

SALE SUBJECT TO 'OBTAINING FUNDS FROM' AN INHERITANCE

Patrinos (N.O) v Theresa (883/2021) [2021] ZAFSHC 226 (17 September 2021)

In property sale transactions that do not follow the usual pattern - facilitated by an estate agent with funding obtained from a bank – it is important for sellers and buyers to pay very special attention to details. In this matter, the parties included a suspensive condition rendering the sale subject to the purchaser “obtaining funds” from a deceased estate. The inheritance was subsequently paid over, but not before the purchaser grew cold feet and sought to escape liability. She argued that the agreement lapsed for lack of “obtaining funds” by a certain date, as the funds were not paid over at the relevant date. The seller argued there was fulfillment as the funds were “available”, and the condition met.

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

FACTS

In May 2020 Ms Kaufmann sent an email to Mrs Patrinos, in her capacity as trustee in the estate of her late mother. Ms Kaufmann enquired whether the deceased properties in Dewetsdorp was for sale and, if so, what the purchase price was.

This culminated later on into the signing of an agreement of sale between the executor and Ms Kaufmann. The properties were sold for R750,000.00, this amount being payable in cash on/or before 30 October 2020. A suspensive condition was included, to the effect that the agreement was subject to Ms Theresa obtaining funds from the deceased estate of one B Hodgson, to cover the purchase price and costs, within ninety (90) days of the signature. The clause was included in the deed of sale by the attorney acting for Ms Kaufmann. It read as follows: “This offer is subject to a suspensive upon the purchaser **obtaining funds from** Estate Late B. Hodgson to cover purchase price and costs within 90 days of signature hereof” (Our emphasis.)

Subsequent to signing the agreement, Ms Kaufmann took occupation of the property. On 17 September 2020 the Master granted permission that the funds in the estate of the late B Hodgson be paid to Ms Kaufmann. On 18 September 2020, the executor paid an initial amount of R25,000.00 into the bank account of Ms Kaufmann.

Then, on 21 September 2020, Ms Kaufmann approached the executor with a request to be released from the sale agreement. Ms Kaufmann cited threats to her personal safety as the main reason for the requested cancellation. The executor refused, and Ms Kaufmann thereupon claimed that the agreement had lapsed because the suspensive condition had not been met.

HELD

- This matter rests on the question whether the suspensive condition in the sale agreement was fulfilled. In terms of the written agreement, the condition had to be met by 30 October 2020. The contract of sale thus comes into existence only when the condition is fulfilled.
- The seller and buyer differed in their interpretation of the phrase “obtaining funds from the Estate Late B. Hodgson”.

How to interpret the wording used in the suspensive condition?

- The provision in the contract must not only be interpreted in the context of the contract as a whole, but the

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Court must give a commercially sensible meaning to the contract. This approach is subject to qualification: The rule of interpretation requires to ascertain what the language used by parties means. Thus a sensible and business-like interpretation should be sought, *provided* it does not violate the actual wording of the agreement.

- In the present matter, the purchaser argued that the words “obtain funds” meant “funds paid over”, whilst the seller argued that it rather meant “funds being available”.
- It was apparent from the outset that the negotiations which culminated with the signing of the sale agreement were premised on the purchaser, Ms Kaufmann, accessing her inheritance from the estate. Such funds could only be accessed and “obtained” once the Master of the High Court had given such permission upon compliance with the relevant requirements in respect of the administration of a deceased estate. On 17 September 2020 such permission was granted that Ms Theresa must be paid her inheritance.
- Thus it appeared that the funds were available to be paid to the transferring attorneys for a period of six (6) weeks before 30 October 2020, the due date mentioned in the agreement. There was no explanation advanced by Ms Kaufmann as to what caused the delay in paying over the purchase price. In fact, it was odd that Ms Kaufmann, a few days after the funds could be accessed, purported to cancel the contract of sale. At that initial stage, she raised amongst others attempted robbery and land invasion by squatters. When that failed, she raised the expiration of the suspensive condition as the reason for cancellation. (It was in any event clear, at this stage, that funds were indeed available, as she had on 18 September 2020 received an initial payment of R25,000.00 from the executor in the estate of the late B Hodgson.)
- The conduct of Ms Kaufmann was reminiscent of that of a person who deliberately frustrated the fulfilment of the suspensive condition.
- In addition, it will not make commercial sense or appeal to logic if one interprets the suspensive condition as suggested on behalf of Ms Kaufmann. Rather, the language used by the parties envisaged that the funds will be obtained once the Master of the High Court had approved the Liquidation and Distribution Account. That is a sensible approach in interpreting the provision because once the permission is granted, payment follows in the natural cause of events. Logic dictates that, in the context of the contract as a whole, the suspensive condition envisaged the contract coming into existence the moment Ms Kaufmann, as purchaser, secured the funds. Ms Kaufmann was entitled to the funds and the process of paying over to her was a part of the administration of the estate which could not have been reversed by anyone. If the parties intended it to mean “paid over by the executor”, they would have simply written it in that way. There is in any event no authority to interpret the word “paid” as a synonym of the word “obtain”.

CONCLUSION

The conclusion is that the suspensive condition was fulfilled, and thus the contract of sale perfected when the funds were obtained following the approval of the Liquidation and Distribution Account by the Master. The sale agreement was declared valid and binding on the parties and Ms Kaufmann was ordered to give due effect to the terms and conditions of the sale agreement.