

SOUTH AFRICA / JUDGMENT

Fountainhead Property Trust v FHP Managers (Pty) Ltd (61/LM/Sep10)

[2010] ZACT 75 (3 November 2010)

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COURT

Competition Tribunal

BEFORE

Norman Manoim, Yasmin Carrim, Andreas Wessels

CASE / FILE NUMBER

61/LM/Sep10

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 61/LM/Sep10

In the matter between:

Fountainhead Property TrustAcquiring Firm

And

FHP Managers (Pty) Ltd in respect of the

Constantia Valley Sale PropertyTarget Firm

Panel : Norman Manoim (Presiding Member) Yasmin Carrim (Tribunal Member) Andreas Wessels (Tribunal Member)

Heard on : 06 October 2010

Order issued on : 06 October 2010

Reasons

issued on : 03 November 2010

Reasons for Decision

APPROVAL

On 06 October 2010, the Competition Tribunal (“Tribunal”) unconditionally approved the transaction involving Fountainhead Property Trust and FHP Managers (Pty) Ltd in respect of the Constantia Valley Sale Property (see paragraph below). The reasons for the approval follow

below.

PARTIES TO THE PROPOSED TRANSACTION AND THEIR ACTIVITIES

The primary acquiring firm is Fountainhead Property Trust (“Fountainhead”)1, a property unit trust managed by Fountainhead Property Trust Management Ltd (“FPTML”). Fountainhead is a closed-end

fund and listed on the JSE. FPTML is the asset manager of Fountainhead and is jointly owned by Standard Bank Properties (Pty)

Ltd and Liberty Group Ltd.

Fountainhead is a diversified real estate investment fund, invested in retail, industrial and office property mainly in the metropolitan areas of South Africa.

The primary target firm is FHP Managers (Pty) Ltd (“FHP Managers”) in respect of the Constantia Valley Sale Property. FHP Managers is a wholly owned subsidiary of Standard Bank Group Ltd. The Constantia Valley Sale Property comprises FHP Managers’s undivided 4/5 (four fifths) share in section 4 of the proposed sectional title scheme known as Constantia Valley, situated in Constantia Kloof, Roodepoort, Gauteng. Section 4 of Constantia Valley forms part of an office park known as Constantia Valley Office Park and is categorised as A-grade office space. This development was completed in 2009.

FHP Managers is a developer and trader in property assets. It owns certain office, retail and industrial properties in South Africa and performs its own asset management services. The relevant part of the property portfolio of FHP Managers for purposes of this transaction is however only the above-mentioned Constantia Valley Sale Property.

DESCRIPTION OF THE TRANSACTION

In terms of the sale agreement between the parties, Fountainhead is acquiring the Constantia Valley Sale Property from FHP Managers.

RATIONALE FOR THE TRANSACTION

Fountainhead submitted that this acquisition is in line with its strategy of acquiring A-grade properties, with strong and certain cash flow, in established nodes. FHP Managers submitted that as a trader and developer of property, it is looking to make a profit from the sale of the Constantia Valley Sale Property which was developed into A-grade office space in 2009.

COMPETITION

ANALYSIS

Although both the merging parties are involved in the property market, Fountainhead does not currently own any A-grade office property in the Constantia Kloof Basin where the target property is situated. There is therefore no horizontal overlap between the activities of the merging parties in respect of rentable A-grade office space in the relevant geographical node, i.e. the Constantia Kloof Basin.

CONCLUSION

The proposed transaction is unlikely to substantially lessen or prevent competition since there is no geographic overlap between the property rental activities of the merging parties. In addition, no public interest issues arise from the proposed transaction. Accordingly we approve the proposed transaction unconditionally.

Date: 03 November 2010

Andreas Wessels

Norman Manoim and Yasmin Carrim concurring

Tribunal Researcher: Ipeleng Selaledi

For the merging parties: Vani Chetty Competition Law

For the Commission: Nazeera Ramroop

¹Originally known as the Standard Bank Property Fund and subsequently Allan Gray Property Trust, Fountainhead was renamed “Fountainhead

Property Trust” on 01 June 2007.

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