2015 IL App (2d) 15-0421-U
No. 2-15-0421
Order filed November 6, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

CLANN DILIS, LTD., d/b/a Re/Max Town & Country,	)	Appeal from the Circuit Court of Kane County.
Plaintiff-Appellee,	)	
v.	)	No. 13-AR-322
ELIZABETH KILROY,	)	Honorable Joseph M. Grady,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Schostok and Justice Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: Because the real estate broker was entitled to a commission that the seller refused to pay, the trial court properly entered a money judgment against the seller for $12,540. Therefore, we affirmed.

¶ 2 Elizabeth Kilroy, the seller of a residential property, entered into a real estate contract with Kathy Healy, a realtor with Clann Dilis, Ltd., d/b/a Re/Max Town and Country. Healy found a buyer for the property, but Elizabeth refused to accept the buyer's offer. Instead, Elizabeth decided to retain the property and buy out her husband's share. Healy demanded her commission, which Elizabeth refused to pay, and Clann Dilis filed suit against Elizabeth to

collect it. The parties went to trial, after which the circuit court ordered Elizabeth to pay the $12,540 commission. The trial court also awarded Clann Dilis attorney fees and costs. Elizabeth appeals, arguing that Clann Dilis did not present evidence that the buyers were ready, willing, and able because (1) Elizabeth never agreed to the listing price that the buyers agreed to pay, and (2) there was no evidence that the buyers had sufficient funds to consummate the sale. We affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Undisputed Evidence & Pleadings

¶ 5 The following evidence is undisputed. The property at issue is the marital residence of Elizabeth and her husband of nearly 30 years, Matthew Kilroy. In October 2011, Elizabeth filed a petition for dissolution, and she and Matthew began the process of ending their marriage.

¶ 6 On November 3, 2011, Matthew signed an "Exclusive Right to Sell Agreement" (listing agreement) with Healy to sell the property, and on November 4, 2011, Elizabeth signed that listing agreement as well. The property was listed at $259,000, with Healy to receive a 6% commission. No offers were made to purchase the property at this price, and on December 13, 2011, the price was reduced to $239,000.

¶ 7 On January 24, 2012, Elizabeth sent Healy an e-mail (January e-mail), asking whether she thought "it [was] time again to lower the price of the house?" Elizabeth asked, "Should we be more at $219, $209, $199? Let me know what you think." In another e-mail from Elizabeth to Healy on April 17, 2012 (April e-mail), she wrote that "[Healy] and Matt can go ahead and revise the price on the home where you think it should be. Let me know what you guys decide." The next day, Healy advised Elizabeth that they decided to reduce the price to $229,000. No offers were made, and on April 27, 2012, the price was reduced to $219,000.

¶ 8 On May 16, 2012, a family (buyer) offered to purchase the property for $209,000. The offer was accepted by Matthew on May 17, 2012, but Elizabeth never accepted it. As a result, Matthew filed an emergency motion in divorce court to compel Elizabeth to accept the buyer's offer, and the court ordered Elizabeth to accept the offer.

¶ 9 Elizabeth then decided to retain the property and purchase it from Matthew, and the two agreed on a price of $217,000. On May 21, 2012, the divorce court ordered that Elizabeth pay off Mathew's interest in the property in exchange for a quitclaim deed of his interest. The order further stated that Matthew was to accept 50% of the equity after reduction of all lien values and prorated taxes "as if the property had been sold including any funds or charges due to the realtor for this buyout situation." After accounting for the above reductions, including a realtor's commission of $12,540, Elizabeth bought out Matthew's interest in the property for $68,480.21.

¶ 10 Healy then sought her commission, which Elizabeth never paid, thereby prompting Clann Dilis to file a complaint against Elizabeth. In its complaint, which culminated in a two-count second amended complaint, Clann Dilis alleged breach of contract in count I and breach of implied contract in count II. In particular, Clann Dilis alleged that Elizabeth's January e-mail suggested that Healy lower the price below $200,000 and that Elizabeth's April e-mail said that Healy and Matthew could revise the price to where they thought it should be. Healy then presented a contract to purchase the property at $209,000 from a buyer who was ready, willing, and able.

