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

Case No: 70564/2013

In the matter between:

26/11/2014

CLEAR MANDATE PROPERTIES 110 CC Applicant

and

TSHINYALANI CHARLOTTE SHAVANI Respondent

JUDGMENT

DELETE WHICHEVER IS NOT APPLICAI
(1) REPORTABLE : ~~YES~~/NO
(2) OF INTEREST TO ~~OTHER JUDGES~~ : ~~YES~~/NO
(3) REVISED

DATE 26/11/14 SIGNATURE

FOURIE, J

[1] This is an application for an order declaring that a written agreement of sale with regard to certain immovable property is valid and that the respondent be ordered to give effect to the agreement against payment of the purchase price. The respondent opposes the application and has raised a number of defences in her answering affidavit.

[2] However, counsel who appeared for the respondent indicated during argument that he will rely only on four of these defences, i.e. lack of *locus standi*, a failure to comply with the provisions of section 2(1) of the Alienation of Land Act, No 68 of 1981, a failure to give proper notice to the Registrar of Deeds and a failure to comply timeously with a suspensive condition.

BACKGROUND

[3] On 9 September 2013 the applicant as purchaser and the respondent as seller entered into a written agreement of sale with regard to an immovable property known as Erf 539, Randfontein Township, otherwise known as 79 Village Street, Randfontein. The purchase price is R1,620,000.00 payable to the seller upon registration of transfer which shall be secured by means of a banker's or other guarantee within seven days of a mortgage bond referred to in clause 2 being granted.

[4] Clause 2 refers to a suspensive condition. It provides that the sale is conditional upon the purchaser being able to obtain from a registered financial institution within seven days of signature a loan of not less than R1,620,000.00 on the security of a mortgage bond to be registered over the property. The agreement is signed by the respondent as the seller and by an unidentified person on behalf of the purchaser.

[5] On 13 September 2013 two draft letters of guarantee for the total amount of R1,620,000.00 issued by the HBZ Bank Limited were addressed to Truter Crous & Wiggill Incorporated, the transferring attorneys nominated in the agreement. In both these letters of guarantee it is stipulated that upon the written confirmation from the said attorneys that certain conditions have been complied with, the bank as guarantor will make payment of the purchase price. Both these letters of guarantee are unsigned copies, indicating that it is valid for three months (up to 12 December 2013).

[6] In the founding affidavit it is alleged that on or about 13 September 2013 the HBZ Bank Ltd approved the loan and the two draft letters of guarantee were sent to the transferring attorneys for approval. The transferring attorneys then made certain corrections whereafter the draft letters of guarantee were returned to the said bank.

DEFENCES RAISED BY THE RESPONDENT

LOCUS STANDI

[7] It was contended on behalf of the respondent that the applicant, being a close corporation, does not have *locus standi* to enforce the agreement, as the person who signed on behalf of the applicant is unknown. There is also no indication that this person was authorised to represent the applicant as the purchaser. As far as the first issue is concerned, the respondent herself indicated in her answering affidavit (par 18.3) that "the agreement was only signed by Mrs Hakimjee, a member of the entity..." It therefore appears that the person who signed on behalf of the applicant is Mrs Hakimjee, a member of the applicant.

[8] As far as the second issue is concerned, it was contended by the respondent that there was no ratification or a resolution "confirming that the entity took the decision to purchase the property and that she was appointed the representative of the entity". In the replying affidavit reference is made to a confirmatory affidavit by a co-member of the applicant who confirms that he

is aware of and supported the purchase of the property and that he also confirms the authority of his co-member to represent the applicant.

[9] Furthermore, section 54(1) of the Close Corporations Act No 69 of 1984 provides that a member of a close corporation shall in relation to a person who is not a member and is dealing with the corporation, be an agent of the corporation. Having regard to all these considerations, I am of the view that there is no merit in the defence relating to *locus standi*.

