
SOUTH AFRICA / JUDGMENT

Bowley Steels (Pty) Ltd v 10 Sterling Road (Pty) Ltd and Another (2016/2461) [2017] ZAGPJHC 196 (28 June 2017)

[2017] ZAGPJHC 196

COURT

South Gauteng High Court, Johannesburg

BEFORE

RS Willis

CASE / FILE NUMBER

2016/2461

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

CASE

NO: 2016/2461

Not

reportable

Not

of interest to other judges

Not

revised

28

June 2017

In

the matter between: BOWLEY
STEELS (PTY)
LTD Applicant
and
10
STERLING ROAD (PTY)
LTD First
Respondent
MITCHELL
CHEMICALS
CC Second
Respondent

JUDGMENT

WILLIS AJ:

1. The applicant is the owner of industrial premises situated at 2119 Albertina Sisulo Road (previously 25 Maraisburg Road) Industria West, hereinafter referred to as “the property”. The first respondent is in occupation of the property together with sub tenants, one of which is the second respondent. Only the first respondent opposes this application.
2. The application is a vindicatory claim. As such the applicant bore the onus to prove ownership. At the very least in vindicatory

claims proof of ownership has to be adequate, see *Rusken N.O. v. Thiergen* 1962 (3) SA 737 A at 744 A – B. The applicant did not put up a copy of the title deed as best evidence to prove title to the immovable property. “The best evidence of ownership of immovable property is the Title Deed to it ...” see *Goudini Chrome (Pty) Ltd v. MCC Contracts (Pty) Ltd*

[1992] ZASCA 208; 1993 (1) SA 77 A at 82. The applicant relied instead on a “DeedsWeb” printout. My concern herewith is that without more, one does not know the veracity of this document and its contents. The information obtained is hearsay in that the person responsible for extracting the information has not put up an affidavit. For example Windeed, a similar resource to DeedsWeb I believe, has a disclaimer regarding its information which is gathered from suppliers and to this extent it indemnifies itself. See Sibango

- v. PPM Plumbing (Pty) Ltd 2016 JBR 0799 (GP) at para 20. However ownership has not been placed in issue and is effectively common cause. Nonetheless where evidence is put up in support of an allegation, it should be admissible, proper and save for god reason the best evidence.
3. In terms of a sale contract concluded on 10 July 2007, the applicant sold the property to the first respondent who was represented by its sole director at the time, the late Mr Gerke who passed away on 13 July 2015. Since 2007 the first respondent has occupied the property in

anticipation of transfer into its name subject to its performance in terms of the contract. The applicant now contends that it has cancelled the contract, that the respondents are in unlawful possession and it has had to come to Court to seek their eviction together with all persons occupying the property through the respondents.

4. The respondent's case is that the applicant failed to validly cancel the contract and that consequently it remains extant, valid and binding. The first respondent disputes it was placed in mora and in any event that any notice was effective or afforded it a reasonable time within which to remedy the alleged breaches. Accordingly the primary issue before me was whether the contract of sale has been lawfully cancelled by the applicant. Counsel for the parties were in agreement that should I find that the contract has been cancelled, an eviction order follows. The applicant also seeks confirmation of cancellation and a declaratory order to this effect. The first respondent sought condonation for the late filing of its answering affidavit which was not opposed and there was no reason to deny condonation.
5. The factual matrix within which the contract was concluded, which is common cause on the papers, provides insight into the relevant

provisions of the contract. In time gone by the City of Johannesburg had levied electricity charges against the applicant

which were disputed, in consequence of which the City removed its electricity meter from the property and ceased providing electricity. The property was sold voetstoets without metered electricity. What the first respondent did was to run an electrical cable from a neighbouring property owned by a related entity known as H K & A B Properties CC (to which I will refer as "HK/AB Properties"), for the provision of electricity to the property. HK/AB Properties in fact occupied the property in casu prior to the first respondent purchasing and occupying same.

6. Against this background the terms of the contract relevant to the dispute before me are that:

- 6.1. The purchase price is payable against registration of transfer.

- 6.2. The first respondent would, at its own cost, supply a certificate of compliance for the property from an accredited electrical contractor

as required by legislation.

- 6.3. Vacant occupation of the property would be given to the first respondent on signature of the contract by both parties.

- 6.4. Occupational rental of R15 000.00 per month plus VAT and municipal charges would be payable by the first respondent from 1 June 2007.

