

Summary: Talacar Holdings (Pty) Ltd v Christopher Howe Cole

The Talacar Holdings (Pty) Ltd (applicant) and Mr Christopher Howe Cole (respondent) entered into a written agreement for the sale and purchase of property to the respondent. The applicant accepted the offer to purchase from the respondent in the amount of R135 000 000. This concluded the sale of the property. The respondent then requested a further viewing of the property. This was arranged and representatives of the respondent were accompanied by experts to check for any defects as provided in clause 20 of the offer to purchase. The experts could not ascertain any defects. Therefore, clause 20.2 of the offer to purchase which provided for the respondent's experts to inspect the property for structural defects, was complied with.

After sometime, the respondent communicated to the applicant that he could not continue with the agreement due to "imperfections" after conducting due diligence. The applicant believes these "imperfections" are artificial and contrived, as the respondent did not indicate what specific structural defects or other defects were present until they were raised in the opposing affidavit. The applicant notes that these imperfections conflict with the "voetstoots" clause in the agreement. There were three issues for determination in this matter.

First, whether the respondent's affidavit should be accepted as evidence without an Apostille certificate. In this regard, the court was satisfied that the affidavit meets the requirements for acceptance as an affidavit. Further, that the notary's stamp and details are sufficiently explained and reflect a properly signed and authenticated affidavit in terms of Rule 63.

On this issue, the court found that the alleged defects were changes the respondent wished to effect to ensure the property was changed to a state acceptable to him. The court concluded that the respondent's non-performance was not justified.

Third, whether the respondent's alleged cancellation of the agreement in terms of clause 20.2 was valid. In this regard, the court stated that the respondent's defences for cancellation of the agreement are truly contrived and have no basis, thus, offering no real dispute of fact. The court made an order for specific performance against the respondent in respect of the sale agreement concluded between himself and the applicant.

Held: The application succeeds with costs