

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT IN AND  
FOR MIAMI DADE COUNTY, FLORIDA

CIVIL DIVISION

ESSLINGER-WOTTEN-MAXWELL, INC.,  
a Florida corporation,

Plaintiff,

v.

LONES FAMILY LIMITED PARTNERSHIP,  
a Florida limited partnership, LEE S. LONES,  
individually, and JUDY C. LONES, individually,

Defendants.

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LONES FAMILY LIMITED PARTNERSHIP,  
a Florida limited partnership, LEE S. LONES,  
individually, and JUDY C. LONES, individually,

Counter-Plaintiffs,

v.

ESSLINGER-WOTTEN-MAXWELL, INC.,  
a Florida corporation, KAREL FOTI,  
individually, WORLD BUSINESS BROKERS,  
INC. a Florida corporation,

Counter-Defendants.

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CASE NO. 2013-19808 CA 11

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MIAMI-DADE COUNTY, FL  
CIVIL DIVISION #202

**ORDER ON RECONSIDERATION AND MOTIONS FOR SUMMARY JUDGMENT**

**THIS CAUSE**, has come before this Court on “Plaintiff’s Motion for Final Summary Judgment,” “Lones Family Limited Partnership’s, Lee S. Lones’ and Judy C. Lones’ Motion for Final Summary Judgment Against Esslinger-Wooten-Maxwell, Inc.,” and on World Business Brokers Inc.’s “Motion to Vacate the Partial Summary Judgment.” The Court, having reviewed the motions, the responses in opposition, having heard the argument of counsel, and being otherwise fully advised in the premises, hereby finds as follows:

1. On January 27, 2010, Esslinger-Wooten-Maxwell, Inc. (EWM) and Lones Family Limited Partnership (Seller) entered into a “Commercial Exclusive Right of Sale Listing Agreement.” The agreement gave EWM, from January 27, 2010 to January 27, 2011, the exclusive right to sell certain real property, and called for the payment of a six percent commission if the property were sold during that period. In addition, Paragraph 3.B. of the agreement provided that:

Said commission is to be paid to Broker whether the purchaser is found by Owner, by Broker or by any other broker or person at the price and upon the terms set forth above or at any other price or terms acceptable to Owner, or if Owner agrees to sell the Property *within twelve (12) months next after termination of this Agreement* to a purchaser to whom Broker, Owner or any other cooperation broker submitted the Property for sale during the continuance of this Agreement.

(emphasis added.) Paragraph 3.D. of the agreement provided that:

*If within a period of twelve (12) months following the termination of this Agreement, Owner shall lease the property to a party obtained by Owner, Broker, or by any other person during the term of this Agreement, it is agreed that Owner shall pay a leasing commission to Broker based upon Broker’s leasing commission rates set forth in Paragraph 16 hereof. If during the term of said lease, or within two (2) years after its termination, the Lessee of any person or any entity affiliated with Lessee shall buy the property from Owner, the sales commission herein agreed to shall be deemed as earned by and shall be due and payable to Broker.*

(emphasis added.)

2. On February 8, 2012, subsequent to the expiration of the contract between Seller and EWM, Seller entered into a contract with a different broker, World Business Brokers, Inc. (WBB).
3. On June 1, 2013 the property was leased, via a document entitled “Educational Facilities Lease Agreement.” Seller paid WBB a commission.
4. EWM brought suit, arguing that it was entitled to a commission, alleging that entities that it procured or entities owned, controlled, related, or operated by such entities purchased or leased the property at issue from the Seller. EWM alleged that it was entitled to a commission for the sale or lease of the property, and that Seller breached the terms of the brokerage contract by not paying such a commission.
5. On April 4, 2014, a predecessor Judge entered an order granting the Plaintiffs’ Motion for Partial Summary Judgment on Liability as to Procuring Cause.

