

A BUYER FOR YOUR EX PARTNER'S HALF SHARE: CAN BE TRICKY

Bosman v Hoffmann (48330/2021) [2022] ZAGPPHC 588 (12 August 2022)

Apart from the emotional strain that accompanies the break-up of a cohabiting couple, it is another hurdle to untangle the financial implications, especially where a property was owned jointly and mortgaged. The judgment below is a case in point. The ex-partners had entered into an agreement that the one's half share in the property would be bought out by Mr S. However, the ex-partners had initially bought the property with bond financing and thus were co-debtors for the entire outstanding bond debt. S qualified for a bond for the value of the half share, but not the full amount of the debt as a co-debtor. The Court thus granted the order for termination of the joint ownership, meaning a sale of the property and division of the proceeds.

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

FACTS

Bosman and Hoffman were in a romantic relationship for some time and decided to buy a home together, each owning one half in undivided shares. Hoffmann ran a creche business from a part of the property. They obtained a joint bond from Standard Bank to finance the purchase of the property.

Later, when the relationship soured, Bosman moved out of the property, renting a residence somewhere else. Hoffmann continued to reside in the property from where she ran the business of a kindergarden (within a portion of the property as was the case from the inception).

In November 2016, Bosman issued summons against Hoffman claiming: (i) termination of joint ownership of the property, and (ii) payment of an outstanding amount due and owing to him in terms of an agreement between the parties.

In April 2020 they signed a settlement agreement. Claim (i) was settled on the basis that Bosman's 50% share in the property would be sold to a certain Mr Swanepoel ('Swanepoel'), and claim (ii) was settled on the basis that Hoffmann would pay a certain amount to Bosman. The settlement agreement was made an order of Court and the amount in (ii) was duly paid over to Bosman.

Swanepoel however did not purchase Bosman's 50% share in the property. What happened was that in August 2021 Swanepoel cancelled his home loan application (which was for purposes of purchasing Bosman's half share), and advised the parties that the transaction they envisaged in the settlement agreement (that he buys a half share in the property) was in fact more complex. This is because the bondholder would not simply release Bosman as debtor and replace him with Swanepoel. From the bank's point of view, Bosman and Hoffmann are co-debtors for the entire amount on the outstanding bond. Thus, Swanepoel and Hoffmann would need to apply anew for a joint bond in both their names for the full amount. Swanepoel however did not qualify for a bond in that amount.

Bosman thereafter approached the Court, seeking an order for termination of the joint ownership. Hoffmann resisted the application, claiming that she stands to suffer great economic and financial prejudice should she be forced to dispose of her half share in the property. This included relocation costs of her business, rental increases and that she may be forced to close her business should she not find a suitable property in the same area where the property in question is.

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Actio communi dividundo

- No co-owner is obliged to remain a co-owner against his or her will. In the absence of an agreement to the contrary, any co-owner may demand partition of the common property at any time, except if the parties had agreed not to effect a division until the expiry of a certain period. An agreement *never* to terminate the joint ownership is null and void.
- A termination of joint ownership can occur either voluntarily or pursuant to a Court order.
- The Court has a wide discretion to effect an equitable partition. Where a division is not practical, the Court can award the property to one joint owner on the basis that he must compensate the other joint owner for his or her shares. Where the methods of partitioning appear to be impractical, the Court may order the property to be sold by public auction and the proceeds to be shared among the joint owners.
- Against this context, it is noted that an economic hardship is not a defence to a claim for the termination of joint ownership. At best, such circumstances will be taken into account by a Court when determining the mode of division.
- Hoffmann's circumstances could not serve as a tool to shackle Bosman to the joint property in perpetuity. The romantic relationship was the glue that held the parties together. With its end, the parties ceased living together and Bosman was entitled to achieve a clean-break from their past.
- The fact that they did make a serious effort to get a purchaser of Bosman's share of the property counts in favour of a liquidation of the property with the proceeds shared, less any proven claims by either party.

CONCLUSION

The application for termination of the joint ownership therefore succeeded.