- 6.5. If there was any delay in effecting transfer by reason of any default attributable to either party, then the party responsible for such delay would pay the other party interest on the purchase price at the prevailing prime rate of interest for the period of delay.

6.6. The parties recorded that the applicant was engaged in litigation with the City of Johannesburg in connection with the rates and other municipal charges in respect of the property and that as such the applicant was unable to obtain a Rates Clearance Certificate.

The inability to get such a Certificate would not constitute a delay within the meaning of the Agreement.

6.7. The parties chose as their *domicilium citandi et executandi* the addresses contained on the signature block of the Agreement, the address for the first respondent being 7 Maraisburg Road, Industria West, Johannesburg.

6.8. The first respondent acknowledged having inspected the property which was sold “voetstoets”.

7. But for its obligation to give transfer of the property to the first respondent, the applicant has complied with its obligations and the first respondent bears all remaining obligations. Prior to the dispute between the applicant and the City being resolved, neither the applicant nor the first respondent could apply for the installation of an electricity meter at the property. This dispute was resolved in and about July 2013 and henceforth was not a barrier to transfer of the property. The applicant’s

complaint is twofold, firstly that the first respondent has failed to comply with its obligation to supply of a certificate of compliance. For this the first respondent had to secure the installation of metered electricity linked to the City’s billing system without which the City is unable to issue a clearance certificate and the Registrar of Deeds will not affect transfer without same. Secondly the applicant complains that the first respondent has failed to pay the conveyancing attorneys the amounts necessary to lodge for transfer of the property. The first respondent demonstrates in its answering papers that it had installed the electricity meter on 13 July 2015 and obtained the requisite Certificate of Compliance by 3 October 2016, which it annexes to its papers, and tenders to pay to the applicant all amounts necessary for transfer of the property. However the applicant contends that it cancelled the contract before that. Factual disputes arise in casu. The rule in *Plascon-Evans Paints Ltd v. Van Riebeeck Paints (Pty) Ltd*

[1984] ZASCA 51; 1984 (3) SA 623 A at 634 E – 635 C is that in motion proceedings a final order may be granted if those facts averred in the applicant’s affidavits, which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order. In certain instances the denial by a respondent of the facts alleged by the applicant may not be such as to raise a real, genuine or bona fide dispute of facts. It is bona fide disputes in motion proceedings which fall to be determined on the facts contained in the opposing papers.

8. The sale contract does not specify a date for performance by the first respondent. When fixed property is sold and the contract is not or is no longer conditional, time is ordinarily not of the essence of the contract. See the Principles of the Law of Contract A K Kerr 6th Edition, pg. 618; Young

- v. Land Values Ltd 1924 WLD 216 at 226; Sapelford Estate (Pty) Ltd and Another v. Wright 1968 (1) SA 1 (E) at 3 D – E; Nel
- v. Cloete 1972 (2) SA 150 A. The contract in casu is no different. In fact the parties catered for possible delay as follows: “9.1 Should there be any delay in effecting transfer by reason of any default attributable to either party then the party responsible for such delay shall pay to the other interest on the purchase price at the prevailing prime rate of interest for the period of delay.” and the parties agreed to exclude from the definition of delay the anticipated delay that only the seller could remedy: “9.2 The purchaser is aware that the seller is embroiled in litigation with the City of Johannesburg in connection with the rates and other municipal charges in respect of the property and that as such the seller is unable to obtain a rates clearance certificate. This inability does not constitute a delay within the meaning of 9.1.” The contract also does not contain a *lex commatoria* (forfeiture clause). This fact also excludes time being of the essence of the contract.
- 9. The right to terminate a contract where time is not of the essence of the contract and the time for performance is not stipulated, even where a reasonable time within which performance could have taken place has lapsed, is limited to those failures to perform which go to the root of the contract i.e. the failure amounts to a repudiation. See Christie’s *The Law of Contract in South Africa*, 6th Edition, pg. 529 (d). On a proper construction of the contract in casu a failure to perform is a minor breach i.e. without the first respondent being placed in *mora non-performance* does not go to the root of the contract.
- 10. Generally when a contract does not prescribe a time for performance, a demand (*interpellatio*) is necessary to place the defaulting party in *mora*. This brings into focus *mora ex persona* and the general rule formulated in Breytenbach
- v. Van Wyk 1923 AD 541 at 549, that when the contract does not fix a time for performance there can be no *mora ex re*, only *mora ex persona*, so demand by the creditor is necessary in order to place the debtor in *mora*. This general rule is subject to the qualification that performance cannot be demanded unreasonably so as to defeat the objects of the contract or to allow insufficient time for compliance. In other words the general rule must be read together with the rule for deciding when contractual obligations are enforceable if no time for performance is fixed in the contract. See MacKay
- v. Naylor 1917 TPD 533 at 537 – 538 per Mason J, approved by Jansen JA in Nel
- v. Cloete 1972 (2) SA 150 A at 169 G. The onus is on the party demanding performance to show that the demand allowed the other party a reasonable time within which to perform. See *Ver Elst v. Sabena Belgium World Airlines* 1983
- (3) SA 637 A.

