

SOUTH AFRICA / JUDGMENT

Green and Another v Free State Development Corporation and Others (2103/2022) [2022] ZAFSHC 211 (24 August 2022)

[2022] ZAFSHC 211

COURT

Free State High Court, Bloemfontein

BEFORE

Africa

CASE / FILE NUMBER

2103/2022

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IN

THE HIGH COURT OF SOUTH AFRICA.

FREE

STATE DIVISION, BLOEMFONTEIN

Case

number: 2103/2022

Reportable:

NO

Of

Interest to other Judges: NO

Circulate

to Magistrates: NO

In

the matter between: GREGORY
GREEN
1st
Applicant
ANNIE
CHRISTINE
GREEN 2nd
Applicant
and
FREE
STATE DEVELOPMENT CORPORATION 1st
Respondent
REGISTRAR
OD DEEDS, BLOEMFONTEIN 2nd
Respondent
KRAMER
WEIHMANN ATTORNEYS 3rd
Respondent

CORAM: AFRICA,
AJ
HEARD
ON: 04
AUGUST 2022
DELIVERED

ON: This judgment was handed down
electronically by circulation to the parties' legal representatives
by email. The date and time for
hand-down is deemed to have been at
11h00 on 24 AUGUST 2022.

JUDGMENT

INTRODUCTION

[1] This is an application for an order in the following terms:

1. That the 3rd respondent be appointed as conveyancing attorneys with all rights and obligations therewith associated for the transfer of the immovable property known as Erf [...], T[...], District T[...], Free State Province.

2. That the 1st respondent be ordered and directed to sign all necessary

transfer and registration documents required to effect transfer of the immovable property known as Erf [...], T[...], District T[...], Free State Province, into the names of the applicants at the office of the 3rd respondent being Kramer Weihmann Attorneys, 24 Barnes Street, Westdene, Bloemfontein, within 7 days from date of this order.

3. That the Registrar of the Honourable Court be authorised to sign all necessary transfer and registration documents required to effect transfer of the immovable property known as Erf [...], T[...], District T[...], Frees State Province, into the name of the applicants in the event of the 1st respondent failing to comply with paragraph 2 above.
 4. That the 2nd respondent be authorised to register the immovable property known as Erf [...], T[...], District T[...], Frees State Province, into the name of the applicants after all necessary transfer and registration documents have been duly signed and any further legal requirements have been met.
 5. That the 1st respondent be ordered to pay the cost of this application on attorney and client scale.
 6. That such further and/or alternative relief be granted to the applicants as the Honourable court may deem fit.
- [2] The 1st respondent's opposing affidavit was filed out of time, but as the applicants took no issue with it and in fact raised no objection thereto, this court condoned the late filing of the 1st respondent's opposing affidavit.
- [3] Adv. Steenkamp on behalf of the applicants contends that the crux of this matter revolves around the applicant's right to property, who have complied with all the terms and conditions of the Sale Agreement. It is submitted that the Applicants as purchasers, concluded a written agreement of sale with the 1st Respondent, as seller, in respect of the property described as Erf [...], T[...], District T[...], Frees State Province ("the property").[1]
- [4] As the applicants have complied with all the terms and conditions of the agreement of sale, they are entitled to transfer of the property into their names.[2]
- [5] However, the 1st respondent has failed to effect the transfer to the applicants. In fact, the 1st respondent has failed to even appoint a conveyancing attorney to attend to the necessary transfer of property.[3]
- [6] It is common cause that during March 2017, the 1st applicant offered to purchase the property from the 1st respondent and subsequent thereto on the 3rd of July 2017, received a letter from the 1st respondent indicating its intention to sell and that the asking price is R150 000.00. The receipt of offer was confirmed and the applicants had to pay an amount of R179 944.60, within 90 (ninety) days from the 14th of July 2017.[4]
- [7] On the 17th of August 2017, a written agreement of sale was entered into between the parties and the applicants purchased the property for R150 000.00. excluding VAT. ("the agreement") [5]

- [8] It is argued that the applicants have complied fully with the terms and conditions of the agreement, one of the terms being that the applicants undertake to pay for and obtain the necessary clearance certificate from the local authority to enable the 1st respondent to proceed with obtaining a Deed of Grant for the incorporation and transfer to the applicants.
[6]
- [9] The applicants were only financially able to pay an amount of R54 972.48 to the Mangaung Metropolitan Municipality in respect of the clearance figures on the 10th of March 2021. Thereafter again on the 25th of April 2022 a further amount of R56 406.89 was paid, to settle the full amount outstanding to the Mangaung Metropolitan Municipality.
- [10] It is argued that not only have the applicants complied in all respects with their obligations in terms of the agreement, but they also tendered to pay the balance of the transfer costs, if any, as well as any other amounts due to the Municipality which may have accumulated since March 2021.
- [11] The applicants bemoan the 1st respondent's opposition to the application as meritless, with reference to the defences raised.
- [12] The 1st respondent submit that the applicants have not complied with the terms of the contract in that:
- [12.1] They failed to pay the clearance figures issued by the Mangaung Metropolitan Municipality and which were provided to them in May 2018 and valid until 30th of June 2018. These figures were obtained by the conveyancers appointed by the 1st respondent notwithstanding the fact that the applicants had a duty in terms of the contract to obtain the clearance certificate.[7]
- [12.2] The amounts paid by the applicants on the 10th of March 2021 and on the 22nd of April 2022 were not clearance figures obtained from the Mangaung Metropolitan Municipality but only a portion of the rates and taxes owing on the relevant municipal account. The Mangaung Metropolitan Municipality could not issue a clearance certificate contemplated in section 118(1) of the Municipal Systems Act without clearance figures having been applied for and obtained from that Municipality.[8] In fact it is submitted that the payment so made was not brought to the attention of the 1st respondent, as the 1st respondents duty to register the property arose on that date. Consequently, the applicants institution of these proceedings on the 9th of May 2022 did not afford the 1st respondent a reasonable time within which to register transfer of the property in the names of the applicants in terms of the contract.[9]
- [12.3] On the 18th of October 2017 a letter was written to the 1st applicant informing him that he is required to pay occupational rent in the amount of R2 590.71 until date of registration. ("Annexure EL1") [10] Further that the applicants will continue to be bound by the terms of the lease agreement entered into in respect of the property during the duration thereof.
- [13] In response hereto, the 1st applicant submits that prior to the conclusion of the agreement, they were in occupation of the property and in terms of the Agreement of Sale at Clause "E", Occupational Interest is "N/A". The court's attention was drawn to the Non-variation clause,

