IN THE HIGH COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

1/8/2005

CASE NO: 28803/04

DELETE WHICHEVER IS NOT APPLICABLE

In the matter between:

(1) REPORTABLE: /NO
(2) OF INTETEREST TO OTHER JUDGES: /NO
(3) REVISED.

VILLA 2510 SAN LAMEER BK — Applicant

and

NICO RIEKERT VAN HEERDEN — 1st Respondent

ADELE MARITZE VAN HEERDEN — 2nd Respondent

JUDGMENT

MABUSE AJ:[1]. This is an application by the Applicant for the eviction of the 1st and 2nd Respondents from certain premises known as 977 Swarpiek Crescent, NinaPark, Extension 32, Pretoria. In the alternative, the Applicant applies for an order in terms whereof the Sheriff of Wonderboom is empowered to remove the Respondents and their possessions from the aforementioned premises, if they fail to vacate the said premises within 48 hours after the granting of the order.

[2]. According to the application, the Applicant is a close corporation, probably

/2 .... registered

registered in terms of the Close Corporation Act No.69 of 1984 and has its registered office at Villa 2510, San Lameer, Kwa-Zulu Natal. According to annexure "B" of the application, the description of the principal business of the Applicant is "investment in and letting out property". The First Respondent is Nico Riekert Van Heerden, an adult male who resides at the property. The Second Respondent is Adele Maritze Van Heerden, an adult female who also resides at the property. Both Respondents have chosen their domicilia citandi et executandi at Eagle Nest 7, Bishop Bird Street, Centurion. According to annexure "F", the Respondents are married to each other.

[3]. On the 28th May 2004 and in Pretoria, the Applicant and First Respondent entered into an agreement of purchase and sale in terms of which the Applicant sold to the 1st Respondent who bought from the Applicant, a property known as Erf No.976 O, Swartpiek Crescent, Ninapark, for an agreed price of R791 000.00 [SEVEN HUNDRED AND NINETY ONE THOUSAND RANDS]. All the terms of the said agreed are embodied in a written agreement of sale. A copy of the said agreement was attached as annexure"F" to the application. As the whole application revolves around the written agreement of sale, it is only appropriate to refer to its terms at this stage.

[4]. <u>THE TERMS OF THE AGREEMENT</u>

As already indicated somewhere *supra* the Purchase Agreement was entered into on the 28th May 2004 in Pretoria. It was signed by the 1 st Respondent in his personal capacity as the purchaser and his wife on the one hand and by the Seller's agent on

/3 .... the other

the other hand in presence of a witness. Seemingly only one witness was present when the said Agreement was signed by the parties as explained.

[4.1] The property that is the subject of the sale is Erf NO.976 0, Swartpiek Crescent, Extension 32, NinaPark.

[4.2]. According to clause 1 of the said Agreement, the purchase price was R791000.00(SEVEN HUNDRED AND NINETY ONE THOUSAND RAND) which sum was payable on cash on registration of the property. Included in the said sum of R791000.00 is an amount of R21000.00[TWENTY ONE THOUSAND RAND] for legal and transfer costs.

[4.3]. Clause 1 or the last part of it states that:

"Die koper sal binne 30 dae na aanvaarding hiervan, bank waarborge uitreik soos versoek deur die Verkoper of sy genomineerde aan die Verkoper of sy genomineerde vir die volle balans van die koopprys betaalbaar teen registrasie van oordrag".

[4.4]. Clause 1.4 states that:

“Hierdie koopkontrak is onderhewig aan die opskortende voorwaarde dat die Koper (of die Verkoper of die Agent in die Koper se belang) in staat is om 'n lening aan te gaan teen die sekuriteit van 'n verband(e) wat teen die eiendome passeer word vir 'n bedrag van nie minder as R791 OOO.OO[R21 000.00 for legal and transfer costs] .... uit te voer".

[4.5]. In terms of clause 2:

" Oordrag van die eiendom sal bewerkstellig word deur die Verkoper se prokureurs, W.D. Saayman, Burger Street, Pretoria North (die prokureurs) binne 'n redelike tyd nadat die Koper die voorwaardes van klousule 1 hiervan nagekom het en betaling aan

/4 .... die

die Prokureurs gemaak het van hereregte en alle ander koste noodsaaklik vir die oordrag, dit alles waarvoor die Koper aanspreeklik sal wees en verplig om voorsiening voor te maak op aanvraag. Sou die Koper betaling versuim van sulke kostes op aanvraag, word die Koper daarvoor aanspreeklik bly. Die Koper sal die koers betaal volgens die aanbevole tariewe. Indien die tariewe meer is as aanbeveel, sal die Verkoper die verskil betaal" .

[5]. On the 9th September 2004, the Applicant's Attorneys sent a letter to the Respondents at Bishop "Bud" Street, Eagles Nest 7, Centurion 0157. In this letter the Applicant's Attorneys drew the Respondents' attention to the provisions of clauses 1, 1.3, 2, 3.1, 6 and 10.1 and expressed an opinion that the Respondents committed breach of contract by failing to pay occupational rental in the sum of R791 0.00 per month from the 30 July 2004 (date of occupation) and by further failing to pay transfer costs and transfer duty. In the same letter, the Applicant's Attorney demanded from the Respondents that they comply with the provisions of clause 6 of the said agreement within ten(10) days of the sending of the said letter. The demand is couched in the following words:

"U word hiermee ingevolge klousule 6 van die koopooreenkoms in kennis gestel om binne (1 O)dae van versending hiervan die oordragkoste en hereregte by die kantore van die oordrag prokureur, Mnr W.O. Saayman Prokureurs, in te betaal en ook om aan al U finasieële verpligtinge kragtens die koopooreenkoms te voldoen en verder alle dokumente en aktes te onderteken te eiende volvoering aan die koopooreenkoms te gee".

