

TRANSFER ANNULLED AS SELLER WAS NOT INFORMED OF PURCHASER'S CORRECT IDENTITY

Uniting Presbyterian Church in SA and Another v Reformed Presbyterian Church in Southern Africa and Others (1438/2018) [2019] ZASCA 129 (30 September 2019)

A church breakaway group bought a property from the City of Cape Town at a time when the latter was led to believe that the purchaser belonged to an existing congregation. The Court here annulled the agreement of sale as well as the subsequent transfer, holding that the conduct of the purchaser caused a material mistake (error in persona) and rendered the sale agreement null and void. The judgment is a valuable read, especially for illustrating that apart from an ostensibly valid sale agreement, there was no 'real agreement' or consensus to pass transfer and that this resulted in annulling registration of transfer.

The Judgment can be viewed [here](#).

FACTS

Erven 546 and 547 Langa have for many decades been used as a church hall (erf 546) and manse (erf 547) by the Reformed Presbyterian Church in Southern Africa (the RPCSA, which was previously known as the Bantu Presbyterian Church in Southern Africa). One of its congregations was the Tiyo Soga Memorial Congregation (the Tiyo Soga Congregation) in Langa and it was this congregation which occupied the properties since at least 1940, apparently in terms of a 99-year lease agreement entered into with the legal predecessor of the City of Cape Town municipality (the City).

At the time when the Bantu Presbyterian Church in Southern Africa changed its name to the RPCSA in 1979, it consisted of 11 presbyteries situated across South Africa, each in turn consisting of several congregations which owned and had rights to various immovable properties. The majority of the members and worshippers of the RPCSA were black. Its mainly white counterpart was the Presbyterian Church of Southern Africa (the PCSA). The demise of apartheid led to the desire to unify the RPCSA and the PCSA. This set in motion a comprehensive process to constitute a new unified church.

This process culminated in the establishment of the Uniting Presbyterian Church in South Africa (UPCSA) in 1999, collectively governed by its general assembly. A new governing document was adopted which dealt with all aspects of the joined church. Amongst other things, and dealing with property interests of the various united congregations, it was specifically noted that "sites in former Black townships and areas which either of the negotiating Churches has leased or has permission to occupy shall be re-registered" in the name of the UPCSA.

A dispute during June 2004 resulted in a substantial number of the members of the Tiyo Soga Congregation (herein after referred to as 'the dissidents') resolving to withdraw from the UPCSA and this decision was conveyed to the UPCSA in a letter written on the letterhead of the 'UNITING PRESBYTERIAN CHURCH IN SA – PRESBYTERY OF THE WESTERN CAPE – TIYO SOGA MEMORIAL CONGREGATION'. Attempts to resolve the dispute were unsuccessful.

Although having broken away from the UPCSA, the dissidents remained in occupation of erven 546 and 547 Langa. They held the opinion that after their withdrawal from the UPCSA, they were entitled to the rights to and occupation of the properties because they (still) represented the RPCSA. (And, at the time, understandably, certain matters of implementation of the union still had to be attended to, such as transferring the properties to UPCSA and thereafter formally dissolving the RPCSA and PCSA.)

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In March 2005, the dissidents, acting in the name of the RPCSA, purchased erf 546 from the City, pursuant to which registration of transfer followed.

In June 2008, the dissidents, again acting in the name of the RPCSA, submitted an application to the City to purchase erf 547. As before and as required in terms of its standard procedures, the City published the application for public comment. This resulted in an objection to the application by the Langa Congregation of the UPCSA stating that the dissidents neither constituted nor represented the RPCSA.

At about this time, the UPCSA became further aware that erf 546 had already been sold and transferred to the dissidents. It consequently approached the Western Cape High Court: Cape Town for, amongst other things, an order setting aside the sale and transfer of erf 546, obliging the City to transfer it to its Langa Congregation and affording the latter the opportunity to submit an application to purchase erf 547. The application was dismissed.

UPCSA then appealed to the Supreme Court of Appeal (SCA).

In the SCA the dissidents defended the matter arguing that the transfer of the immovable properties of the RPCSA to the UPCSA had not been completed and that the RPCSA therefore remained in existence and their agreement with the City remained valid and binding.

HELD

- It was beyond doubt that the congregations of the RPCSA were integrated into the UPCSA during 1999 and that the RPCSA continued to have only a technical legal existence for the purpose of completion of the transfer of its immovable properties and other assets to the UPCSA.
- It followed that the dissidents did not and could not have become members of the RPCSA, nor its representatives, at that time.
- It was equally clear, however, that the dissidents had led the City to believe the contrary; that they indeed represented the RPCSA. The truth was that the dissidents were a breakaway group that did not represent the RPCSA and that the RPCSA was, in any event, bound to transfer its properties and rights to the UPCSA.
- The City would not permit the sale of public property to a person that materially misrepresented its identity. In the result, the conduct of the dissidents caused a material mistake (*error in persona*) on the part of the City. This representation resulted in a fundamental (material) mistake on the part of one party and rendered the 'contract' between them *void ab initio*; no contract ever existed. This was so because there was no consensus between the parties. In such a case there was no need for cancellation or rescission because there was nothing to cancel or rescind.
- It followed that no sale agreement came into existence in respect of erf 546. It was immaterial that the City did not purport to rescind or cancel such agreement.

Effect of the abstract theory of transfer

- Our law subscribes to the abstract theory of transfer of immovable property. This theory holds that the validity of the transfer of ownership is not dependent on a valid underlying agreement: ownership of immovable property passes on registration of transfer, notwithstanding that the underlying contract is defective, if the registration gives effect to a so-called real agreement, that is, a meeting of minds to transfer and receive

ownership.

- The general principles applicable to agreements apply to real agreements. Thus, a real agreement may itself be defective or may not have come into existence. In such a case registration of transfer does not result in the passing of ownership and has no effect.
- It was clear that in the present matter the City had no intention to transfer ownership of erf 546 to the dissidents. It intended to transfer ownership to the RPCSA, an entity that the dissidents did not and could not represent.
- In the result there was no real agreement to transfer and receive ownership of erf 546. Despite the registration of transfer in the name of the RPCSA, ownership of erf 546 did not pass and remained vested in the City.

Did UPCSA have standing to obtain relief in respect of these transactions?

- Yes, when the new unified body was duly established, RPCSA's rights to the 99-year lease in respect of the properties and any rights to obtain ownership of the properties were relinquished to the UPCSA. The UPCSA therefore had a direct and substantial interest in the sale and transfer of the properties. It chose to exercise its rights through the Langa Congregation. And as a resident of the area of jurisdiction of the City, the Langa Congregation in any event had standing to hold the City accountable for the unlawful alienation of public property.

CONCLUSION

The agreement with and transfer to the dissidents were therefore set aside.