

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO.: 14725/2016

(1)	REPORTABLE:	no
(2)	OF INTEREST TO OTHER JUDGES:	no
(3)	REVISED:	yes
DATE		29/01/2016
SIGNATURE		[Redacted Signature]

In the matter between:

VILLA ANNE BOTIQUE HOTEL GROUP CC

Plaintiff

and

MACOLINK INVESTMENTS (PTY) LTD

First Defendant

RELIANCE AUCTIONS (PTY) LTD

Second Defendant

JUDGMENT

VAN DER WESTHUIZEN, J

- [1] The plaintiff instituted an action against the defendants in respect of a claim for confirmation of the cancellation of a sale agreement and the repayment of a deposit paid following on a sale of a property on auction. The plaintiff alleged that the defendants did not disclose certain impediments of the said property which impediments impacted upon the

ability to use the property for the purpose for which it was purchased. The purpose being to use the property as a guesthouse.

- [2] The cancellation of the sale agreement was premised upon the following alleged undisclosed facts:
- (a) The existence of a High Court interdict granted by the Gauteng High Court, Johannesburg, under case number 21196/2015 which restricted the use of the property as a commercial entity in contravention of the zoning rights afforded to properties classified as Residential 2 properties. The restriction was not limited to the use of the property as a guesthouse.
 - (b) The existence of a High Court application for the review and setting aside of the building plans for the property under case number 40997/2015 on the basis that the building plans were approved in contravention of the National Building Regulations and Building Standards Act, 103 of 1997.
- [3] The vexed property was the subject of an auction arranged by the second defendant. It acted as the auctioneer thereof. The first defendant was the owner of the said property. The auction took place at the site of the property. A number of bidders registered to participate at the auction, one of which was the plaintiff.
- [4] The auction appears to have been widely advertised and a special invitation to participate was addressed to the plaintiff, who had acquired a number of properties in the past that she utilised as guesthouses.
- [5] It was the plaintiff's case that the advertisement in respect of the auction of the said property clearly advertised that the said property could be utilised as a guesthouse. For that reason, the plaintiff's interest in the auction was raised. The catch phrase in the advertisement read:

**EXECUTIVE ACCOMMODATION & GUEST HOUSE OPPORTUNITY
RES 2**

- [6] It is common cause that RES 2 relates to the property zoning and could permit an application to utilise the property in respect of a number of uses, including the use as a guesthouse. Such use required an application to the municipality for permission for the specific intended use. The procedure for such application is prescribed by law. The plaintiff confirmed her knowledge and experience in the said requirement of obtaining the said use permission.
- [7] The plaintiff testified that she arrived at the auction just prior to the commencement thereof. Her evidence was that unbeknown to her, the said property was the subject of a high court interdict prohibiting the property being utilised as a guesthouse and that the plans of the buildings erected thereon were not approved. It is further the plaintiff's case that those facts were not made known at the auction, either prior to the commencement thereof, or during the auction.
- [8] It is to be noted that at the entrance of the property, and in the immediate vicinity adjacent thereto, huge placards were placed clearly indicating the existence of the high court interdict. Pamphlets were also handed out to people entering the premises advising of the said interdict. Photos of the placards at the entrance to the property were entered into evidence. These photos depicted the size of the placards and could hardly be not noticed.
- [9] In this regard, the plaintiff testified that she had not noticed the placards, nor received a pamphlet, when she entered the property as she was late and in a hurry. Apparently, she appeared to have been preoccupied.
- [10] A video of the proceedings prior to the commencement of the calling for bids and during auction was entered into evidence. It stands to be recorded that the quality thereof was poor. Subsequent to the hearing of

the matter, a copy of the video was provided to me. I further called for a transcript of the recording to assist in following the video. By agreement between the parties such transcript was provided.

