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NOT REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA

(FULL COURT OF THE TRANSVAAL PROVINCIAL DIVISION)

CASE NUMBER: A407/2007

DATE: 2012/02/22

In the Matter between:

PM M

Appellant

AND

TH M

Respondent

JUDGMENT

Fabricius J:

1.

This is an appeal from a Judgment delivered by Patel J on 17 Dec 2006. On 17 April 2007 leave to appeal to a full bench of this Court was granted.

2.

The parties hereto were divorced, which divorce order incorporated a Deed of Settlement.

The relevant terms of this agreement which gave rise to the dispute between the parties read as follows:

4.1 Plaintiff hereby gives to Defendant for her sole and exclusive ownership, Stand 31 Sakhile on the condition that the house bond must be cancelled in the name of Plaintiff within 3 months of date of divorce.

4.2 Plaintiff shall sign all the necessary documents to effect transfer of Stand no. 3171 to Defendant.

4.3 If Defendant fails to comply with this condition, the house then must be sold, the house bond must be released, and the profit to be divided 50% towards each party."

3.

The parties could not agree on the interpretation of the relevant terms, and, as a result, no steps were taken to give effect thereto. This caused the applicant to approach the court a quo seeking an order that the common home be sold, that the respondent sign all documents to give effect to the sale, which in turn caused the respondent by way of a counter application to seek an order directing the applicant to cancel the bond, and to transfer the relevant stand to her. This order was granted by the court a quo on the basis that the reference to "defendant" in clause 4.3 of the settlement agreement in fact meant "plaintiff", in the context of the clauses read as a whole.

4.

The appellant interpreted clause 4 of the Deed of Settlement as meaning that the respondent would become the sole owner of the property on condition that the bond be cancelled within three months of the divorce, failing which the property had to be sold, the bond be paid off,

and the profit be shared in equal parts. Obviously, the respondent interpreted clause 4 of the agreement to be in line with the order granted by the court a quo. Appellant referred us to a number of authorities dealing with the interpretation of an agreement, and in particular *Coopers and Lybrand v Bryant* 1995 (3) SA761 (A) at 767 E to 768E. This decision is to the effect that the ordinary and grammatical meaning of words must be given effect to unless an absurdity would result. The context of the relevant clauses must be considered in the light of the general purpose of the agreement. Background- and surrounding circumstances also have to be considered.

5.

Without detracting from that argument it was however the appellant's case that it was not necessary to determine which party had to fulfil the condition in the mentioned agreement. The reason for this was that it was objectively clear that clause 4.1 of the agreement was not complied with within 3 Months of the date of the divorce, and as a result the terms of clause 4.3 had to be given effect to. It is, as I said, common cause that this was not done.

6.

I agree with the submission and reasoning behind it. Accordingly, it is my view that the learned Judge a quo was wrong in making the order that he did. As a result thereof the appeal must succeed and the following order is therefore made:

- a. The Appeal succeeds with costs;
- b. The application is granted and an order is made in terms of prayers 1, 2 and 3 of the appellant's notice of motion dated 14 June 2006.

13 February 2012

JUDGE H J FABRICIUS

JUDGE OF THE NORTH GAUTENG HIGH COURT

I Agree:

JUDGE B R SOUTHWOOD

JUDGE OF THE NORTH GAUTENG HIGH COURT

I Agree:

JUDGE M W MSIMEKI

JUDGE OF THE NORTH GAUTENG

HIGH COUR

Case no.: A407/07

Heard on: 22/02/2012

Counsel for the Appellant: JR Minnaar

Instructed by: Annari Claassen Attorneys c/o Riaan Bosch Attorneys

761 Park Street Clydesdale

Pretoria

Counsel for the Respondent: No appearance for respondent

Instructed by: Carrmin Essak Attorneys c/o F Vally Attorneys Standard Bank Chambers,

Room 418 12 Paul Kruger Street Pretoria

Date of Judgment: 22 February 2012 at 10:00am. In the High Court of South Africa