

NO ESCAPE FROM THE SIMPLE WORDS OF THE ALIENATION OF LAND ACT WHEN SELLING OR BUYING LAND

Stucky v Brechoost CC and Another (D5105/2020) [2021] ZAKZDHC 26 (18 August 2021)

In pursuance of an oral agreement for the sale of land concluded in 2012, the purchaser signed an offer to purchase in 2018 and subsequently sought the Court's assistance when the representative of the seller, a CC, refused to sign in acceptance. This after the members had, in an undated resolution, approved the sale and appointed the representative to sign the necessary documentation to effect transfer. In fact, a power of attorney was signed in which the CC's representative authorised the conveyancers to pass transfer to the purchaser. But the Court refused to force the CC to sign the offer. This was because the purchaser's application, in essence, sought for the offer to be constituted as a valid deed of sale, in these circumstances. This, the Court held, would side-step the Alienation of Land Act's requirement that for a sale agreement of land to be valid, it must be recorded in writing and signed by the parties or their representatives.

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

FACTS

In 2012, an oral agreement was concluded between Mrs Stucky, her late husband and the Brechoost CC (the CC), represented by Mr Brecher, for the purchase and consolidation of a property registered in the name of the CC.

Thereafter, and only in 2018, Mrs Stucky signed a written offer to purchase the property for an amount of R50,000.00 pursuant to the oral agreement. According to Mrs Stucky, following the conclusion of the offer to purchase, she was tasked with drafting and submission of various layout plans to the local authority for subdivision and consolidation approval, on behalf of the CC. The CC never signed the offer.

Since that time and despite being tasked by the members of the CC in terms of a resolution to sign the necessary papers in order for Mrs Stucky to take transfer of the property, Mr Brecher refused to do so.

Mrs Stucky launched an application in court for an order compelling Mr Brecher to sign the offer to purchase for and on behalf of the CC. She alleged that she had already paid R25,000 to the CC as an initial payment towards the purchase price.

Apart from the 2018 offer to purchase signed by Mrs Stucky (alone), she relied on:

- (i) the undated, signed resolution of the members of the CC, which recorded the sale by Mr Brecher of the property to Mrs Stucky for the amount of R50,000, and which authorised him to sign all papers necessary for the registration of transfer;
- (ii) a Power of Attorney, dated 26 November 2018, in which Mr Brecher authorises the attorney to proceed with the transfer of the property to Mrs Stucky. In the Power of Attorney it was recorded that 'the said property having been sold by me on 19 November 2018 to the said transferee for the sum of R50 000,00'. (The judgment does not reflect where this power of attorney originated from, but presumably conveyancers were appointed to proceed with transfer, at some stage.)

Mrs Stucky argued that, viewed together, these documents satisfied the essentials for the alienation of land in accordance with section 2(1) of the Alienation of Land Act (the Act) and had to be interpreted as the formulation of an intention on the part of the CC to sell the property to her. It was submitted further that the members of the CC had not

sought to set aside the resolution and neither had the power of attorney been revoked by Mr Brecher.

The CC and Mr Brecher submitted that while an oral agreement initially existed in 2012 to sell the property, the discounted price offered in respect of the property had been overtaken by the passage of time and that they were no longer desirous of selling the property (which they now consider to be valued in the region of R250,000).

The issue to be determined was whether a valid and binding deed of alienation for the purposes of section 2(1) of the Act was in place.

HELD

- Section 2(1) of the Act provides that an alienation of land shall not “ be of any force or effect unless it is contained in a deed of alienation signed by the parties thereto or by their agents acting on their written authority.” What was obviously lacking here was Mr Brecher’s signature to the 2018 offer to purchase.
- The problem was that an oral agreement for the sale of land does not meet the requirements for the Act. The subsequent documentation drawn in 2018 cannot convert the *de facto* oral agreement into a *de jure* agreement.
- The essence of the application is that Mrs Stucky sought for the court to declare the 2018 offer, in light of surrounding factors, to constitute a valid deed of alienation. The written documents which she sought to rely on as the basis of her claim, can be interpreted as evidence of the intention on the part of the CC to sell their property to her. However a court cannot order parties to contract with each other.
- Mrs Stucky, in bringing this application, was attempting to secure through the courts what she had been unable to achieve through the normal process of bargaining with a seller to purchase immovable property. She was trying to achieve something novel: By taking a collective of documents which do not on their own meet the requirements of the Act, to constitute a collective, from which the intention must be inferred that the CC intended to sell the property and that a valid agreement existed.
- A contract of sale is a consensual agreement by which one of the contracting parties (the seller) binds itself to the other (the buyer) to exchange a thing for a definite sum of money (the price) which the buyer promises to pay to the seller. The essentials of the contract are agreement upon the *merx* (i.e. the thing sold), the price and the obligation of the seller to deliver the *merx* to the buyer. The approach contended for by Mrs Stucky did not comply with these principles and would side-step and circumvent the provisions of the Act.

CONCLUSION

The application failed.