

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG, PRETORIA)

CASE NO: 36209/2012

24/4/2013

(1) REPORTABLE: YES / NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

24/4/2014

DATE

SIGNATURE

In the matter between:

RELEBIPI PROPERTIES CC

APPLICANT

and

CHRISTIAAN FREDERIK DE WET N.O.

FIRST RESPONDENT

LEON NAUDE N.O.

SECOND RESPONDENT

ALLAN DAVID PELLOW N.O.

THIRD RESPONDENT

GAVIN CECIL GAINSFORD N.O.

FOURTH RESPONDENT

MARGARET EDWARDS N.O.

FIFTH RESPONDENT

SNYMAN DE JAGER ATTORNEYS

SIXTH RESPONDENT

HEUNIS STREULI ATTORNEYS

SEVENTH RESPONDENT

THE REGISTRAR OF DEEDS

EIGHTH RESPONDENT

THE MASTER OF THE HIGH COURT

NINTH RESPONDENT

INVESTEC BANK

TENTH RESPONDENT

 J U D G M E N T

 KUBUSHI, J

- [1] The first, second, third, fourth, fifth and tenth respondents (herein referred to as the respondents) have applied for leave to appeal against the whole of my judgment and order handed down on 17 January 2014.
- [2] The respondents filed their application for leave to appeal out of time. They as a result filed an application for condonation of the late filing of their application for leave to appeal. The applicant did not oppose the condonation application. At the hearing of the application for leave to appeal both counsel did not bring this issue up. I am thus of the view that in the interest of justice I should grant the condonation application.
- [3] The appeal emanates from an application in which the applicant sought to compel the first, second, third, fourth and fifth respondents in their joint capacities as liquidators of Meltin Properties 59 CC (in liquidation) to sign all documents required for the seventh respondent (or any other properly appointed conveyancing attorneys) to effect transfer of Sectional Title Units 1 and 3 of SS Norma Jean Square, 124/2010 situated at Die Howes Ext 197, 705 also known as units 1 and 3 Norma Jean Square, 244 Jean Avenue, Centurion (the immovable property), to the applicant in effecting the purchase agreement entered into between the applicant and Meltin Properties 59 CC. I found in favour of the applicant and granted it the relief sought with costs.

- [4] The respondents seek leave to appeal the judgment on various grounds as stated in their application for leave to appeal. However, at the hearing of the application their counsel argued mainly on two grounds, namely, that:
- a. I misdirected myself in not finding that once the funds left the trust account they were no longer entrusted for the purpose of the purchase price.
 - b. I erred in finding that the liquidators had chosen to perpetuate the agreement and that the obligations must be performed in their entirety as *per* the agreement.
- [5] My view is that there are no prospects that another court may come to a different conclusion. In my judgment I dealt in depth with the issues raised by the respondents in their application for leave to appeal and as argued by their counsel in court. And I have not been persuaded otherwise.
- [6] My findings on the facts and on the law are succinctly set out in my judgment. It is common cause that the second agreement was entered into by the applicant and Lawrence in his capacity as a member of Meltin Properties 59 CC (the seller). In terms of this agreement the applicant as the purchaser of the seller's immovable property authorised the seller's attorneys to release a portion of the purchase price (R3 400 000) held in trust to the seller to be utilised towards the finalisation of the seller's development project. It is also common cause that

before the property could be transferred into the applicant's name the seller went insolvent.

[7] It is trite that the status of an immovable property, where the agreement of sale in respect thereof was entered into before the seller went insolvent and the property has not been transferred into the name of the purchaser, the property vests in the liquidator/trustee of the seller's estate. Similarly in this instance, since the property had not been transferred into the applicant's name, when the seller went insolvent the property vested in the trustees of the seller's estate. The general rule is that in such an instance, the trustees had to elect whether to stop the agreement or to preserve it. In this instance my conclusion is that the trustees elected to preserve the agreement. I concluded as such due to the numerous communications between the applicant and the trustees' attorneys which are indicative of the trustees' intention to proceed with the agreement. The trustees changed their intention only when they were of the opinion that the applicant had not paid the purchase price.

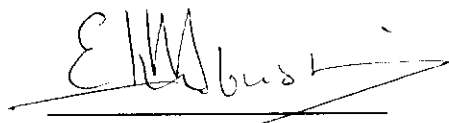
[8] I concluded on this point that even though the applicant had authorised the seller's attorneys to release part of the purchase price to the seller, the applicant had paid the full purchase price. I concluded as such because at all material times hereto the intention of the applicant was to pay the amount as the purchase price. This is set out in both the first and second agreements which the applicant and the seller entered into. The proposition by the respondents' counsel that for it to be said that the applicant paid the purchase price the funds

should have been ring-fenced and kept in the attorneys' trust account or that the seller should have refunded the money before it went insolvent and further that by releasing the money the applicant ran the risk of losing the money, has no merit. As argued by the applicant's counsel there is no law or case law to support this proposition and indeed none was proffered by the respondents' counsel. The purchase price of immovable property can be paid either before or at the time of transfer or even after transfer of the property. It can also be paid directly to the purchaser or to a third party as directed by the seller or as agreed between the parties. And in this instance, in terms of the purchase agreement the applicant was directed to pay the purchase price into the trust account of the seller's attorneys and by a further agreement the parties agreed to pay out a portion of thereof directly to the seller.

[9] On the basis of the factual and law findings in my judgment and as summarised herein, in my opinion, no other court will come to a different conclusion and the respondents' application for leave to appeal ought to be dismissed with costs.

[10] In the premises I make the following order:

- a. The application for leave to appeal is dismissed with costs.

A handwritten signature in black ink, appearing to read 'E. M. Kubushi', is written over a horizontal line.

E. M. KUBUSHI

JUDGE OF THE HIGH COURT

Appearances:

HEARD ON THE	:23 APRIL 2014
DATE OF JUDGMENT	:24 APRIL 2014
APPLICANT'S COUNSEL	: ADV J C KLOPPER
APPLICANT'S ATTORNEYS	: VAN GREUNEN & ASSOCIATES
RESPONDENTS' COUNSEL	: ADV FABER
RESPONDENTS' ATTORNEYS	: FSE ATTORNEYS