¶ 11 Clann Dilis further alleged that Matthew accepted the offer but Elizabeth did not, leading Matthew to file a petition in divorce court compelling Elizabeth to accept the offer. Though the divorce court granted Matthew's petition, Elizabeth then petitioned the court to allow her to buy out Matthew's interest in the property, which the court allowed at a price of $217,000. In

purchasing Matthew's interest, Elizabeth obtained a credit of $12,540, which was the entire 6% commission of the buyer's offer of $209,000. According to Clann Dilis, Elizabeth's refusal to pay Healy's commission constituted a breach of the listing agreement.

¶ 12 After extensive discovery and the court's denial of Elizabeth's motion for summary judgment, a two-day trial occurred in February 2015. During the trial, the following evidence was adduced.

¶ 13 B. Trial Testimony

¶ 14 Healy testified first as follows. Matthew contacted her to sell the property, and she met with him on November 3, at which time he signed the listing agreement. Elizabeth could not attend the meeting and signed the agreement the next day. According to Healy, there was a lot of tension between Elizabeth and Matthew. Both were eager to sell the property, and both had to agree on a listing price and any change to the listing price.

¶ 15 The property was originally listed at $259,000 and then dropped to $239,000 in December 2011. Elizabeth then sent Healy the January e-mail asking about whether it was time to lower the price to $219,000, $209,000, or $199,000. Healy understood Elizabeth to be "very anxious" to sell, meaning she wanted the property priced to sell. When Healy discussed lowering the price with Matthew, however, he was unwilling to do so. Healy told Elizabeth that it was logical to lower the price to $219,000, and on January 25, 2012, Elizabeth e-mailed Healy that $219,000 sounded "good to" her. Still, Matthew did not want to lower the price until February 7, 2012, which was the 90-day mark.

¶ 16 In two February 2012 e-mails between Elizabeth and Healy, Elizabeth insisted on selling the house "as is," and Healy explained that Matthew was not agreeing to a price reduction and that Elizabeth and Matthew needed to be on the "same page." In March 2012, Elizabeth obtained

an appraisal for the property at $192,000, and in April 2012, Matthew obtained an appraisal for $203,000. When Healy suggested that the three of them meet in April 2012 to discuss pricing, Elizabeth responded in the April e-mail that Healy and Matthew could revise the price as they wished. Healy subsequently advised Elizabeth that she and Matthew had agreed to lower the price to $229,000.

¶ 17 There were no offers, and the listing price was reduced to $219,000. Healy then showed the property to the buyer, who made an offer around $200,000. When Healy called Matthew about the buyer's offer, he thought it was low and made a counter-offer of $209,000. Healy thought Elizabeth would be happy with the buyer's offer because it was higher than both of their appraisals. However, when Healy called Elizabeth, Elizabeth said she would have to think about the offer and get back to Healy, but she never did.

¶ 18 The buyer agreed to Matthew's counter-offer of $209,000. Healy "absolutely" believed that the buyer was ready, willing, and able to buy the property, and she sent Elizabeth and Matthew the buyer's written offer and preapproval letter for the mortgage. According to Healy, the preapproval letter was proof that the buyer was ready to buy, in that the buyer had done his homework by going to the mortgage company. Likewise, the buyer was willing to buy because he wanted to buy, and he was able to buy because he was capable of closing on the property.

¶ 19 After Matthew accepted the buyer's offer, Elizabeth sent Healy an e-mail saying she was going to buy the property from Matthew. The change in Elizabeth's attitude occurred after Matthew, who had been living at the property, decided to move and take a job out-of-state. When Healy asked Elizabeth for her commission, Elizabeth refused to pay. Matthew told Healy that, to avoid paying the commission, Elizabeth had instructed him to cancel the listing agreement and say that they had decided not to sell the property. However, the transfer of the

property from Matthew to Elizabeth factored in the realtor's commission to reduce the net equity in the property.

¶ 20 Following Healy's testimony, Matthew's deposition was read into the record. He testified as follows in his deposition. Elizabeth's January e-mail to Healy was a request to lower the listing price of the property. Though the property had not been on the market 90 days, Elizabeth was "already very anxious" to reduce the listing price, but Matthew disagreed. Elizabeth wanted Healy to sell the property below $200,000, which Matthew was trying to prevent; he was the one holding out on dropping the price. Matthew testified that $219,000 was the last listing price that he and Elizabeth had agreed on. Prior to the buyer's offer, which was the only offer they received on the property, Matthew had no reason to believe that Elizabeth would not accept an offer of $209,000. Elizabeth wanted the property sold and had asked Healy several times to lower the listing price.

