# SELLERS BEWARE
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*HOW IS A SELLER AT RISK FOR LIABILITY FOR COMISSION TO TWO AGENTS?*

The Supreme Court of Appeal ("SCA") case of *Wakefields Real Estate v Attree (666/10) [2011] ZASCA* 160 raises concerns regarding a seller's liability for estate agent's commission to more than one estate agent.

In this case, a purchaser was introduced to a property by the First Agent. After viewing the property, the Purchaser advised the First Agent that for financial reasons, she could not purchase the property. The First Agent did not contact the purchaser further. A few months later, the Sellers reduced their asking price. A Second Agent, who fortuitously learned that the purchaser "loved the house" and heard that the Seller had reduced the asking price, contacted the purchaser and arranged a further viewing. The Second Agent subsequently negotiated and concluded the sale and was paid commission.

The First Agent sued the Seller for commission, alleging that she had been the effective cause of the sale. The claim was dismissed as the court found the cumulative effect of various factors outweighed the initial introduction by the First Agent.

The First Agent took the matter on appeal to the SCA. The SCA reversed the decision. It held that, but for the actions of the First Agent, the Purchaser would not have been aware of the property and the sale would not have been concluded. The Seller was held to be liable to pay commission to both the First Agent and the Second Agent.

This case illustrates that the onus is on the seller to protect him/herself against the risk of liability for commission to more than one estate agent. Sellers do not necessarily know which estate agent first introduced a particular purchaser to their property. Ideally they should obtain a warranty from the purchaser that they were only introduced by the agent in question and an indemnity against any claim brought by another agent. If in doubt, sellers should seek legal assistance prior to concluding the sale to minimize this risk.