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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 9333/2020

DATE: 2020.04.20

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO.

REVISED

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In the matter between

GALLOPTIC TRADE & INVESTMENT (15) PTY LTD Applicant

And

GROENEWALD & OTHERS Respondent

J U D G M E N T

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WEPENER J: This matter concerns the cancellation of a written agreement of sale. Due to the development of the argument before me, I need not concern myself with the prior conduct of the parties in previous litigation, as the respondent conceded that the first time that the applicant made an election whether to abide or abide by or cancel the agreement was during these proceedings when it elected to abide by the contract. The issue arises due to a clause in the offer to purchase which reads as follows:

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“The purchase price is R1.25 million, payable as follows:

[1] R nil;

[2] The 1.25 million shall be paid to the seller upon registration of transfer of the property into the name of the purchaser and shall be secured by means of bankers or other guarantee, within 90 days after confirmation of registration by the sellers attorneys."

10 It is common cause between the parties that the last phrase refers to the fact that the applicant was in the process of purchasing the property and that the 90 day period was provided for from the time that the applicant acquired the property - It then had to confirm the registration into its name so that the respondents can deliver the guarantees. The respondent's case is that the applicant never complied with the confirmation portion in that the seller's attorneys did not give a "notice of registration". I quote the word "notice of registration", as per the wording of the contract paragraph. The applicant avers that proof of such notice by a particular attorney is of no consequence. It says, and this is undisputed, that the respondent's attorney recorded, in a letter date of 29 November 2018, the fact that it had knowledge. In the letter, the respondent's attorney records that it was aware that the property was registered in the name of the applicant. The respondent complains that
20 this does not overcome the notice required in the offer to purchase. I am of the view that the respondent's attitude is one of extreme technicality. The purpose of the clause was to enable the respondent to have actual knowledge of the transfer into the applicant's name so that he can prepare the bank guarantees within the 90-day period. On their own admission, the respondents were so aware but did not obtain the guarantees. The respondents, therefore, had actual knowledge of the registration of transfer into the name of the applicant and failed to provide the bank guarantees within the 90-day period. The respondent admitted to have had this knowledge. I am of the view that the doctrine
30 of substance over form allows the true state of affairs to be recognised, i.e., that the respondents had actual knowledge of the transfer of the property when they recorded it in a letter by their attorney sent to the applicant's attorney. Thereafter, as it was entitled to do, the applicant gave the respondent notice, as required in the contract, and, due to the

respondent's failure to perform, duly cancelled the agreement. In my view, the agreement was properly cancelled. No other issue in this matter was debated before me. I issue the following order:

[1] The first and second, third respondents and any persons occupying the property described as portion [...] of the Farm W [...], number 517, through them, are evicted from the property.

10 [2] The first, second and third respondents, and any other persons occupying the property through them, or to vacate the property on or before 31 May 2022.

[3] In the event of the first, second, third respondents or any other person occupying the property through, fail to vacate the property or before 31 May 2022, then the sheriff of this court is authorised and directed to take all necessary steps in order to carry out the eviction as from 1 June 2022.

20 Finally, the first and second respondents are to pay the costs of this application jointly and severally, the one paying, the other to be absolved.

WEPENER J
JUDGE OF THE HIGH COURT
DATE: 2022.04.20