¶ 21 Matthew wanted Elizabeth to accept the offer so that the house would be sold before he began a new job out-of-state. When Elizabeth learned that Matthew was vacating the house, she abruptly changed her mind, however, saying she was no longer interested in selling the property. Instead, she wanted him to tell Healy that they had decided not to sell the property because their daughter, who was coming home from college, needed a place to live.

¶ 22 Matthew was questioned about an e-mail he sent to Elizabeth in May 2012. In his e-mail, he pointed out that Elizabeth had told Healy to lower the price of the property to $199,000 based on an appraisal that Elizabeth had done without informing him. Healy, however, had advised them to be patient for the right buyer and not to drop the price so drastically. Matthew wrote, "Now we have an offer, after [Healy] has worked with us for over 6 months to sell this home, and you want me to tell her we have changed our minds."

¶ 23 Elizabeth refused to accept the buyer's offer of $209,000, even though it surpassed the value of her appraisal and the listing price she had suggested to Healy in her January e-mail. As a result, Matthew filed a motion to compel Elizabeth to accept the offer in divorce court so that the matter could be finalized and he could start his new job. The divorce court gave Elizabeth the option of purchasing the property at $217,000. The figure of $217,000 was based on Elizabeth's willingness to sell the property for $219,000 but her refusal to accept the buyer's offer of $209,000. Matthew testified that it was a "court-ordered purchase" in that Matthew was compelled to sign the quitclaim deed.

¶ 24 Elizabeth's divorce attorney withheld the entire commission amount from the equity of the property so that Matthew would be "indemnified from this" and so that Elizabeth could either dispute the commission or pay the commission. On several occasions, Matthew asked Elizabeth for his 50% share of the commission so that he could pay Healy. Healy had worked endlessly to sell the property, and the listing agreement was a binding contract.

¶ 25 Elizabeth was called to testify as an adverse witness. Initially, she testified that $229,000 was the lowest listing price for the property that she had authorized. Then, Elizabeth admitted asking Healy, in her January e-mail, if the property should be priced at $219,000, $209,000, or $199,000. According to Elizabeth, it was a sarcastic question based on Matthew's young friend moving in with him. Elizabeth was asking "[S]hould we do this?"; it was not an authorization to lower the price. The day after her January e-mail, when Elizabeth said $219,000 sounded good, she admitted that she would have accepted that listing price in January 2012, but not in May 2012. Because Matthew would not agree to reduce the price to $219,000, Elizabeth obtained an appraisal in March 2012 for $192,000. Still later in her testimony, Elizabeth denied that Matthew's desired listing price was higher than hers.

¶ 26 Elizabeth also denied purchasing the property from Matthew; it was a division of the marital assets. Elizabeth admitted that $12,540, or 6% of the $209,000 offer, was deducted from the $217,000 value of the property. She also admitted that she had not paid Matthew his half of that amount ($12,540 ÷ 2 = $6,270), and she had not paid Healy her commission. Though the divorce attorneys used these figures, it was "incorrect accounting."

¶ 27 On direct examination, Elizabeth testified that she never authorized Healy to lower the list price to $209,000.

¶ 28 C. Trial Court's Decision

¶ 29 The court issued a written decision and made the following findings. Matthew and Elizabeth reduced the listing price of the property from time to time. It was uncontroverted that Matthew was more resistant than Elizabeth to the periodic reductions in price. There was testimony that Matthew wanted to list the property at no less than $219,000, to which it was reduced on April 27, 2012. Elizabeth appeared to have been willing to reduce the listing price to $199,000.

¶ 30 The court noted that there was significant communication by e-mail during Healy's negotiations with Elizabeth and Matthew. From time to time, Elizabeth and Matthew amended, changed, or adjusted the terms of the listing agreement verbally or by e-mail with Healy, and Healy did the same with them. Healy was often used by Elizabeth and Matthew to communicate and negotiate with each other; Elizabeth and Matthew seldom communicated with or were contacted by Healy when they were together or at the same time. The presence of writings between Elizabeth, Matthew, and Healy did not appear to be required to modify the terms of the listing agreement, such as the price of the property. The court stated that "[t]hat appears to have been the history of the business relationship of the parties."