11. For its mora notice for cancellation, the applicant relies in its founding papers on a letter dated 18 June 2015, prepared by the conveyancing attorneys representing the applicant, which reads:

“1.1 Our client has engaged the services of Fast Track Admin to pave the way towards obtaining the municipal clearance certificate which is a pre-requisite to transferring the above property to you in terms of the sale agreement of July 2007.

1.2 We understand that there is no electricity meter on the property and that for years you have run a cable from your next door property to use on Stand 90 which you occupy in terms of the agreement of July 2007.

1.3 According to Fast Track the City Council will not provide clearance figures unless there is a meter on the property. We attach a copy of a letter dated 22 October 2014 from Fast Track for your information and guidance.

1.4 Paragraph 4 of the sale agreement provides that you will supply a valid Certificate of Compliance for the electrical supply from an accredited Electrical Contractor. Such Certificate will not be obtainable in the absence of an electricity meter duly installed. Kindly therefore make arrangements to have the meter installed and provide us with a Certificate of compliance on or before 10 July 2015.

2.1 In terms of the sale agreement you are to pay occupational rental of R15 000.00 per month plus municipal charges.

2.2 We enclose herewith a copy of our client's account to you for payment of R252, 281.73 in respect of arrear rent and unpaid services.

2.3.1(sic) Our client demands payment in full by no later than 3 July 2015.

3. Please be advised that in the event of your failing to comply with the request in 1.4 and the demand in 2.3(sic) above, our client will issue summons for payment and it will also cancel the sale agreement and proceed against you for eviction from the property.

4. Please note that our client has changed its domicilium citandi et executandi to care of our offices.”

12. The first respondent chose its domicilium for ‘service’ of notice in regard to the contract. Although not alleged it is apparent on the face of this letter of 18 June that the applicant elected registered mail as its method for delivery. The applicant makes the allegation in its founding papers that this letter was “addressed” to the first respondent. It is not alleged that it was actually sent in the physical sense or delivered in the legal sense.

Furthermore no evidential material is put up to show that the letter was sent by registered mail or sent by email. However by implication

the applicant relies on the letter having been sent. To this the first respondent specifically pleaded that this letter “was not sent by the Applicant to the First Respondent and was not received by the First Respondent.”

13. Service of any process may be effected by delivering or leaving a copy thereof at the domicilium chosen in the contract. Such service is then good, even if the process may not actually be received, because the purpose of requiring the choice of a domicilium is to relieve the party causing service of the process, from the burden of proving actual receipt, hence the decisions in which service at a domicilium has been held to be good, even though the address chosen was vacant ground, or the party was known to be resident abroad, or had

abandoned the property, or could not be found. See *Loryan (Pty) Ltd v Solarsh Tea and Coffee (Pty) Ltd* 1984 (3) SA 834 (w) at 847B and the cases cited in *Muller v Mulbarton Gardens (Pty) Ltd* 1972