6. Seller sought leave to file a counter-claim against EWM as well as WBB. The motion was granted on June 10, 2015.
7. In May of 2017, a contract for the sale of the property was entered into, and in June of 2017, the property was sold at closing to Somerset Academy, Inc.
8. EWM asserts that, even though its brokerage contract with the Seller expired in January 27, 2011 and the sale was not completed until 2017, it is entitled to a commission because it procured Somerset Academy, Inc. It asserts that the procuring cause doctrine allows such recovery.
9. The Seller, on the other hand, asserts that there is no evidence that EWM procured Somerset Academy, Inc. as a buyer, that Seller and Somerset intentionally excluded EWM from their deal, and that, pursuant to the terms of the brokerage contract, EWM was entitled to a commission only if the property was sold within twelve months of the termination of the contract to a buyer that EWM procured.
10. The procuring cause doctrine allows a broker to recover a commission if the broker was the procuring cause of a sale, even if the sale did not occur during the contract period.
11. “A broker, to be considered the “procuring cause” of a sale, must have brought the purchaser and seller together and effected a sale through continuous negotiations inaugurated by him unless the seller and buyer intentionally exclude the broker and thereby vitiate the need for continuous negotiations.” *Venturevest Realty Corp. v. A.K.S.I.P. Corp.*, 793 So. 2d 1054, 1056 (Fla. 3d DCA 2001) (quoting *Sheldon Greene & Assoc., Inc. v. Rosinda Invs., N.V.*, 475 So. 2d 925, 927 (Fla. 3d DCA 1985)) (emphasis removed). In the instant case, the allegation is exclusion of the broker rather than the existence of continuous negotiations.
12. If the procuring cause doctrine applies, it is not clear whether there is any limit to the the period during which a broker is entitled to a commission if it was the procuring cause. Research has revealed no cases suggesting that there is such a limit. Therefore, it may be that when the procuring cause doctrine applies, there is no particular time limitation on it, as long as the requirements of the procuring cause doctrine are met (i.e. as long as the broker is the procuring cause of the sale under the specified definition).
13. However, the parties disagree about whether the procuring cause doctrine applies to the instant case. EWM’s view is that the doctrine applies to all brokerage contracts, including the one at issue in this case, so that EWM is entitled to a commission regardless of when the lease and sale at issue in the instant case occurred, as long as it is considered the procuring cause. The Seller’s view, however, is that the procuring cause doctrine does not entitle a broker to a commission beyond the period specified in a contract when that period has expired.
14. Thus, the question is whether the procuring cause doctrine applies to all brokerage contracts, including the one in the instant case, or only those that do not set forth their own

time period during which the broker is entitled to a commission subsequent to the expiration of the contract.

15. Case law provides that the default for a brokerage contract is that the procuring cause doctrine is incorporated into every brokerage contract: “Common sense dictates that the intent of *most* parties to [brokerage] contracts is to inferentially incorporate the [procuring cause] doctrine into the contract; otherwise a seller would have little motivation to close the sale prior to the expiration of the contract.” *Sanson v. Dutcher, Higginbotham and Bass, Inc.*, 401 So. 2d 913, 915 (Fla. 4th DCA 1981) (emphasis added). Thus, “[i]n the absence of a special contract, a broker is entitled to a commission when that person is the procuring cause of a sale.” *Allenby & Assocs., Inc. v. Crown “St. Vincent” Ltd.*, 8 So. 3d 1211, 1212 (Fla. 4th DCA 2009) (emphasis added).
16. However, parties to a brokerage contract can avoid the default incorporation of the procuring cause doctrine by entering into a “special contract.” *See id.* A “special contract” is a contract which contains provisions different than what would be included through the operation of law. *See Della Ratta v. Della Ratta*, 927 So. 2d 1055, 1048 n.1 (Fla. 4th DCA 2006).
17. Accordingly, a “normal” brokerage contract will include the procuring cause doctrine by default, through the operation of the law, but a “special contract” can utilize different provisions instead.
18. As such, when a contract specifies how long a broker is entitled to a commission after the contract term expires, that contract is a “special contract” that does not incorporate the procuring cause doctrine. In such a case, rather than applying the procuring cause doctrine, and its possibly unlimited time period, the terms of the contract are applied instead.
19. This can be seen in cases in which brokerage contracts themselves have specified a certain time period after a contract ended in which the broker would still be entitled to a commission. In such cases, the courts have applied the time periods specified in the contracts, rather than utilizing the procuring cause doctrine. *See Wood/Fay Realty Grp., Inc. v. New Aquarius Corp.*, 842 So. 2d 914 (Fla. 3d DCA 2003) (finding that a broker was due its commission when a contract provided that a commission was due, if, within 180 days of the termination of the contract, the seller sold the property to any prospects with whom the seller and broker communicated prior to the termination date, and a prospect bought the property three weeks after the termination of the contract; also noting that “procuring cause” cases were unpersuasive when considering the contractual obligations of the parties, because the broker’s right to a commission is controlled by the contract); *Ben-Shmuel v. Wimbish-Riteway, Inc.*, 772 So. 2d 955 (Fla. 3d DCA 1998) (finding that a broker was entitled to a commission under a contract when property sold approximately fifty days after the expiration of a brokerage agreement when the contract included a clause requiring a brokerage fee if the seller agreed to sell the property within twelve months of the termination of the agreement, and noting that the broker’s right to a commission is controlled by the provisions of the contract).