¶ 31 The court further noted that the offer to purchase the property was pending when Elizabeth and Matthew "and the Court in their divorce case arranged and transferred the property between" Elizabeth and Matthew. Had the buyer's offer expired or the buyer been unable to meet the terms or conditions of the offer, a transfer of the property between Elizabeth and Matthew would probably have been a transaction beyond the terms of the listing agreement or expectations of the parties to the agreement. The price Elizabeth paid Matthew for his interest in the property was adjusted by the 6% commission, and Matthew had agreed that his one-half of the 6% amount was to be paid to Healy. Consequently, Elizabeth had the benefits of the listing agreement with Healy without the liability of the costs specified in the agreement.

¶ 32 Elizabeth's January and April e-mails were "of particular note" in terms of her contention that she did not agree to list the property at a price lower than $219,000. Although Elizabeth argued that her January e-mail suggesting that the price of the property be reduced to $219,000, $209,000, or $199,000 was sarcastic, the court detected no sarcasm or qualification in that e-mail.

¶ 33 The court determined that Healy was entitled to her commission. According to the court, Healy produced a buyer who was ready, willing, and able to purchase the property on terms consistent with the terms of the listing agreement, as periodically amended by agreement of Elizabeth and Matthew. The price offered by the buyer was consistent with the prices to which Elizabeth had agreed in her e-mails and was higher than the lowest price to which she had agreed in her e-mails.

¶ 34 Following the court's decision, Clann Dilis, as the prevailing party, petitioned for attorney fees and costs pursuant to the listing agreement. The trial court granted Clann Dilis attorney fees and costs.

¶ 35 Elizabeth timely appealed.

¶ 36 II. ANALYSIS

¶ 37 Elizabeth's overall argument on appeal is that the trial court's finding that Healy found a ready, willing, and able buyer was against the manifest weight of the evidence. At the outset, we note that Elizabeth has abandoned on appeal two of the arguments she made to the trial court. First, she does not argue that any decision to lower the price needed to be in writing, per the terms of the listing agreement, and instead acknowledges that the price was altered "in other ways at other times." Second, she does not argue that her buy-out of Matthew's half of the property was part of the division of the marital assets and thus not a "sale." Rather, Elizabeth argues that Healy did not produce buyers who were ready, willing, and able because Elizabeth neither agreed to a list price of $209,000, nor accepted the buyer's offer.

¶ 38 The elements of a breach of contract claim are: (1) the existence of a valid and enforceable contract; (2) performance by the plaintiff; (3) breach of contract by the defendant; and (4) resultant injury to the plaintiff. *Timan v. Ourada*, 2012 IL App (2d) 100864, ¶ 24. Whether a breach of contract occurred is a question of fact, and the court's finding will not be disturbed on appeal unless it was against the manifest weight of the evidence. *Id*. "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *Best v. Best*, 223 Ill. 2d 342, 350 (2006). Under the manifest-weight-of-the-evidence standard, we give deference to the trial court as the finder of fact because it is in the best position to observe the conduct and demeanor of the parties and witnesses. *Id*. Accordingly, we will not substitute our judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn. *Id*.

¶ 39 A broker who brings a breach of contract action to recover a commission must set forth facts showing his or her entitlement to that commission. *Schaller v. Weier*, 319 Ill. App. 3d 172, 178 (2001). It is well-established that a broker's commission is earned once a ready, willing, and able buyer is produced. *Hallmark & Johnson Properties, Ltd. v. Taylor*, 201 Ill. 3d 512, 517 (1990). The sale need not be consummated for a broker to recover a commission; rather, the broker must show that he or she produced a buyer who was ready, willing, and able to purchase the property on terms specified in the listing agreement. *Beider v. Eugene Matanky & Associates, Inc.*, 55 Ill. App. 3d 354, 357 (1977); see also *Solomon v. Baron*, 123 Ill. App. 3d 255, 259 (1984) (it is necessary for the broker to prove the readiness, willingness, and ability of the purchaser to take the property on the terms proposed). The question of whether a broker has procured a purchaser ready, willing, and able to purchase the property upon the specified terms and conditions is typically one of fact. *Id*.

¶ 40 As stated, Elizabeth's argument is that the buyer was not ready, willing, and able to purchase the property upon the specified terms because he offered $209,000, which was $10,000 less than the last listing price agreed upon, $219,000. While acknowledging that the listing price was incrementally lowered at times from $259,000 to $219,000, Elizabeth points out that the listing price never fell below $219,000. Elizabeth argues that because Healy never obtained an offer to purchase the property at a price to which she agreed, Healy never obtained a ready, willing, and able buyer. Though the court appeared to determine that she agreed to a listing price of $209,000 because "she had agreed to reductions via e-mail or verbal agreements in the past," Elizabeth argues that there is no evidence that she agreed that the listing price should be dropped to $209,000. Noting that a seller may reject an offer that fails to meet the asking price, she points out that she never accepted the buyer's offer. On the contrary, Elizabeth argues that she

took extraordinary measures to avoid accepting the offer, such as paying Matthew $217,000, which was $8,000 more than the buyer's offer of $209,000.

