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**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case No. **008158/2022**

1. REPORTABLE: NO
2. OF INTEREST TO OTHER JUDGES: NO
3. REVISED: 17/01/2024

JULIAN YENDE

24 JANUARY 2024

In the matter between:

LESIBA PERCY MAJA

Applicant

And

THABISO MAAKE

First Respondent

ABEL JACOBUS GROBBELAAR

[In their capacity as the Trustees for
The time being of the Comfort-Zone Trust
Registration No. IT 00729/2020]

Second Respondent

JUDGMENT

YENDE AJ

Introduction

- [1] This matter concerns an opposed application where the applicant seeks an order to compel the respondents to sign a new sale agreement for the immovable

property described as portion 30 of erf 2[...] M[...] Extension 120 Township Registration Division J.R, Gauteng Province Measuring 364 (Three Hundred and Sixty- Four) Square Metres and also to sign all transfer documents in order to pass transfer of the property to the applicant.

Common cause and Factual matrix.

[2] On 23 March 2021, the applicant and the respondent entered into a sale agreement in respect of which the respondent made an offer (“the offer to purchase”) to sell the property which belonged to the respondent to the applicant for an amount of R 900 000.00 (Nine Hundred Thousand Rand) which was duly signed by the parties.

[3] It is common cause that on 3 June 2021 the applicant and the first respondent signed an addendum to the offer to purchase (“the addendum”) *inter alia* the terms of the buildings on the property, increasing the balance of the purchase price to R650 000.00. In terms of the addendum, the applicant was allowed a period of six (6) months from 1 June 2021 to complete the buildings of the property at his own expenses.

[4] It is apposite for the purpose of this judgment to restate the material clause(s) of the addendum signed on 3 June 2021 by the applicant and the first respondent. Clause 1 reads as thus;-

“ 1. The Purchaser will be allowed a period of six (6) months from 1 June 2021 to complete the buildings on the property, at his own costs and in accordance with the approved building plans, and to obtain a certificate of occupancy from the City of Tshwane”.

Clause 4 reads as thus;-

“ 4. Within 7 (seven) days from the date of issuing of the certificate of occupancy by the City of Tshwane, the Purchaser will apply for a Home Loan at all major banks for the balance of the purchase price of R650 000,00 (six Hundred and Fifty

Thousand Rand), which loan must be approved within 15 (fifteen) days thereafter”.

[5] As adumbrate *supra* the facts of this matter are crisp and in fact common cause. Having said that, the need for me to delve into the facts beyond what I have described above, as this Court would ordinarily do under a different set of circumstances, does not exist in *casu*.

[6] The applicant averred that the building was completed in November 2021, which was within the six (6) months period provided for in the addendum to the “Offer to Purchase” signed and dated 1 June 2021. According to the applicant the six (6) months period was to expire in December 2021; and by November 2021 being the 5th month, the City of Tshwane conducted the site inspections and later the issued the Certificate of Occupancy in June 2022.

[7] The applicant further averred that having completed the building of the property at the end of November 2021, it notified the seller in this regard and furthermore, it applied for the home loan with Standard Bank and same was duly approved for R810 000.00 (Eight Hundred and Ten Rand), thus enough to settle the balance of the purchase price. However, since the “Certificate of Occupancy” from the City of Tshwane was not yet obtained, the applicant decided not to continue with the registration of the bond over the property in order to comply with clause 4 of the addendum as mentioned early above.

[8] The applicant averred that during the process of securing a home loan within (7) seven days from of being issued with the occupancy certificate as per clause 4 of the addendum, the credit provider required a newly signed offer to purchase in order to register the home loan. The respondent refused to sign the new offer to purchase to give effect to the transfer of the property thus the refusal by the respondent to sign a new offer to purchase is deemed by the applicant as a repudiation of the contract.

[9] As the result, the applicant seek the relief from this court to order the respondent to sign a new sale agreement of R650 000, 00 (Six Hundred and Fifty Thousand Rand)

within (7) seven court days and thereafter to sign all the necessary document to pass transfer to the applicant, failing which, the Sheriff to be authorized to sign on behalf of the respondent.