- [11] From the video and the transcript thereof, the plaintiff moved out of the room where the auction was being held at the time the auctioneer commenced with the formalities. The auctioneer noticed that and remarked that as she was a bidder, she would not hear what was going to be said. One of the other bidders remarked that the plaintiff indicated that she could hear what was being said.
- [12] The rules of the auction and the conditions and terms thereof were read out and clarified prior to calling for a bid. It was clearly indicated by the auctioneer that there was an objection raised to utilising the property as a commercial entity. It was further clarified that as a result of the objection the zoning was not in place for commercial use and specifically for any other use, including a guesthouse. It was clearly stated by the auctioneer that should any purchaser wish to use it for commercial purposes, that person would be required to go through the normal channels and procedure in that regard. The auctioneer called for any questions relating to zoning and the like, and stated clearly that the property was being sold *voetstoots*. The property was to be sold as a RES 2 property. As recorded earlier, that meant that following on the prescribed procedure, a specific type of commercial use of the property may be applied for. It was also clarified which portions of the plans were apparently the subject of an objection. It was further clarified that a successful purchaser was required to deal with the objection to the plans of the property. It was also made clear that the property could be used by the purchaser for any purpose he or she intended, provided that it was residential use.
- [13] Thereafter the bidding commenced and the bid was awarded to the plaintiff. In terms of the conditions of the auction, she was obliged to pay

the required deposit. The plaintiff paid the deposit as required. That payment formed the basis of the plaintiff's claim.

- [14] It was the plaintiff's clear and sole intention to purchase the property to utilise it as a guesthouse. This intention was not made known to the auctioneer at the auction. The plaintiff further testified that neither the advertisement, nor the info pack, disclosed the existence of the interdict or that the plans of the buildings were not approved, whether the subject of high court proceedings or an objection thereto registered at the municipality.
- [15] The plaintiff further testified that on concluding the purchase of the property and signing the necessary documentations and after leaving the property, she was approached by a person who handed her the pamphlet referred to earlier indicating the existence of the high court interdict and the complaint in respect of the plans. It was only thereafter that she realised that she could not use the property as a guesthouse and that she would have to participate in the existing legal proceedings, subsequently having received notice by the party initiating the interdict procedures.
- [16] On obtaining legal advice, the plaintiff cancelled the purchase agreement and sought to reclaim the paid deposit. The basis upon which she cancelled and claimed repayment of the deposit was due to her being unaware of the interdict and the objection to building plans of the property, and that she consequently could not utilise the property for her intended purpose to utilise it as a guesthouse.
- [17] There is no merit in the plaintiff's contentions: that the advertisement contained a misrepresentation in that it was to be sold as a guesthouse; that the defects to the use of the property as a guesthouse were known to the auctioneer, yet it proceeded to advertise and offer it as a guesthouse.

- [18] The plaintiff has only herself to blame for her inattentiveness. She entered the premises "with blinkers on" not noticing the warnings on the placard. She left the room where the auction was taking place at a time when the aforementioned issues were being ventilated, nor did she pay sufficient attention to the detail being related to the prospective bidders.
- [19] As recorded earlier, the issue of the zoning of the property was clarified to the extent that the bidders were forewarned that there existed no zoning for use of the property as a commercial entity and in particular that of a guesthouse and that the property could only be used for residential purposes. Those facts should have raised red flags to the plaintiff. The mere fact that the words "interdict", "application" and high court were not mentioned, is neither here nor there. The specific issue of zoning was clearly mentioned and that the property could only be used for residential purposes and that the buyer was obliged to follow the channels etc. if a different use was to be pursued.
- [20] Furthermore, the mere indication of "guesthouse" in the advertisement is of no consequence. The word is clarified by the word "opportunity". The context indicates a possibility of such use, that the property lends itself to be employed as such. It was certainly not advertised as a guesthouse as a going concern, or so specifically zoned. It was a mere opportunity to so employ the property, which would require the required steps to be taken.
- [21] It follows that the plaintiff cannot succeed in her claim and that it stands to be dismissed.

I grant the following order:

1. The action is dismissed with costs.

CJ VAN DER WESTHUIZEN J
JUDGE OF THE HIGH COURT
PRETORIA

On behalf of Applicant: B D Stevens
Instructed by: Krügel Heinsen Inc

On behalf of Respondent: L C M Morland
Instructed by: Eugene Pyper Attorneys

Date of hearing: 29-31 July 2025

Date of Judgment: 29 January 2026