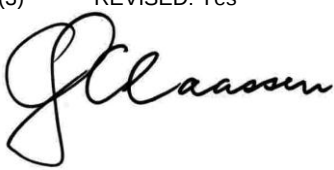


IN THE HIGH COURT OF SOUTH AFRICA

(SOUTH GAUTENG HIGH COURT, JOHANNESBURG)

CASE NO: 1866/2010

DATE: 2012-02-09

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: Yes
	
SIGNATURE	<u>17 July 2013</u> DATE

In the matter between

JOEY SUZETTE STEYN

Applicant

and

GREGORY VILJOEN

^{1st} Respondent

ABSA BANK LTD

^{2nd} Respondent

REGISTRAR OF DEEDS, JOHANNESBURG

^{3rd} Respondent

J U D G M E N T

C. J. CLAASSEN J:

[1] I have a notice of set down in terms of rule 6(5) to argue for the payment of the costs of an application which was settled. In the notice, the first respondent, Mr Gregory Viljoen, is indicated as being the person to be held responsible for paying the costs.

[2] The main application was instituted on 9 March 2010 wherein the

applicant, Ms Steyn, sought an order against Mr Viljoen, Absa Bank and the Registrar of Deeds, to transfer a certain immovable property into the name of the applicant. In the body of the founding affidavit, reference is made to the written deed of sale which was concluded between Mr Viljoen as the seller and Ms Steyn as the purchaser. In paragraph 33 of the founding affidavit of the main application, Ms Steyn undertook to pay the balance outstanding of the purchase price secured by a bank guarantee as provided for in the agreement.

- [3] It is common cause that an amount of R10 000 was paid in cash, leaving a balance of R130 000 which was to be secured by a bank guarantee. In the answering affidavit of the main application, the first respondent took the point that there is no tender of the balance in the notice of motion. In my view that is not a valid point as the body of the founding affidavit, paragraph 33 contains such a tender.
- [4] Ultimately the property was transferred into the name of the applicant. However, what is now outstanding is to decide who is to be liable for the payment of the application brought by Ms Steyn for the transfer of the property. The first respondent denies liability for such costs, relying on a letter which was sent by his attorney of record on 5 March 2010. It is common cause that the letter incorrectly refers to the balance of the purchase price as R140 000.
- [5] The important paragraph is as follows:

“The First Respondent hereby without prejudice tenders transfer of the property to the Applicant upon payment of the R140 000.00 plus arrears on occupational rent at the agreed rentals of R2 300.00 and R1 300.00 respectively to be calculated, plus all the electricity consumed on the premises during the period of the Applicant’s occupation, also to be calculated from vouchers in the First Respondent’s possession.

The offer is open for acceptance and the furnishing of guarantees for payment of the above amounts until 15th March 2010.”

- [6] Within five days in a letter dated 10 March 2010, the applicant's attorney of record accepted the offer, but indicated that the balance was R130 000 and not R140 000. He also requested a statement supported with vouchers regarding the outstanding amounts, I presume in regard to the question of arrear occupational rentals, electricity, etcetera.
- [7] The first respondent now adopts the attitude that the acceptance of the offer in the letter of 5 March 2010 constituted a compromise which also included payment of the costs of the main application. In my view there can never be a compromise when one party accepts payment of the entire amount claimed by the other side, more so there can be no compromise of the delivery of property which is not separable or which is indivisible.
- [8] In this case the settlement referred only to the transfer of the property against the supply of guarantees for the balance and payment of the arrear occupational rental, electricity and rates and taxes. Nothing was contained in the letter containing the offer of costs of the application. In my view that cannot consist a compromise which included the question of who is to pay the costs of the main application.
- [9] In my view the cost should normally follow the result. The result in this case was that the applicant was successful in obtaining transfer of the property as a result of the application. I cannot find that the so-called offer and acceptance was in full and final settlement, including the question of costs.
- [10] I therefore order that the first respondent pay the cost of the main application, including the costs reserved on 7 December 2011.

DATED THE 17th DAY OF July 2013 AT JOHANNESBURG

A handwritten signature in black ink, appearing to read 'C. J. Claassen', with a large, stylized initial 'C'.

C. J. CLAASSEN
JUDGE OF THE HIGH COURT

Counsel on behalf of the Applicant: Adv D. J. Smit

Counsel on behalf of the Respondents: Adv S. M. Katsew

Attorney on behalf of the Applicant: Leon J. J. van Rensburg Attorneys

Attorney on behalf of the Respondent: H Miller Ackermann & Bronstein
Attorneys

Argument was heard on 9 February 2012