Weathers, as the principal broker of Re/Max, effectively removed the owners' obligation to pay the commission owed under the Listing Agreement. The terms of the Listing Agreement pertaining to the commission, when read in conjunction with the "commission" provisions of the Independent Contractor Agreement, clearly reflects that Re/Max had nothing to lose in signing this Release. The only party that stood to benefit from the commission owed under the Listing Agreement, and, hence, the only party who stood to lose by the execution of the Release, was the plaintiff. We hold that Re/Max and Mr. Weathers, as its principal broker, are not the real parties in interest with respect to the Listing Agreement as far as the commission is concerned. Consequently, they are not immune from liability for inducement of breach of contract.[7]

V.

Having found that the parties to the "commission" component of the subject transaction are the plaintiff and the owners, we must determine if the evidence suffices to hold the defendants liable for inducing the breach of that contract. To succeed on her inducement claim, the plaintiff must prove that: (1) a legal contract existed; (2) the defendants knew the contract existed; (3) the defendants intended to induce a breach of that contract; (4) the defendants acted with malice; (5) the contract was breached; (6) the defendants' actions were the proximate cause of the breach; and (7) the plaintiff suffered damages. ***TSC Indus., Inc. v. Tomlin***, 743 S.W.2d 169, 173 (Tenn. Ct. App. 1987).

With respect to these elements, the defendants argue that the evidence does not support a finding that they intended to induce a breach or that they were acting with malice. At trial, Mr. Weathers testified that, when he executed the Release, he was unaware that a lease existed and that, *ergo*, the defendants were not aware that the plaintiff was entitled to a commission on the deal. However, the trial court held that "a legal contract existed of which the wrongdoer was aware," and did not find credible Mr. Weathers' testimony to the contrary. On appeal, we accord substantial weight to the trial court's assessment of witness credibility. ***Weaver v. Nelms***, 750 S.W.2d 158, 160 (Tenn. Ct. App. 1987). Therefore, we are unwilling to find that the evidence contained in the record before us preponderates against the trial court's judgment that Mr. Weathers was aware of the lease agreement.

To support their argument that they did not intend to induce the breach of contract, the defendants refer us to portions of a treatise addressing the liability of corporate officers, directors, and employees for intentional interference. That treatise states as follows:

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[7] In light of our disposition of this issue, we need not address the parties' arguments with respect to whether or not Mr. Weathers was acting within the scope of his employment when he signed the Release. Since we affirm the trial court's judgment that Re/Max and Mr. Weathers were not parties to the real "contract" at issue, that is, with respect to the plaintiff's commission, Mr. Weathers' capacity when he signed the Release is not relevant. He is not immune from liability regardless of his relationship with Re/Max.

> With intent to interfere as the usual basis of the action, the cases have turned almost entirely upon the defendant's motive or purpose, and the means by which he has sought to accomplish it. As in the cases of interference with contract, any manner of intentional invasion of the plaintiff's interests may be sufficient if the purpose is not a proper one . . . .
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> Most of the decisions, however, have turned upon the defendant's motive or purpose. Again, as in the case of interference with contract, the defendant has been held liable if the reason underlying his interference is purely a malevolent one, and a desire to do harm to the plaintiff for its own sake. On the other hand, some element of ill will is seldom absent from intentional interference; and if the defendant has a legitimate interest to protect, the addition of a spite motive usually is not regarded as sufficient to result in liability.

Forrester v. Stockstill, 869 S.W.2d 328, 332-33 (Tenn. 1994) (quoting W. Page Keeton, *Prosser & Keaton on The Law of Torts* § 130, pp. 1009-10 (5th ed. 1984) (footnotes omitted)). The defendants place particular emphasis on the language "some element of ill will is seldom absent from intentional interference; and if the defendant has a legitimate interest to protect, the addition of a spite motive usually is not regarded as sufficient to result in liability." ***Id.*** They contend that Mr. Weathers signed the Release to avoid liability. They further argue that they did not know that the lease giving rise to the commission existed, because the plaintiff never furnished them a copy. Consequently, according to the defendants, their lack of knowledge and their desire to prevent liability preclude a finding of sufficient evidence of the requisite intent to induce a breach.