in the agreement of sale and the fact that the 1st respondent has never taken any legal steps to recoup any occupational rent but in fact indicated their decision "to withdraw the action" against the applicants purportedly for arrear rental in the amount of R222 721.46, excluding interest.

[14] Further, that notwithstanding various correspondence exchanged between the Applicants' attorneys and the 1st respondent's attorneys in respect of the appointment of a conveyancer to see to the transfer of the property into the names of the applicants, the 1st respondent has failed to appoint an attorney and/or conveyancer to effect the transfer of the property.

[15] Evidently, the 1st respondent in their letter dated 27 October 2021[11] states that the 1st respondent has decided that " the property be registered in the name of Mr Green in terms of the purchase and sale agreement". However it is submitted that as section 118(1) is a statutory restraint on the registration of property, the reasonable time agreed upon in clause 6.3 of the contract should be calculated from the date of payment of the clearance figures and not the date of payment of the purchase price, bearing in mind that the contract stipulates that the purchase price is payable on the date of

registration of the transfer.[12]

[16] Clause 6.3 of the agreement reads as follows:

"Transfer of the property shall be effected by the seller within a reasonable period after the purchaser has paid the full purchase price referred to in paragraph 1.2 hereof, or secured the purchase price or balance of the purchase price by a bond"

[17] The 1st respondent contends that only after 25 April 2022, would the municipality have been in a position to issue the clearance certificate and only thereafter can the transfer be done, but the 1st respondent was not afforded enough time to ensure registration in the name of the applicants, therefore this application is premature.

[18] Further that the applicants are not entitled to the order for specific performance, namely the prayer to appoint a specific attorney because the contract says that it's the right of the 1st respondent to choose whomsoever it wishes, to effect the transfer.

[19] In rebuttal hereof, the applicants contend that the 1st respondent's submission that it appointed conveyancing attorneys in this matter, is misplaced. No less that 3 (three) conveyancers have dealt with this matter over a period of 3 (three) years and yet the applicants have not been informed hereof. The applicants asked this court to take a dim view of 1st respondent's submissions in this regard because it appears that the 1st respondent does not carry the view of bringing this matter to finality and justice and equity dictates that this court come to the assistance of the applicants who have complied fully and are still not the owners of the property. It is further argued that nowhere in the agreement is the right reserved for the 1st respondent to "choose whomsoever it wishes, to effect the transfer.

[20] As it is the submission of the 1st respondent that it has always tried to transfer the property into the names of the applicants but could not do so without the Municipality

clearance figures being paid by the applicants.[13]

This court makes an order in the following terms:

1. That the 1st respondent is ordered to appoint a Conveyancer from its panel within 14 (fourteen) days from the date of this order, to effect the transfer of the immovable property known as Erf [...], T[...], District T[...], Free State Province.
2. That the 1st respondent is ordered and directed to sign all necessary transfer and registration documents required to effect transfer of the immovable property known as Erf [...], T[...], District T[...], Free State Province, into the names of the applicants, within 14 (fourteen) days from date of this order.
3. That the Registrar of the Honourable court is authorised to sign all necessary transfer and registration documents required to effect transfer of the immovable property known as Erf [...], T[...], District T[...], Free State Province, into the name of the Applicants in the event of the 1st Respondent failing to comply with paragraph 2 above.
4. That the 2nd respondent is authorised to register the immovable property known as Erf [...], T[...], District T[...], Free State Province, into the name of the applicants after all necessary transfer and registration documents have been duly signed and any further legal requirements have been met.
5. That the 1st respondent is ordered to pay the cost of this application on party and party scale.

AFRICA, AJ

APPEARANCES:

COUNSEL FOR THE APPLICANTS: Adv.

Steenkamp

Instructed by: Kramer Weihmann Inc

COUNSEL FOR 1st RESPONDENT:

Adv. Litheko

Instructed by: Litheko

Motsoeneng Inc.

[1] Paragraph 1 of applicants heads of arguments.

[2] Paragraph 2 of applicants heads of arguments

- [3] Paragraph 3 of applicants heads of arguments
- [4] Record page 11 par 8.4.
- [5] Record page 11 par 8.5.
- [6] Paragraph 10.9 of Applicants heads of argument
- [7] Paragraph 13.1 of 1st respondent's heads of argument.
- [8] Paragraph 13.2 of 1st respondent's heads of argument
- [9] Paragraph 14 of 1st respondent's heads of argument
- [10] Paragraph 7 of 1st respondents opposing affidavit
- [11] Annexure "FA13" record page 40
- [12] Paragraph 15 of 1st respondent's heads of argument
- [13] Paragraph 11 of 1st respondents opposing affidavit

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