¶ 41 Elizabeth also refutes Clann Dilis's claim that she "palmed the commission." According to Elizabeth, her divorce attorney's letter to Matthew regarding her buy-out of his interest in the property merely indicated that Matthew's "portion of [Healy's] commission would not be paid at that time, but that he would be entitled to a refund if and when she proved that [Healy] was not entitled to a commission." The import of the letter, Elizabeth argues, was that despite no commission being owed, Healy would claim one anyway. Still, Matthew would be entitled to a refund when it was determined that the commission was not owed. The letter stated, "to the extent the realtor is entitled to a commission it would be $12,540." It further stated, "If the realtor's commission can be reduced from $12,540, we propose a rebate to" Matthew "of 50% of the savings when that is resolved."

¶ 42 The issue is whether the buyer was ready, willing, and able to purchase the property upon the specified terms of Matthew and Elizabeth. The trial court specifically found that because the $209,000 offer was consistent with the prices to which Elizabeth had agreed in her e-mails, and was higher than the lowest price to which she had agreed in her e-mail, Healy was entitled to her commission. The trial court's finding was not against the manifest weight of the evidence.

¶ 43 It is clear from the evidence at trial that Elizabeth and Matthew were anxious to sell the property. Healy testified that two months after listing the price at $259,000, Elizabeth was "very anxious" to sell and thus sent her the January e-mail asking about whether it was time to lower the price to $219,000, $209,000, or $199,000. Matthew similarly testified in his deposition that even though the property had not been on the market 90 days, Elizabeth was "already very anxious" to reduce the listing price. Matthew testified that Elizabeth wanted to sell the property

below $200,000, and he described her January e-mail as a request to lower the listing price. Although Elizabeth testified that her January e-mail was intended to be sarcastic, the trial court found no evidence of sarcasm and discredited her testimony to that effect. It was up to the trial court to assess Elizabeth's credibility, and we afford the trial court deference because it observed her demeanor while testifying. See *Best*, 223 Ill. 2d at 350 (under the manifest-weight-of-the-evidence standard, we give deference to the trial court as the finder of fact because it is in the best position to observe the conduct and demeanor of the parties and witnesses).

¶ 44 It was undisputed that Matthew was more resistant than Elizabeth to the periodic reductions in price. As the trial court stated, Matthew did not want to list the property at less than $219,000, although Elizabeth appeared, as evidenced by her January e-mail, to have been willing to reduce the price as low as $199,000. Because Matthew would not agree to lower the price, Elizabeth obtained an appraisal for the property in March, which valued the property at $192,000. Then, Elizabeth sent the April e-mail agreeing that Matthew and Healy could decide on a price, and they decided on $229,000. In the meantime, Matthew obtained an appraisal for $203,000. It is undisputed that they received no offers and then both agreed to reduce the price to $219,000 at the end of April.

¶ 45 Both Healy and Matthew testified that when the buyer agreed to pay $209,000 for the property in May, they had no reason to believe that Elizabeth would not accept that offer. Rather, both Healy and Matthew testified that Elizabeth did not change her mind about being anxious to sell the property until Matthew decided to vacate the property and take a job out-of-state. However, the offer had already been made at that point. Therefore, although Elizabeth's entire argument hinges on the discrepancy between the listing price and the offer, and her refusal to accept the buyer's offer, the evidence shows that rather than having a problem with the price,

Elizabeth abruptly changed her mind about selling the property after the offer had been made. To this end, Matthew testified that, in order to avoid the commission, Elizabeth had wanted him to tell Healy that they had changed their mind about selling the property. Matthew refused to be persuaded by Elizabeth because he wanted to accept the offer, sell the property, and move away.

¶ 46 As the trial court noted, the issue here was a matter of timing because the buyer's offer was pending when Elizabeth arranged to buy out Matthew's share in the divorce court. The trial court correctly noted that had the buyer's offer expired or had the buyer been unable to meet the terms of their offer, no commission would be owed. However, up until the time of the offer and Elizabeth's decision not to sell, her January and April e-mails had suggested either lowering the listing price or letting Matthew and Healy set the price. Thus, it was not that the buyer failed to make an offer at the specified terms (indeed, $209,000 was higher than the $199,000 listing price Elizabeth had previously suggested), it was that Elizabeth had changed her mind about selling the property while the offer was pending.

