REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED:

……………………….. ………………………….
DATE SIGNATURE

CASE NO: 2024-135980

In the matter between:

SAU ESTATES (PTY) LTD Applicant
(REGISTRATION NUMBER: 2016/098572/07)

And

CHAPPELBAUM PROPERTIES (PTY) LTD Respondent
(REGISTRATION NUMBER: 1999/009734/07)

JUDGMENT

DREYER AJ:

[1] In the present application the Applicant seeks an order for:

1.1 payment of the sum of R18 000 000.00 together with interest;

1.2 payment of the sum of R20 000.00 together with interest; and

1.3 costs of the application on an attorney and client scale.

[2] The relief sought by the Applicant arises out of a written Agreement of Sale (attached to the Founding Affidavit as Annexure "FA2") entered into between the parties on 28 January 2021 for the purchase of the immovable property situated at the property known as P[…] H[…], 1[…] E[…] O[…] Avenue, B[…], Johannesburg ("the immovable property").

[3] The Applicant is seeking repayment of the purchase price (being R18 000 000.00) and repayment of the portion of the transfer costs (being R20 000.00).

[4] In terms of clause 6 of the Agreement of Sale ("the agreement"):

4.1 the purchase price is R18 000 000.00;

4.2 the purchase price shall be paid by way of an initial amount of R5 000 000.00 within 5 (five) days of the signature date; and

4.3 payment of the balance of the purchase price amounting to R13 000 000.00 shall be made by way of 23 (twenty-three) successive monthly instalments of R541 600.00in plus a final instalment in the twenty fourth (24th) month of R543 200.00.

[5] The Applicant avers in the Founding Affidavit that it complied with its obligations in terms of the agreement, in particular:

5.1 by making payment of the full purchase price, with the final instalment being paid on or about 14 February 2023;

5.2 by making payment of a portion of the transfer costs associated with the transfer on 25 April 2024; and

5.3 by signing the relevant transfer documentation on request.

[6] The Applicant contends that the Respondent breached the agreement in that it failed to give transfer of the property to the Applicant within a reasonable time after payment of the last instalment of the balance of the purchase price was made.

[7] It is common cause that the Applicant made the final payment of the purchase price on or about 14 February 2023 and that the full purchase price has been paid by the Applicant and further that the Applicant made payment of a portion of the transfer costs on 25 April 2024.

[8] I deem it relevant to set out a brief chronology of the matter as follows:

8.1 27 January 2021 – parties conclude the agreement.

8.2 14 February 2023 – Applicant makes full payment of the purchase price.

8.3 25 April 2024 – Applicant makes partial payment of the transfer costs.

8.4 14 August 2024 – Applicant's attorneys of record address correspondence to the transferring attorneys (Brasg Associates Inc.) requesting a comprehensive progress report on the transfer.

8.5 29 August 2024 – Brasg Associates Inc. respond to the Applicant's attorneys of record advising of the difficulty experienced in obtaining the clearance figures from the City of Johannesburg ("the CoJ").

8.6 6 September 2024 – Applicant's attorneys of record address correspondence to Brasg Attorneys affording the Respondent 10 (ten) business days (i.e. until 21 September 2024) to register transfer of the immovable property.

8.7 13 September 2024 – Brasg Associates Inc. respond to the Applicant's attorneys of record advising that: (i) the Respondent has not been able to pass transfer as a result of valid clearance figures not being furnished by CoJ and without a valid clearance certificate being lodged, the transfer may not be registered by the Deeds Office; (ii) clearance figures have been received on 13 September 2024 to enable the clearance certificate to be applied for, whereafter transfer will be able to be lodged in the Deeds Office; (iii) it is not possible to comply within the 10 (ten) day period afforded in the letter under reply; and (iv) the Respondent tenders to pass transfer of the immovable property to the Applicant within a reasonable period.

8.8 19 September 2024 – Brasg Associates Inc. provide clearance figures to the Applicant's attorneys of record.

8.9 4 October 2024 – Applicant's attorneys of record respond to Brasg Associates Inc. recording that: (i) the Respondent has had more than reasonable time to register transfer of the immovable property to the Applicant and has failed to do so; (ii) the Respondent was placed on terms to effect registration of transfer within 10 (ten) days form the letter dated 6 September 2025 and failed to do so; (iii) the Respondent remains in breach of the agreement; and (iv) the Applicant hereby cancels the agreement, as provided for in terms of clause 18.1.2. The Applicant further demands repayment of the full purchase price and transfer costs paid.