- (1) SA 328 (W) at 332G. All that was required of the applicant in terms of the contract in this instance was to deliver the letter to the first respondent at its chosen domicilium address. There is no so called double provision in the contract prescribing both domicilium and the method of delivery. See *Gerber v Stoltze and Others* 1951
- (2) SA 166 (T) at 169G; *Muller v Mulbarton Gardens (Pty) Ltd* 1972
- (1) SA 328 (W) at 331 in fine to 333H and the authorities there cited. So it mattered not whether the applicant elected delivery by registered mail or leaving a copy at the domicilium address.
14. Pursuant to the first respondent placing these issues in dispute, the applicant in reply alleged that this letter “was also sent to by (sic) registered post to the First Respondent’s chosen domicilium citandi et executandi.” Still no evidence, proper or otherwise was put up. As could be expected objection was taken in argument on behalf of the first respondent at this attempt to make out a case in reply. The onus is on the applicant to establish the facts on which its case is based in its founding papers, which constitute and must contain both the pleadings and evidence. See *inter alia* *Titties Bar and Bottle Store (Pty) Ltd v. ABC Garage (Pty) Ltd* 1974(4) SA 362 T at 368 H to 269 B, *Director of Hospital Services v. Mistry* 1979 (1) SA 626 A. As I have pointed out the applicant did not even allege sending or delivery to the chosen domicilium i.e. sending the letter per registered mail. The principles as to what is required of an applicant in motion proceedings are conveniently laid down in *Business Partners Ltd v. World Focus* 754 CC 2015 (5) SA 525 (KZD): “[8] It is trite that in application proceedings the affidavits constitute not only the pleadings but also the evidence. Equally trite is that an applicant must make out his case in his founding affidavit and that he must stand or fall by the allegations contained therein. It follows therefore that the applicant must set out sufficient facts in his founding affidavit which will entitle him to the relief sought. [9] The general rule is that the court will not permit an applicant to assert new facts in his replying affidavit which should have been set out in his founding affidavit. However, this rule, like all general rules, is not without exceptions. As was stated in *Shepherd v. Tuckers*

Land and Development Corporation (Pty) Ltd (1) by Nestadt J. ‘This is not however an absolute rule. It is not a law of the Medes and Persians. The court has a discretion to allow new matter to remain in a replying affidavit This indulgence, however, will only be allowed in special or exceptional circumstances.’ [10] A variety of factors can be taken into consideration by the court when exercising such a discretion. What is of overriding

importance in the consideration of those factors is that the applicant should not be permitted to make a case in reply where no

case at all was made out in the founding affidavit and ‘none is authority for the proposition that a totally defective application

can be rectified in reply’.” See further Shepherd

v. Tuckers Land and Development Corporation (Pty) Ltd

(1) 1978 (1) SA 173 (W) at 177 H – 178 A; Poseidon Ships Agencies (Pty) Ltd v. African Coaling and Exporting Co (Durban) (Pty) Ltd 1980

(1) SA 313 D at 315 H – 316 A. The objection was well taken. However the applicant had bigger problems than that.

15. It is also apparent on the face of this letter that the applicant intended to send this letter per email to “Dinah@polka.co.za”, the email address of the late Mr Gerke’s personal assistant Ms Diana Heynes. Unless the method of email delivery and the email address is agreed delivery of a letter as a notice by email is not the same as delivery to a chosen physical domicile. In a case where email is used as a method but was not agreed upon, the party giving notice would bear the onus of proving actual receipt and in this case that the late Mr Gerke received (not necessarily personally) same on behalf of the first respondent. Be that as it may the applicant also does not allege that the email was sent and equally no proof that it was sent is put up i.e. a print out of the email transmission. The first respondent specifically raised in answer that Ms Heynes’ email address as captured in the letter is incorrect and should have read dianah@polka.co.za and not dinah@polka..co.za. This allegation is seen to be correct from other emails in the papers. In argument counsel for the applicant conceded that the email could not have reached Ms Heynes or the first respondent by email to the wrong email address and did not rely on such email. There is nothing to suggest and it was not contended for, that as at the 18 June, the letter was emailed to Ms Heynes for any other purpose than to ensure the letter came to the attention of the late Mr Gerke.

16. Although not specifically pleaded in its founding papers it was argued on behalf of the first respondent for its case that it had placed the first respondent in mora that the first respondent had in fact received the 18 June letter. For this approach the applicant relied on an email from Ms Heynes on 25 June. Although not pleaded specifically in the founding affidavit, it was argued that Ms Heynes sent this email on 25 June on the instructions of the late Mr Gerke in response to receipt of the alleged mora notice of 18 June. In this email Ms Heynes stated that the late Mr Gerke had paid the outstanding rental at the beginning of

June 2015; advised that any disputed municipal charges were cleared in July 2013, and any outstanding amounts are not for the account of the first respondent; and confirmed that the first respondent had applied for re-instatement of electricity in respect of the property.

