

IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION SOUTH AFRICA

Case No: 2569/2013

In the matter between:

MURIEL CORNELISSEN

Applicant

and

NATASHA COLLEEN NORRIS

First Respondent

SHA-IESTAH HAYMAN

Second Respondent

EG COOPER MAJIEDT INGELYF

Third Respondent

THE MASTER OF THE HIGH COURT,

BLOEMFONTEIN

Fourth Respondent

THE REGISTRAR OF DEEDS, BLOEMFONTEIN

Fifth Respondent

ABSA BANK BEPERK

Sixth Respondent

JUDGMENT BY:

SESELE, AJ

HEARD ON:

17 OCTOBER 2013

DELIVERED ON:

21 NOVEMBER 2013

- [1] This is an application to compel the first respondent to pass transfer of the property known as Erf 849 Ashbury, district Bloemfontein, Free State Province ("the property") to the applicant, alternatively, for an order authorising the sheriff of this court to take such steps on the first respondent's behalf to transfer the property to the applicant.

- [2] The applicant also launched applications for condonation for the late filing of the replying affidavit and non-compliance with the court order. These applications are dealt with later in the judgment.
- [3] The property initially belonged to the applicant and her late husband. The property was transferred to the applicant during 1988.
- [4] The applicant experienced financial difficulties and during 2000 the property was transferred to the applicant's son, who is now deceased. The applicant's son and the first respondent were married in community of property on 7 August 2004.
- [5] A mortgage bond number B190/2000 for R80 000,00 was registered against the property in favour of the sixth respondent during 2000.
- [6] During 2005 a second mortgage bond number B19280/2005 was registered against the property in favour of the sixth respondent for R65 000,00.
- [7] The first respondent and her former husband divorced on 19 October 2006. The deed of settlement of the divorce matter did not regulate the division of the joint estate and the first respondent therefore remained the owner of the undivided half share in the property.

- [8] During December 2011 the first respondent brought an application against her former husband under case number 5478/2011 to compel the former husband to take transfer of the undivided half share in the property and/or cause the endorsement to be registered to the effect that the former husband would be the sole owner of the property and that the first respondent would be released from liability to the sixth respondent in respect of the first and the second mortgage bonds.
- [9] On 21 January 2012, while the above case was pending, the first respondent and her former husband sold the property to the applicant in terms of the written Agreement of Purchase and Sale ("the agreement").
- [10] The first respondent and her former husband reached settlement which was made an order of court.
- [11] This application turns on non-compliance with the terms of the said court order. The court order under case no 5478/2011 provides *inter alia* that:
- "1. Applikante die koopkontrak (Agreement of Purchase and Sale deur Adams Real Estate), aangeheg tot die aansoek stukke as aanhangsel "X", binne vyf (5) dae na verlening van hierdie bevel onderteken indien sy dit nog nie onderteken het by verlening van die bevel nie.
 2. Applikante dring nie aan op stiptelike nakoming van paragraaf 1.3 van aanhangsel "X" nie en moet Respondent toesien dat waarborge deur die koper binne een (1) maand na verlening van hierdie bevel

aan die oordraggewende prokureurs (EG Cooper Majiedt Ing. – Donovan Majiedt) verskaf word.

3. Oordrag van die eiendom in naam van die koper (**Muriel Cornelissen**) moet binne drie (3) maande na verlening van hierdie bevel geskied en word Respondent gelas om toe te sien daartoe.”

[12] Paragraph 1.3 of the agreement to which the court order relates provides:

“1.3 The PURCHASER shall provide GUARANTEES from a financial institution on or before 01/03/2012 (DATE) to secure payment of the said amount (BALANCE / WHOLE) to the SELLER on registration of transfer of the property into the name of the PURCHASER and registration of a mortgage bond if necessary.”

[13] As the court order was granted on 3 May 2012, it is apparent from the terms of the court order that the applicant had until about 4 June 2012 to obtain the guarantees which her son, the first respondent's husband, should have delivered to the transferring attorneys.

[14] The applicant further had until about 2 August 2012 to take transfer of the property. The court order states that the first respondent's former husband should see to it that the property is transferred to the applicant.

[15] The court order granted on 3 May 2012 has not been set aside and therefore remains valid. (**Bezuidenhout v Patensie Sitrus Beherende Bpk** 2001 (2) SA 224 (ECD) at 229B.) Significantly, the court order only changed the date of the furnishing of the guarantees. In other words, the court order did not do away with

the suspensive condition but merely changed the deadline for furnishing of the guarantees.

[16] Since the date for furnishing the guarantees has lapsed the court will not order specific performance because performance has become impossible – **Benson v S A Mutual Life Assurance Society** (1) SA 776 (A) at 783E – F, Christie, **The Law of Contract**, 5th Edition, page 145.

[17] The effect of non-fulfilment of a suspensive condition is that the contract naturally lapses upon non-fulfilment of the condition. The court in **Kovacs Investments 724 (Pty) Ltd v Marais** 2009 (6) SA 560 (SCA) which was decided in the context of a suspensive condition which provided for cancellation of the contract upon non-fulfilment of the suspensive condition did not find differently.

[18] The applicant's explanation for the delay to take transfer of the property does not change the fact that the guarantees were not furnished on the due date in terms of the court order. The late filing of the replying affidavit also has no effect on the non-fulfilment of the suspensive condition.

[19] The costs must follow the result

ORDER

[20] The application is dismissed with costs, including costs for the applications for condonation for the late filing of the replying affidavit and non-compliance with the court order.

L. M. SESELE, AJ

On behalf of the applicant:

Adv. L. A. Roux
Instructed by:
Plaaitjies Attorneys
BLOEMFONTEIN

On behalf of the respondent:

Adv. N. Snellenburg
Instructed by:
Honey Attorneys
BLOEMFONTEIN

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