8.10 1 November 2024 – Clearance certificate issued by the CoJ.

[9] The Respondent denies that the Applicant complied with its obligations in terms of the agreement. The Respondent contends that by only making partial payment of the transfer costs, the Applicant did not comply with its obligations in terms of the agreement. The Respondent contends by virtue of the Applicant's incomplete performance the breach notice and subsequent cancellation of the agreement are both invalid.

[10] The Respondent admits that the transfer of the immovable property has not yet been registered, and contends that the delay was beyond its control. The Respondent sets out that the dispute with the CoJ regarding the validity of the clearance figures and the issue of the clearance certificate was only resolved on 30 October 2024.

[11] Clause 13.1 of the agreement provides the parties agree that transfer of the immovable property shall be given to the Applicant within a reasonable time after the last instalment of the balance of the purchase price has been paid.

[12] Clause 13.2 of the agreement provides the Applicant shall, on request from the conveyancers (being Brasg Associates Inc.), pay all costs of and incidental to the concluding of this transaction by the transfer of the assets comprising the enterprise, including the immovable property, into the name of the Applicant. Such costs shall include the costs of issuing and obtaining a

rates clearance certificate/s from the local authority, but not the amount payable on the local authority rates clearance account required to be paid before the clearance certificate can be issued.

[13] The Respondent avers that the initial transfer costs account presented to the Applicant by Brasg Associates Inc. dated 5 April 2024 (Annexure “AA3” to the Answering Affidavit) was for a total amount of R182 308.80. The Applicant requested a reduction and after negotiating the requested discount and agreeing on the reduced amount with the Applicant, the transfer costs account was reduced to R149 945.50 (Annexure “AA4” to the Answering Affidavit, dated 25 April 2024). The Applicant was expressly requested to make payment of the reduced transfer costs account. The original of Annexure “AA3” was handed to the Applicant with the agreed hand-written amendments on it. Following on the request for payment, the Applicant undertook to make payment of the balance owing under the amended transfer costs account (Answering Affidavit paragraphs 14.2 to 14.5).

[14]

14.1 In the Replying Affidavit the contents of paragraph 14 (being paragraphs 14.1 to 14.7) of the Answering Affidavit are denied by the Applicant. In particular the Applicant denies that there was ever a request for payment. The Applicant contends that the Respondent cannot produce a single document, including any by Brasg Associates Inc., wherein the Applicant was requested to make payment of the transfer costs.

14.2 The denial of the Applicant also amounts to a denial of the following:

14.2.1 That the Applicant was presented with Annexure “AA3” to the Answering Affidavit, being the initial transfer costs account.

14.2.2 That Applicant requested a reduction and after negotiating the requested discount and agreeing on the reduced amount with the Applicant, the transfer costs account was reduced.

14.2.3 That the initial transfer costs account was reduced as requested by the Applicant and a new transfer costs account was issued by Brasg Associates Inc., attached as Annexure “AA4” to the Answering Affidavit and dated 25 April 2024.

14.3 This denial by the Applicant is non-sensical given that it is common cause that the Applicant made partial payment of the transfer costs on 25 April 2024 in terms of Annexure “AA4” to the Answering Affidavit.

[15] The Applicant further avers that on 7 November 2024 Brasg Associates Inc. was requested via email by a Ms Yvonne Janse van Rensburg, formerly of the Applicant’s attorneys of record, to *“… provide us with any and all demands delivered to our client for payment of the transfer costs.* According to the Applicant *“Brasg replied and confirmed, unsurprisingly, that no such “formal” demand had been made.”* However, the email thread the Applicant seeks to rely on, being Annexure “RA1” to the Replying Affidavit, only contains the email of Ms Janse van Rensburg. The reply from Brasg to the said email of Ms Janse van Rensburg is not attached to the Replying Affidavit. I can therefore not accept this version of the Applicant as the evidence the Applicant relies on in support of the version is not before the Court.

[16] The Applicant’s contention that the Respondent breached the agreement in that it failed to give transfer of the property to the Applicant within a reasonable time after payment of the last instalment of the balance of the purchase price was made must be viewed together with the following:

16.1 The Applicant waited for a period of approximately 18 (eighteen) months from the time full payment of the purchase price was made on 14 February 2023 before addressing correspondence to Brasg Associates Inc. on 14 August 2024 requesting a comprehensive progress report on the transfer.