20. Thus, when a brokerage contract sets forth a specific time period after the termination of the contract during which a broker is entitled to a commission for procuring a buyer, courts look to that period rather than applying the procuring cause doctrine.
21. In the instant case, rather than relying on the procuring cause doctrine which would have been included in the brokerage contract through the operation of the law, the brokerage contract includes specific clauses which provide that EWM was entitled to a commission if the property was sold or leased within 12 months of the termination of the lease. Since this specific time period was used in the contract, it applies, rather than the procuring cause doctrine.
22. The brokerage contract in the instant case ran from January 27, 2010 until it expired on January 27, 2011. By the terms of the contract, EWM was entitled to a commission if the property was sold or leased within 12 months after the termination of the contract. In other words, EWM's right to a commission expired on January 27, 2012. The property was not leased until June 1, 2013, and the property was not sold until June of 2017.
23. Accordingly, by the terms of the special brokerage contract entered into between EWM and the Seller, the property was not leased or sold until after the expiration of EWM's right to a commission.
24. Since, by the time that the property was leased and sold, EWM's right to a commission had expired, no other facts in dispute are relevant. Even if EWM would qualify as the procuring cause of the sale under the procuring cause doctrine, that doctrine does not apply in the instant case since a special contract utilizing different terms was utilized.
25. In other words, because it is undisputed that the property was neither sold nor leased within 12 months of the expiration of the brokerage contract between Seller and EWM, there is no genuine issue of material fact that could exist that would allow EWM to recover a commission for either the sale or the lease.
26. Furthermore, even if this Court were to analyze this case using the procuring cause doctrine, the facts do not support that the Seller and the ultimate Buyer, Somerset Academy, Inc, intentionally excluded EWM, or that EWM brought the Seller and Somerset Academy, Inc. together.
27. As a matter of law, EWM is not entitled to a commission either pursuant to the terms of the brokerage contract, or pursuant to the procuring cause doctrine.
28. As noted, a predecessor Judge in this case already granted EWM's motion for partial summary judgment on liability as to procuring cause. However, a trial court has the inherent authority to reconsider and modify interlocutory orders, including those granting summary judgment, which it previously entered, or which were previously entered by a predecessor judge. *LoBello v. State Farm Fla. Ins.*, 152 So. 3d 395 (Fla. 2d DCA 2014); *Carr v. Eslinger*, 101 So. 3d 423 (Fla. 5th DCA 2012); *AC Holdings, Inc. v. McCarty*, 985

So. 2d 1123 (Fla. 3d DCA 2008); *Whitlock v. Drazinic*, 622 So. 2d 142 (Fla. 5th DCA 1993).

**WHEREFORE**, it is hereby **ORDERED** and **ADJUDGED**:

1. The April 4, 2014 order granting partial summary judgment is **VACATED**.
2. EWM's motion for partial summary judgment and its motion for final summary judgment are **DENIED**.
3. Lones Family Limited Partnership's, Lee S. Lones' and Judy C. Lones' motion for summary judgment is **GRANTED**.
4. Based on the foregoing, EWM's complaint against KAREL FOTI, individually, and WORLD BUSINESS BROKERS, INC. a Florida corporation, is hereby **DISMISSED**.

**DONE** and **ORDERED** in chambers this 14<sup>th</sup> day of ~~November~~ 2018 at Miami-Dade County, Florida.

  
MAVEL RUIZ  
Circuit Court Judge

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ALL PARTIES OF INTEREST

**MAVEL RUIZ**  
CIRCUIT COURT JUDGE