17. Fundamentally a party must prove what it alleges or can argue off the papers by way of proper and admissible evidence. The best evidence rule which in modern law is virtually non-existent, was that a party must always produce the best evidence of a fact available to it and that evidence which itself suggested the existence of better evidence of that fact, so-called secondary

evidence, was inadmissible, save in regard to documents. See *Gemeenskapsontwikkelingsraad v Williams and Others* (1) 1977

- (2) SA 692 (W) at

697. Noteworthy in casu is the fact that in respect of two later registered letters allegedly “delivered”, registered slips were put up. No explanation was tendered for the inability to put up proof of delivery of the 18 June letter per registered mail nor the email for that matter. The applicant’s reliance on secondary evidence in the form of Ms Heynes’ email was in my view a clutching at straws. It does not reference any demand let alone the 18 June letter. Even if I accept that the subject matter is in line with the 18 June letter, receipt of the 18 June letter is not the only rational explanation for the email. After all the issues were extant and overdue and the late Mr Gerke had just died. However the glaring issue and obvious question is how did the first respondent and the late Mr Gerke receive the 18 June letter if not by registered mail, or by email? There was no allegation or argument for any other basis. That the first respondent did not make payment as demanded in the letter by 3 July 2015 and did not provide the electrical compliance certificate as demanded by 10 July 2015, must also carry some weight to suggest that the first respondent and in particular the late Mr Gerke, did not receive a copy of the 18 June letter before he died on 13 July. In fact the applicant’s case in fact and law of placing the first respondent in mora, in its founding affidavit, is vague if not less. To know at all what the applicant’s case on mora is, one has to have regard to the heads of argument filed on its behalf. The irresistible inference is that this letter was

never delivered at all i.e. it was never actually sent by registered mail or email. The applicant’s case for delivery of the 18 June letter as a mora notice was still born.

18. Accordingly if the letter of 18 June 2015 could not be shown by the applicant to have been delivered to or in fact received by the first respondent, the first respondent could not be found to have been placed in mora by the applicant in regard to the electrical compliance certificate or payment of monies, by such letter and cancellation on that basis was bad in law. However argument on the applicant’s behalf did not end here.
19. The applicant’s case continued and relied on the following: a telephone call on 21 August 2015 from the son of the late Mr Gerke, Arndt Gerke, to an employee of the conveyancing attorneys allegedly advising that he had taken over the running of the first respondent since

his father's passing and giving certain undertakings; a telephone call between Arndt Gerke and the applicant's attorney Mr David Phillips, in which conversation Mr Phillips allegedly warned that if the compliance certificate was not forthcoming the applicant would have no choice to cancel the agreement, what was relied on as oral notice; a letter dated 16 October 2015 addressed to the first respondent care of Arndt Gerke referring to the first letter of 18 June 2015, a copy of which was indeed forwarded to Mr Gerke on the 25th August 2015 advising that notwithstanding demand no certificate of compliance had been forthcoming and the first respondent was in breach of the agreement and the applicant entitled to cancel it; a letter dated 26 November 2015 by the conveyancing attorney

allegedly sent to the first respondent per registered post on 27 November 2015 as well as to Arndt Gerke's attorneys at the time Phillip Silver Schwartz per email on 26 November, demanding payment of transfer costs, duty and penalty in the amount of R109,647.60

together with the electrical compliance certificate within 14 days, non-compliance with which would result in cancellation of the

agreement without further notice; and when the first respondent did not comply with the letter of 26 November 2015 a letter dated 17 December 2015 allegedly sent by the conveyancing attorneys per email and registered post to Arndt Gerke and his attorneys cancelling the contract and demanding that the property be vacated forthwith; a letter allegedly delivered per registered post to the first respondent on 11 January 2016; and an assertion in the founding affidavit that the applicant cancelled the contract.

