

Don't Forget About the Seller: NJ Appellate Division Allows Claim for Failure to Conduct Due Diligence of Buyer to Move Forward

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In a recent decision by the New Jersey Appellate Division – Spring Lake Enterprises, LLC v. Ward Wight Sotheby's International Realty, Inc. and Brian Church, Docket No: A-4726-16T4 – the Court reinstated and allowed to proceed claims by the seller of a property against the broker based on alleged false statements about the buyer's financial capabilities. The broker previously represented that the buyer had the financial capability to purchase a property at \$4.6 million. After the buyer failed to perform and was sued for damages, the buyer allegedly stated at a mediation he could not perform because he was an hourly worker at an amusement park.

While the Court's ruling was limited to allowing the claims to proceed and primarily addressed procedural issues concerning when the plaintiffs' claims should have been brought in a prior action – i.e., no substantive ruling on whether the alleged statements were false or that the broker actually breached any duty to the seller – the case reminds agents and brokers of their duty to make a reasonable effort to ascertain the accuracy of statements made concerning a prospective buyer's financial ability to perform.