¶ 47 Even assuming that Elizabeth planned on contesting the commission and giving Matthew a refund, the divorce court treated her buy-out of Matthew's share "as if the property had been sold." The order, which was dated five days after the offer and four days after Matthew's acceptance of it, stated that Matthew was to accept 50% of the equity after reduction of all lien values and prorated taxes "as if the property had been sold including any funds or charges due to the realtor for this buyout situation." As a result, half of Healy's $12,540 commission, which was 6% of the buyers' offer of $209,000, was deducted from Matthew's equity in the property. The fact that Elizabeth, rather than the buyer, ended up purchasing the property does not somehow undo the buyer's status as ready, willing, and able. And by keeping the commission as part of her buy-out, the trial court correctly found that Elizabeth had enjoyed the benefit of the

listing agreement with Healy without the liability of the cost of the agreement. See *Schaller*, 319 Ill. App. 3d at 178 (it is the policy of Illinois law to protect brokers who were employed to act and in good faith do act, and it is inequitable for a seller to enjoy the benefits from a broker's services without paying a commission). For all of these reasons, the trial court's finding that Healy produced a buyer ready, willing, and able to purchase the property upon the terms specified was not against the manifest weight of the evidence.

¶ 48 Elizabeth's next argument is that even if the buyer's offer was in conformity with the terms she and Matthew had specified for the sale, Clann Dilis failed to present "significant evidence" that the buyer had the financial ability to consummate the deal that was offered. According to Elizabeth, Healy provided only a preapproval letter to them in an e-mail but did not testify regarding the terms of the preapproval or any possible contingencies. Elizabeth further argues that the preapproval letter was not admitted into evidence, and the buyer never testified.

¶ 49 "A buyer is deemed ready, willing, and able to purchase if he or she (1) has agreed to buy the property and (2) has sufficient funds on hand or is able to obtain the necessary funds within the time set by the contract." *Schaller*, 319 Ill. App. 3d at 178. A buyer is financially "able" if he or she is shown to have sufficient funds on hand or the ability to command the necessary funds within the required time. *Nelson v. Bolton*, 72 Ill. App. 3d 519, 525 (1979). Conversely, a buyer is not shown to have financial ability if he or she is depending upon third persons who are in no way bound to furnish the funds. *Id.*

¶ 50 The trial court specifically found that Healy had found a ready, willing, and able buyer to purchase the property. Healy testified that she "absolutely believed" that the buyer was ready, willing, and able to buy the property, and she sent Elizabeth and Matthew the preapproval letter for obtaining a mortgage. According to Healy, the significance of the preapproval letter was

proof that the buyer had done his homework by going to the mortgage company and getting preapproved.

¶ 51 In addition, Matthew's emergency motion in divorce court, seeking to compel Elizabeth to accept the buyer's offer, lends further credibility to the buyer being financially able to consummate the sale. In his motion, Matthew stated that "[o]n information and belief, this is a good faith offer from a pre-approved buyer, who is ready, willing, and able to purchase the real estate." The trial court in this case noted that the divorce court had originally ordered Elizabeth to accept the buyer's offer, prior to her decision to retain the property and buy out Matthew.

¶ 52 In sum, the question of whether the buyer was ready, willing, and able was a factual one that the trial court resolved in favor of Clann Dilis. Given the divorce court proceedings and Healy's testimony on this point, and no evidence to the contrary, there is no reason to disturb the trial court's finding. Therefore, the trial court's finding that Healy produced a ready, willing, and able buyer, thereby entitling her to a commission, was not against the manifest weight of the evidence.

¶ 53 Having reached this conclusion, it is clear that Clann Dilis is the prevailing party pursuant to the listing agreement. As the prevailing party, it was entitled to request attorney fees and costs, which the trial court granted. On appeal, Elizabeth argues that if this court reverses the judgment in favor of Clann Dilis, then the court should remand the case so that she could file a petition for attorney fees. Because we are affirming the judgment in favor of Clann Dilis, no remand is necessary.

¶ 54 III. CONCLUSION

¶ 55 For the reasons stated, we affirm the judgment of the Kane County circuit court.

¶ 56 Affirmed.