16.2 No explanation is proffered by the Applicant as to what transpired during the said 18 (eighteen) month period and why the Applicant waited so long to request the said progress report on the transfer.

16.3 Approximately 1 (one) month and 3 (three) weeks lapsed from the time the Applicant requested a comprehensive progress report on the transfer on 14 August 2024 until the time the Applicant cancelled the agreement on 4 October 2024. During this period:

16.3.1 The Applicant was advised by the Respondent on 29 August 2024 of the difficulty experienced in obtaining the clearance figures from the CoJ.

16.3.2 Clearance figures were only received from the CoJ on 13 September 2024. The Applicant's attorneys of record were provided with a copy of the clearance figures on 19 September 2024, yet proceed to cancel the agreement approximately 2 (two) weeks later.

16.4 The dispute with the CoJ regarding the validity of the clearance figures and the issue of the clearance certificate was only resolved on 30 October 2024.

16.5 The clearance certificate was only issued by the CoJ on 1 November 2024.

[17] I cannot find support for a finding that the Respondent's contention that the delay was beyond its control is so improbable that it stands to be rejected. It is evident that the delay was in respect of the clearance figures, and was caused by the CoJ.

[18] As set out above the Respondent contends by virtue of the Applicant's incomplete performance the breach notice and subsequent cancellation of the agreement are both invalid.

[19] The obligations of the parties to the agreement are reciprocal. The obligation of the Applicant to pay the full purchase price and the transfer costs in terms of clauses 6 and 13.2 respectively of the agreement, is reciprocal to the Respondent's obligation to transfer ownership of the immovable property in terms of clause 13.1 of the agreement.

[20] The *exceptio non adimpleti contractus* can be raised as a defence in the case of reciprocal contracts. The principle of reciprocity and the *exceptio non adimpleti contractus* was reviewed in some detail by the Appellate Division in *BK Tooling (Edms) Bpk v Scope Precision Engineering (Edms) Bpk* 1979 (1) SA 391 (A). The principle of reciprocity recognises that in many contracts the common intention of the parties, expressed or unexpressed, is that there should be an exchange of performances, and the *exceptio* gives effect to this recognition of this fact be serving as a defence for the defendant who is sued on the contract by a plaintiff who has not yet performed or tendered to perform.

[21] In *Cradle City (Pty) Ltd v Lindley Farm 528 (Pty) Ltd* 2018 (3) SA 65 (SCA) it was held that the principle of reciprocity (*exceptio non adimpleti contractus*) recognises the fact that, in many contracts, the common intention of the parties, expressed or unexpressed, is that there should be an exchange of performance. Whether there is such an intention must often be determined by an interpretation of the contract. The common intention is that neither should

be entitled to enforce the contract unless he/she has performed or is ready to perform his/her own obligations.

[22] At the time of the delivery of the breach letter and subsequent cancellation letter, the Applicant had not fully performed in terms of its own obligation to make payment of the transfer costs. On its own version the Applicant only made payment of a portion of the transfer costs associated with the transfer.

[23] In the circumstances I cannot find that the breach letter and subsequent cancellation letter are valid.

[24] I also cannot find in support of the Applicant's contention that the Respondent breached the agreement in that it failed to give transfer of the property to the Applicant within a reasonable time after payment of the last instalment of the balance of the purchase price was made. As set out above, it is evident that the delay was in respect of the clearance figures, and was caused by the CoJ and not the Respondent.

[25] It is trite that all costs are in the discretion of the Court and that the underlying principle is that the Court's discretion must be exercised judicially upon a consideration of the facts of each case and that in essence it is a matter of fairness to both sides. I cannot fault the Applicant for launching the application given the lapse of time. But I also cannot fault the Respondent as the delay was not caused by the Respondent but by the CoJ. In the circumstances I think it just that each party should pay its own costs.

[26] I therefore make the following order:

1. The application is dismissed.

2. Each party is to pay its own costs.

E DREYER
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

This judgment was handed down electronically by circulation to the parties' legal representatives by email and by being uploaded to CaseLines. The date for hand down is deemed to be 19 May 2026.

Appearances:

Appearance for Applicant:	Adv. K Reddy
Instructed by:	Jason Michael Smith Inc.
Appearance for Respondent:	Adv. AC Comuzio
Instructed by:	Ebrahim Asvat Attorneys
Date of hearing:	22 April 2026
Date of Judgment:	19 May 2026