20. Essentially the argument advanced on the applicant's behalf was that the first respondent was in any event placed in mora orally by Mr Phillips through the letters of 16 October and 27 November 2015 and the contract cancelled on 17 December 2015 alternatively 11 January 2016 but latest upon service of the application papers. The applicant's heads of argument, not the founding affidavit, contended that the late Mr Gerke had delegated the "day-to-day" administration of the first respondent in respect of the property to HK/AB Properties. Accordingly, so I understood the argument, Arndt Gerke as a member of HK/AB Properties represented the first respondent in the instances relied on by the applicant and in turn notice to Arndt Gerke's attorney also constituted notice to the first respondent. The first respondent in its answering affidavit deposed to by Arndt Gerke, by which stage he was the sole director of the first respondent having been so appointed on 27 September 2016, explained inter alia that: prior to his father's death he was not actively involved in the affairs of HK/AB Properties; HK/AB Properties as a tenant of the first respondent sublet to two subtenants; the late Mr Gerke had previously concluded a sale agreement for the purchase of the property from the applicant in the name of HK/AB Properties; the late Mr Gerke had used HK/AB Properties to make application for the installation of metered electricity which was installed on 13 July

2015. On the first respondent's version it was the late Mr Gerke who managed HK/AB Properties and not Arndt Gerke. On the first respondents version a delegation by the late Mr Gerke to HK/AB Properties would effectively be to himself which would make no sense. Arndt Gerke explained further that he did not tell the applicant's employee whom he called that he had taken over the running of the first respondent or that he represented it. He disputed that the 16 October 2015 letter placed the first respondent in mora as, although he did in fact receive it, he was not authorised to represent the first respondent. He disputed the first respondent receiving the notice of 27 November 2015 placing it in breach of the agreement, as this notice was sent to the incorrect domicilium address and disputed that it was received by Arndt Gerke's attorney. He also disputed that the cancellation letter was sent to the correct address and contended it being sent to him and his attorneys was of no consequence as neither of them had authority to represent the first respondent. Notwithstanding argument that Arndt Gerke and HK/AB Properties attended to day to day administration in respect of the property, that Arndt Gerke's email address was listed in the application for a clearance certificate from the City of Johannesburg in October 2013, that HK/AB Properties made payment to the applicant of occupational rental from December 2015 and that Arndt Gerke and his wife sent emails to the conveyancing attorneys in respect of the property, I was not persuaded by counsel for the applicants' valiant effort, that Arndt Gerke and/or HK/AB Properties enjoyed any authority to represent the first respondent for the sake of it being placed in mora. There is no direct allegation let alone evidence to this effect and what the applicant relies on for probabilities is barely secondary evidence if at all. On the first respondents version it was not placed in mora and Arndt Gerke and/or HK/AB were not representing it. The letters on Arndt Gerke's behalf by his attorney made it clear that neither they nor Arndt Gerke represented the first respondent. This finding negates the need to address other arguments put up on the applicant's behalf.
21. The letter of 27 November 2015 (dated 26 November) allegedly placing the first respondent in mora, and the cancellation letter of 11 January 2016, both allegedly delivered by registered mail deserve specific mention. The 27 November letter may have constituted notice for mora. However both letters do not bear the correct domicilium address of the first respondent. Instead of being addressed to 7 Maraisburg Road, Industria West they are both addressed to 7 Marais Street, Industria West. Both items of proof put up to show that these two letters were sent per registered mail also contain the incorrect address. The giving of notice at a domicilium, to be valid, must be effected as required by the contract. Thus, for instance, where delivery of a notice under a contract is to be effected at a residence chosen as a domicilium, it would not be enough merely to drop the notice over the garden fence or to put it into the hedge. Delivery would have to be made in the manner required by the contract. See *Loryan (Pty) Ltd v Solarsh supra* at 847B; *Lovasz and Another v Estate Rosenberg* 1940 TPD 342 at 344; at 331E - F and *SA Wimpy (Pty) Ltd v Tzouras* 1977

- (4) SA 244 (W) at 248A - C. Accordingly the applicant failure to accurately insert the domicilium address robbed the applicant of the benefits of the use of a domicilium address for purposes of notice. The applicant did not prove actual receipt of the 27 November letter.
22. I was not persuaded that the disputes put up by the first respondent were anything but bona fide.
23. I conclude that even apart from the respondent's version the applicant failed to make out a case that it placed the first respondent in mora, without which it could not validly cancel the agreement. Accordingly there is no need for me to address whether any one of the letters relied on were compliant as notices or gave reasonable time for performance.
24. In the result I make the following order: The application is dismissed together with costs.

RS WILLIS

ACTING JUDGE OF THE HIGH COURT

Date of Hearing: [18 April 2017]

Judgment

Delivered: [June 2017]

APPEARANCES

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