The trial court found that the owners apprised Mr. Weathers that a lease existed, and that Mr. Weathers never made any attempt to determine whether there was a factual basis for the execution of the Release. We find that the evidence does not preponderate against the trial court's judgment that the defendants possessed the requisite intent for an inducement of breach of contract claim. The testimony at trial, which the trial court accredited, runs afoul of Mr. Weathers' contentions.

We also reject the defendants' argument that they did not act with malice in signing the Release. The defendants again proffer that they were merely trying to avoid liability. Malice is "an act [that is] hurtful to another, intentional, and without legal justification." ***Hutton v. Watters***, 179 S.W. 134, 135 (Tenn. 1915). It has also been defined as a "willful violation of a known right." ***Crye-Leike Realtors, Inc. v. WDM, Inc.***, No. 02A01-9711-CH-00287, 1998 WL 651623, at *6 (Tenn. Ct. App. W.S., filed September 24, 1998) (citation omitted). Consequently, the test for malice is not simply that the defendants showed ill will toward the plaintiff, but that the defendants' conduct was "intentional, and without legal justification." ***Hutton***, 179 S.W. at 135. Despite the defendants' protestations otherwise, the trial court found, and the evidence does not preponderate to the contrary, that Mr. Weathers was aware of the lease agreement giving rise to the commission, and yet made no effort to discern whether there were facts justifying the execution of the Release.

Where the defendants had nothing to gain and nothing to lose by executing the Release – and they were aware of the benefit which otherwise would inure to the plaintiff – we find that the evidence supports a finding that the defendants acted with malice in executing the Release. The evidence, as found by the trial court, fails to show that the defendants had any liability to the owners that needed to be released for the defendants' protection. The Release exonerated the owners from the one remaining obligation under the Listing Agreement, which conduct amounted to a breach of its terms, a breach which proximately damaged the plaintiff.

As we find that the requisite elements for a claim of inducement of breach of contract have been satisfied, we hereby affirm the judgment of the trial court's application of Tenn. Code Ann. § 47-50-109, and its award of treble damages to the plaintiff.

VI.

Lastly, the defendants challenge the trial court's award of attorney's fees to the plaintiff. The defendants correctly argue that a court can only award attorney's fees if there is a contract or statute authorizing such an award. *See* ***Guess v. Maury***, 726 S.W.2d 906, 923 (Tenn. Ct. App. 1986). To do otherwise would be contrary to the public policy of this state. ***Id.*** The plaintiff responds by arguing that the Listing Agreement forms the contractual basis for the award of attorney's fees, as that agreement provides "the Owner agrees to pay all reasonable attorney's fees together with any court costs and expenses which Broker incurs in enforcing any of Owner's obligations under this agreement." Therefore, so the argument goes, the actions of Mr. Weathers deprived her of the contractual entitlement to attorney's fees that she would have had in her case against the owners. The above-cited provision in the Listing Agreement imposes an obligation upon the *owners* to pay fees under certain circumstances. There are *no* provisions in the agreements before us that impose an obligation upon the defendants to pay for the attorney's fees of the plaintiff. Furthermore, the facts of this case do not implicate a statute providing for fees. Hence, there is no legal basis in this case for such an award of fees.

VII.

The judgment of the trial court is affirmed in part and reversed in part. The trial court's award of treble damages based upon the application of Tenn. Code Ann. § 47-50-109 is affirmed. The trial court's award of attorney's fees is reversed. This matter is remanded for enforcement of the part of the judgment affirmed herein and the collection of costs assessed below, all pursuant to applicable law. Exercising our discretion, we tax the costs on appeal to the defendants, Re/Max Properties, LLC, and Billy Weathers.

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CHARLES D. SUSANO, JR., JUDGE