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SUMMARY OF THE JUDGMENT

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>> PROPERTY LAW UPDATE

PROTECTION FOR VULNERABLE PURCHASERS – LAW CHANGES

Sarrahwitz v Martiz N.O. and Another (CCT93/14) [2015] ZACC 14 (4 June 2015)

The Alienation of Land Act has certain provisions that protect purchasers who buy residential land in terms of installment payments stretching over more than 12 months, in the case of a seller's subsequent insolvency. In this judgment the Constitutional Court held that it was not constitutionally defensible to deny the same protection to a vulnerable purchaser who bought residential property in terms of a cash sale agreement where the purchase price was paid in one lump sum, or in less than a year. The Alienation of Land Act was amended accordingly, by reading in clauses to effect this outcome.

The Judgment can be viewed here.

FACTS

Ms Sarrahwitz entered into a sale agreement with Mr Posthumus to purchase a house. She borrowed money from her employer and paid the full purchase price in one lump sum. Due to oversights and incorrect allocation by the local authority of money paid to obtain the rates clearance certificate, transfer of the house did not come to pass.

Mr Posthumus was later declared insolvent, when transfer had still not been passed.

Upon Postumus' sequestration, the property became part of his insolvent estate. After failed negotiations with Sarrahwitz, the trustee in the insolvent estate (having the election to continue with the agreement or not in terms of the insolvency laws, in the best interests of the body of creditors), elected not to transfer the house to her.

Ms Sarrahwitz launched an application seeking transfer of the property into her name in the Eastern Cape High Court, Port Elizabeth (High Court), arguing that she was entitled to this in terms of the Alienation of Land Act (the ALA). The High Court held that her sale agreement was regulated by common law, that the house vested in Mr Posthumus' insolvent estate and that she was not entitled to transfer. Various applications for leave to appeal were dismissed for lack of prospects of success and Ms Sarrahwitz then applied for leave to appeal to the Constitutional Court.

HELD:

- Chapter II of the the ALA has provisions that enables a purchaser of residential property who pays the purchase price in two or more instalments over a period of one year or longer, to demand transfer of that property if the seller becomes insolvent. The mechanism generally assists vunerable purchasers who do not have means to access traditional funding for home purchases.

- However, an equally vulnerable purchaser who somehow manages to make a once-off payment or pays the purchase price within a year is not entitled to transfer in similar circumstances. Transfer is precluded even if the failure to do so would render the vulnerable purchaser homeless.
- The ALA is therefore inconsistent with Ms Sarrahwitz's constitutional rights of access to adequate housing, dignity and equality.
- The ALA consequently had to be amended by reading in words to confer a right on a vulnerable purchaser to take transfer of residential property, for which the full purchase price was paid in one lump sum or in less than a year, in the event of the seller's intervening insolvency.
- This right to transfer will only arise when the purchaser is likely to become homeless should transfer not take place.
- The court ordered the trustee to transfer the house to Ms Sarrahwitz.

The appeal was upheld and the order of the High Court set aside.

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