THE ALIENATION OF LAND ACT

[10] It was argued on behalf of the respondent that upon signing of the agreement there was no written authority authorising the person who represented the applicant, to do so. Section 2(1) of the Alienation of Land Act, No 68 of 1981 provides as follows:

> *"No alienation of land after the commencement of this section shall, subject to the provisions of section 28, be of any force or effect unless it is contained in a deed of alienation signed by the parties thereto or by their agents acting on their written authority."*

[11] However, since a close corporation cannot write, the problem that the corporation itself can therefore never authorise its agents in writing, is solved by the provisions of section 54(2) of the Close Corporations Act. In Northview Shopping Centre (Pty) Ltd v Revelas Properties Johannesburg CC 2010 (3) SA 630 (SCA) at par 22 Lewis JA held that a member of a close

corporation does not require written authority to conclude a contract for the sale of land on behalf of the close corporation because such authority to act is derived from section 54(2) of the said Act. Having already established that the agreement of sale was signed by a member of the applicant, this defence should therefore also be dismissed.

NOTICE TO THE REGISTRAR OF DEEDS

[12] It was contended on behalf of the respondent that the applicant failed to give proper notice of this application to the Registrar of Deeds. Counsel for the respondent relied on the provisions of section 97(1) of the Deeds Registries Act No 47 of 1937 which provides as follows:

> *"Before any application is made to the Court for authority or an order involving the performance of any act in a deeds registry, the applicant shall give the Registrar concerned at least seven days notice before the hearing of such application and such Registrar may submit to the Court such report thereon as he may deem desirable to make."*

[13] It was pointed out by counsel acting for the applicant that the relief sought in the notice of motion does not involve the performance of any act in a deeds registry, but is directed against the respondent only and failing compliance by her, that the Sheriff be authorised to perform on behalf of the respondent all such acts as may be necessary in order to give effect to the agreement of sale. Once that has been done the Registrar will be requested

by the applicant to perform his or her normal statutory duties as authorised by the Deeds Registries Act. I agree with this submission. The relief sought does not involve the performance of any act in a deeds registry and therefore notice of this application to the Registrar of Deeds was not necessary. In the result this defence should also be dismissed.

SUSPENSIVE CONDITION

[14] As pointed out above, clause 2 of the agreement provides that the sale is conditional upon the purchaser being able to obtain from a registered financial institution, within seven days of signature, a loan of not less than R1,620,000.00. In paragraph 11 of the founding affidavit the following has been alleged:

> *"The applicant applied for a loan of R1,620,000.00 from HBZ Bank Limited and on or about 13 September 2013 HBZ Bank approved the loan. In support hereof I respectfully refer ... to annexure ... which is a true copy of draft letters of guarantee which was sent to the transferring attorneys for approval."*

[15] In her answer to these allegations the respondent does not deny the allegation that the said bank approved the loan on or about 13 September 2013. However, it is pointed out by the respondent that "no signed bond approval or confirmation was received". This is not a requirement as clause 2 of the agreement provides only that the purchaser should be "able to obtain" a loan of not less than R1,620,000.00.

[16] Copies of the draft letters of guarantee also indicate that in all probability such a loan had by then already been approved. This is apparent from the words "hold at your disposal the sum of" which appear in both draft letters. In the absence of any evidence to the contrary, I have to accept the allegation that the loan was approved on or about 13 September 2013 and therefore this defence should also be dismissed.

ORDER

[17] In the result, I grant the following order:

17.1 It is declared that the agreement of sale which was concluded on 9 September 2013 in respect of the sale by the respondent to the applicant of a property known as Erf 539, Randfontein Township, otherwise known as 79 Village Street, Randfontein, is valid and binding on the parties;

17.2 That against the tender by the applicant to pay the purchase price in respect of the property in the sum of R1,620,000.00, together with such further amounts as may still be due in respect of transfer duty and/or VAT, the respondent is ordered to, within 15 days from date of this order:

17.2.1 to give effect to the agreement of sale; and

17.2.2 to perform all such acts as may be necessary to give transfer of the property into the name of the applicant.

17.3 If the respondent fails to comply with the provisions of paragraphs 17.2, 17.2.1 and/or 17.2.2 above, the Sheriff is authorised to perform on behalf of the respondent all such acts as may be necessary in order to give effect to the agreement of sale and to give transfer of the property into the name of the applicant;

17.4 The respondent is ordered to pay the costs of this application

D S FOURIE
JUDGE OF THE HIGH COURT
PRETORIA

Date: 26 November 2014