[10] Conversely, the respondent deny that the applicant completed the building by November 2021. The respondent contends that as at the end of November 2021 the building was not completed in that ;

[1] The electrical installation for the house had not been completed, the plumbing had not been completed and the ceiling had not been installed;

[2] The window glass had not been installed and the painting inside and outside was not done;

[3] The paving inside the yard and the plastering of the boundary wall as per the complex rules was not done, flooring and tiling of the balcony, garage and front veranda was not done.

[4] The relevant building plans and the occupancy certificate was not obtained from the City of Tshwane within the period agreed on in terms of the addendum.

[11] It is contended by the respondent that the applicant had to obtain a certificate of occupancy following, having completed the buildings on the property within six (6) months from 1 June 2021 as per clause 1 of the addendum.

[12] The respondents argues that the addendum contained the “suspensive condition(s)” being clause(s) 1 and 4. Consequently, the applicant’s failure to comply with the same by the end of the six (6) months period agreed between the parties resulted in the “offer to purchase” lapsing by effluxion of time and that the same was validly cancelled by way of the letter sent to the applicant on 4th January 2022.

[13] The respondent contends that the addendum as result of the failure by the applicant to comply with the same is no longer valid and enforceable, thus neither the

applicant nor the respondents are under no obligation to conclude a new offer to purchase as requested by the applicant.

[14] The respondent further contends that it is impermissible for this court to in light of the circumstances in *casu* to grant the order sought by the applicant in terms of the Notice of motion.

[15] As adumbrated *supra* this is a contractual dispute, embedded in this contractual relationship is the “Offer to Purchase” with an “Addendum” that contains suspensive conditions. I am of the firm view that there are no disputes of fact that justify reference to oral evidence. The crisp issue before me revolves around the interpretation of the addendum that contains the suspensive conditions.

A brief exposition of the legal framework concerning approach to contractual interpretation is necessary. The contextual approach to contractual interpretation is now mostly settled and “(the) inevitable point of departure (in interpreting a contract) is the language of the provision itself” as it was explained by the SCA in Natal Joint Municipal Pension Fund v Endumeni Municipality.¹

[16] Recently in the matter of Z v Z² the SCA, albeit in the context of the interpretation of statutes, reiterated that words must be given their ordinary grammatical meaning, unless to do so would result in absurdity.

¹ 2012 (4) SA 593 (SCA) at para 18 it was held that: “Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax, the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible, each possibility must be weighted in light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusiness like results or undermines the apparent purpose of the document. The inevitable point of departure is the language of the provision itself, read in context and having regard to the purpose of the provision and the background to the preparation and production of the document”.

² (556/2021 [2022] ZASCA 113 (21 July 2022) at paragraphs 7 and 15.

[17] In the matter of Tshwane City v Blair Atholl Homeowners Association³ the SCA explained that the court has moved away from a narrow peering at words in an agreement and has stated on numerous occasions that words in a document must not be considered in isolation. Restrictive consideration of words without regard to context should therefore be avoided. It was consequently held that the “distinction between context and background circumstances has been jettisoned with reference to the matter of KPMG Chartered Accountants (SA) v Securefin Ltd and Another 2009 (4) SA 399 (SCA) at 409I -410A.

[18] The Court further noted, *“Since this court’s decision in Endumeni, we are seeing a spate of cases in which evidence is allowed to be led in trial courts beyond the ambit of what is set out in the preceding paragraph. We are increasingly seeing witnesses testify about the meaning to be attributed to words in legislation and in written agreements. That is true of the present case in which, in addition, evidence was led about negotiations leading up to the conclusion of the ESA.”*

[19] Recently and in the matter of Capitec Holdings Limited v Coral Lagoon Investments 194⁴, the SCA again commented as follows with regards to courts allowing evidence beyond the ambit of the approach set out in Endumeni:

“None of this would require repetition but for the fact that the judgment of the High Court failed to make its point of departure the relevant provision of the subscription agreement. Endumeni is not a charter for judicial constructs premised upon what a contract should be taken to mean from a vantage point that is not located in the text of what the parties in fact agreed. Nor does Endumeni licence judicial interpretation that imports meaning into a contract so as to make it a better contract, or one that is ethically preferable”

[20] Consequently, In the matter of Choisy-Le-Roi (Pty) Ltd v Municipality of Stellenbosch and Another⁵, Binns-Ward J, with reference to the decision of University of

³ 2019 (3) SA 398 (SCA).

