

SOUTH AFRICA / JUDGMENT

Edani and Another v Pioen 1153 (Pty) Ltd and Another (3016/2018) [2019] ZAMPMHC 3 (5 April 2019) [2019] ZAMPMHC 3

COURT

Middelburg High Court, Mpumalanga

BEFORE

JH Roelofse

CASE / FILE NUMBER

3016/2018

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REPUBLIC
OF SOUTH AFRICA
IN
THE HIGH COURT OF SOUTH AFRICA
GAUTENG
DIVISION, (FUNCTIONING AS THE MPUMALANGA DIVISION
OF
THE HIGH COURT - MIDDELBURG)
CASE

NO: 3016/2018
In

the matter between: CHRISTIAAN
CHIDOZIE
EDANI
First Applicant
CHINYERE
VICTORIA
EDANI
Second Applicant
and
PIOEN
1153 (PTY)
LTD
Frist Respondent
REGISTRAR
OF
DEEDS

Second Respondent

JUDGMENT

Roelofse AJ:

[1] I dismissed the applicants' application for an order that the first and second respondents be interdicted and restrained from registering, transferring or encumbering fixed property they had purchased from the first respondent ("the respondent") in terms of two written deeds of sale. The applicants seek leave to appeal my

judgment.

[2] I found that the applicants did not satisfy the prima facie right requirement for in interim interdict because the sale agreements together with the applicants' rights flowing therefrom were discharged as a result of the applicants' non-fulfilment of the suspensive condition that the applicants obtain finance for the purchases within the period provided therefore in the sale agreements ("the condition").

[3] The applicants say that I have erred in not finding that the condition was fulfilled when the respondent accepted the money that was belatedly paid to it by the applicants. According to the applicants, the respondent tacitly extended the time period for the fulfilment of the suspensive condition by accepting the money. I dismiss this argument outright because it is common cause that the respondent repaid the money to the applicants upon receipt thereof and maintained that the agreements were cancelled and even presented the applicants with new agreements.

[4] The applicants further allege that I erred because I did not give due regard to the context of the agreements and conduct of the parties as a whole. There was no reason to consider context and the parties' conduct when the terms of the agreements were not in dispute and in light of my finding that a delay in the completion of the units was expressly provided for. There is no merit in this ground of appeal.

[5] In addition, the applicants allege that I erred in finding that the condition is a resolutive condition and that I erred in finding that the payment requirement within 90 days as opposed to the obtaining of a bond was a suspensive condition. I made no such findings. Therefore, there is no merit in this ground of appeal. In any event, it was common cause that the applicants chose to finance the purchases through a bond, made application for a bond and was belatedly granted same.

[6] The applicants' further grounds of appeal relate to the finding I made that the applicants did not make out a case for waiver of the suspensive condition in their founding papers. I understood applicant's counsel's argument during the hearing to be that the respondent's attorney's letter of 1 November 2017 constituted a waiver of the period prescribed by the

suspensive condition. Even if that was not the argument, I maintain that the condition remained unfulfilled and no extension for its fulfilment was granted. This dispose of these grounds of appeal.

- [7] The applicants say that I erred in not considering the delay in the finalization of the units consisting the property. I found that the delay in the finalization of the units was anticipated by the parties for there could be no other reason for including clause 6.1 of the agreements. In my judgment I dealt with clause 6.1 of the agreements and with the delay in the completion of the units. There is therefore no merit in this ground of appeal.
- [8] The applicants say that I disregarded the Plascon-Evens rule. I differ. In my view, I properly considered the evidence before me. The common cause facts disentitled the applicants from relief.
- [9] Belatedly, during argument, counsel for the applicants made a submission not made before in the proceedings. The submission was that the applicants' failure to pay the cash purchase price within 90 days amounted to a breach of the agreements which entitled the respondent to either cancel the agreement or seek specific performance, which the respondent did not do. The applicants' original submission was that the applicants' failure to fulfil the condition amounted to a breach. There is no force in the belated submission because it was never the applicant's case that they would be purchasing the properties without a bond. It was the applicants' case that they fulfilled the condition to obtain a bond and that the time for the fulfilment of the condition was tacitly extended.
- [10] In terms of the provisions of Section 17(1)(a) of the Superior Courts Act 10 of 2013 ("the Act"), leave to appeal may only be given where the judge or judges concerned are of the opinion that the appeal would have a reasonable prospect of success. During the cause of the argument, the applicants confirmed that their application for leave to appeal is squarely upon the provisions of Section 17(1)(a) of the Act. I find that the appeal has no prospect of success.

[11] I make the following order:

The application is dismissed with costs.

JH Roelofse AJ

Acting Judge of the High Court

APPEARANCES:

FOR THE APPLICANTS: ADV SJ VAN RENSBURG SC

Instructed by van Rensburg Kruger Rakwena

FOR THE FIRST RESPONDENT: ADV FJ ERASMUS SC

Instructed by van Heerden & Brummer Inc. 4

DATE OF HEARING: 14 March 2018

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Prepared on 14 October 2026 · Esheria