⁴ 2022 (1) SA 100 (SCA)

⁵ 2022 (5) SA 461 (WCC)

Johannesburg v Auckland Park Theological Seminary and Another⁶, held that in a contractual context an enquiry into the meaning of a text should be directed at determining, within the limits defined by the language the parties have chosen to use, what the parties had intended. He further held that in the context of statutory interpretation the rule of law requires the statutory text to speak for itself and that a person cannot be expected, in the context of legislation, to have to “dig into its drafting history to find out whether it really bears the meaning that its language conveys...”⁷

[21] Insofar as dispute of fact are concerned, it is instructive to refer to *Plascon- Evans Paints Ltd v Van Reibeeck Paints (Pty) Ltd*⁸ where the Court said at paragraph 40 that an Applicant who seeks final relief on motion must in the event of conflict of facts, accept the version set out by the respondent, unless the latter’s allegations are, in the opinion of the Court, not such as to raise a real, genuine or bona fide dispute or are so far-fetched or clearly untenable that the Court is justified in rejecting them merely on papers.

Analysis

[18] As adumbrated *supra*, the applicant and the first respondent on 23 March 2021 entered into a sale agreement in respect of which the respondent made an offer (“the offer to purchase”) to sell the property which belonged to the respondent to the applicant and further on 3 June 2021 the applicant and the first respondent signed an addendum to the offer to purchase (“the addendum”). In terms of the addendum, the applicant was allowed a period of six (6) months from 1 June 2021 to complete the buildings of the property at his own expenses.

[19] The period of six (6) months ended on the November 2021. The respondent deny that the applicant completed the building by November 2021. As at the end of November 2021 the electrical installation for the house had not been completed, the plumbing had not been completed and the ceiling had not been installed. The window

⁶ (2021) ZASCA13; 2021 (8) BCLR 807 (CC); 2021 (6) SA 1 CC.

⁷ See paragraph 38 of the judgment in this regard.

⁸ 1984 (3) SA 623 (A) at 634E- 635C.

glass had not been installed and the painting inside and outside was not done. The paving inside the yard and the plastering of the boundary wall as per the complex rules was not done, flooring and tiling of the balcony, garage and front veranda was not done.

[20] Most importantly, the relevant building plans and the occupancy certificate was not obtained from the City of Tshwane within the period agreed on in terms of the addendum.

[19] The respondent argues that the addendum contained the “suspensive condition(s)” being clause(s) 1 and 4. Consequently, the applicant’s failure to comply with the same by the end of the six (6) months period agreed between the parties resulted in the “offer to purchase” lapsing by effluxion of time and that the same was validly cancelled by way of the letter sent to the applicant on 4th January 2022.

[20] The applicant concedes that its role included interalia to complete the roof, plastering, plumbing, electricity, painting, tiling, ceiling and the installation of windows and doors. The applicant further concedes that in around December 2021 well after the suspensive condition contained in the addendum has lapsed he only begun to compile the necessary documentation to apply for the Certificate of Occupancy and “he realised that he was missing important documents required to apply for the Certificate”.

[21] I found that the applicant failed to complete the building on the property in terms of the addendum duly signed on 3 June 2021 and that as the result thereof, the “Offer to Purchase” had lapsed by effluxion of time. I further accept that the respondent had validly cancelled it through the letter that was sent to the applicant on 4 January 2022. The applicant’s contention that the refusal by the respondent to sign the new offer to purchase as contended in the notice of motion is rejected and it cannot be construed in law as the repudiation of the offer to purchase.

[22] The applicant cannot seek to enforce an offer to purchase that has validly lapse through effluxion of time and equally so the applicant cannot force the respondent to sign a new offer to purchase because the previous one has lapsed.

[23] Consequently, I am constrained to make the following order;

Order

[1] The application is dismissed

[2] The applicant is ordered to pay costs of the application on party and party cost

J YENDE
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

This judgment was prepared by **YENDE AJ**. *It is handed down electronically by circulation to the parties/their legal representatives by e-mail and uploaded on Caselines electronic platform and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed 24 January 2024.*

Heard on: 25 October 2023

Delivered on: 24 January 2024

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