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In the last paragraph of the said letter, the Respondents were warned that should they fail to comply with their obligations arising from the said agreements within the stipulated period, the Applicant would resort to the remedies it had in terms of the agreement and that those remedies included, among others, cancellation of the agreement and a claim for damages and interest.

[6]. The Respondents did not comply with the demand as set out in the letter dated the 9th September 2004. Consequently, the Applicant's attorney, and in their letter dated 29 September 2004, cancelled the agreement of sale. This letter was forwarded per registered post to the Van Heerden, Bishop "Bud" Street, Eagles Nest 7, Centurion, 0157. In the same letter, the Applicant's Attorney demanded that the Respondent should vacate the premises in question on receipt of the said letter. Copies of this letter were forwarded to the Respondent by ordinary post and to Messrs W.O. Saayman and

Corne' Kraamwinkel by telefax.

[7]. On 1 October 2004, the Respondents' Attorney responded to the letter dated 29 September 2004 from the Applicant's Attorneys. Their reaction can be summarised as follows:

[7.1]. With regard to the cancellation of the agreement, they stated that:

"Ons plaas dit hiermee op rekord dat U kliënt se kansellasie van die ooreenkoms nie aanvaar word nie en dat U kliënt aan die betrokke ooreenkoms gebonde gehou word".

[7.2]. While they expressed the view that the wording of clause 3 was unclear, they

/6 .....concluded

concluded, with regard to the issue of payment of occupational rental that:

"Ons kliënt is derhalwe bereid om die okkupasiehuur en ook die koste verbonde aan die oordrag van die eiendom op sy naam te betaal, maar nie om die beweerde hereregte verbonde aan die transaksie te betaal nie. Ten opsigte van die laasgenoemde het die partye nie oor gekontraakteer nie".

[8]. The Applicant duly responded to the Respondents' Attorneys letter dated the 1st October 2004 and another one dated 5 October 2004. During October 2004, the Applicant launched the present application and the Respondents are opposing the application and have also, in the same papers, launched a counter-application. The Respondents oppose the application on the following grounds that:

[8.1]. in terms of the agreement of purchase and sale, no occupational rental is payable;

and they deny that:

[8.2] they refused or failed to pay occupational rental

[8.3]. transfer duty was payable in the transactions.

[8.4]. they refused to pay transfer duty; and

[8.5]. they refused or failed to pay the transfer costs.

9. In response to the Respondents' ground that in terms of the agreement, no occupational rental was payable, the Applicant brought an application for rectification of the agreement. Part of clause 3.1 of the agreement states that:

"Okkupasie van die eiendom moet aan die Koper gegee word op ***registrasie*** van

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welke datum die Koper aan die Verkoper In okkupasie huur van R791 0.00 per maand maandeliks vooruit tot datum van oordrag of pro rata vir enige deel van In maand sal betaal, indien die Verkoper okkupasie behou van die eiendom na registrasie van oordra .... ".

It is quite clear that the said clause does not correctly reflect the intention of the parties. In the first place once registration of the property in the names of the purchasers has been effected, that would have meant that transfer of ownership of the property to the purchasers would have taken place. In the circumstances, there would have been no legal basis for the purchasers to pay occupational rental to the Seller. In the circumstances it could not have been the intention of the parties that the purchasers would, on becoming the owners of the property, pay occupational rental in respect of of their own property. Secondly it is quite apparent that the parties had intended that occupational rental at a sum of R791 0.00 per month should be paid. Evidence of this is found in the fact that the amount of R791 0.00 had been writen already at the time the parties signed the agreement.

10. The word "Registrasie" in clause 3.1 is in the circumstances inappropriate. In **TES VEN CC & ANOTHER v SOUTH AFRICAN BANK OF ATHENS 2000 (1) SA 268 SCA** in paragraph 16, the Court stated that:

II to allow the words that the parties actually used in the documents to over ride their prior agreement on the common intention that they intended to record is to enforce what was not agreed and to overthrow the basis on which contracts rest in our law, the application of no contractual thereon leads to such a result".

/8 .....Finally

Finally on this point, the Court in **LEYLAND (SA) (PTY) L TD v REX EVANS MOTORS (PTY)L TO 1980(4)S.A. 271 on p273 c-d**, held that:

" Rectification does not constitute a variation of the written agreement .... but rather a correction or completion of it so as to correctly reflect what the parties actually agreed".

[11]. The Court finds that clause 3.1 of the Agreement of Sale does not correctly set out the intention of the parties and that it should be rectified. Accordingly the application to rectify the said clause to replace the word *"registrasie"* with date "31 *Julie 2004"* is granted.

12. The Respondent's argument that occupational rental was not payable cannot be valid. In the first place and apart from lack of clarity, particularly with regard to the date on which rental would be payable, clause 3.1 provides for payment of rental in the sum of R7910.00 per month. The parties signed the agreement on 28th May 2004 with oneness in mind that rental would be payable on occupation of the premises.

[13] It would seem that the Respondents took occupation of the premises on 31 5t July 2004. This is clear from the second paragraph of a letter dated 2004 September 9 from the Applicant's Attorneys to the Respondents. The amount of R791 0.00 referred to in the third paragraph of the said letter is the same amount referred to in clause 3.1 of the Agreement. It is also clear from the said letter that the fact that the Respondent had not paid occupational rental in the sum of R791 0.00 formed one of the bases on which

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the Applicant cancelled the Agreement. In terms of paragraph 1 on page 2 of a letter dated 1[51] October 2004 from the Respondent's Attorney to the Applicant, which letter was written after the Applicant had cancelled the agreement, the Respondents' Attorney never disputed the fact or the statement that the Respondents took occupation of the premises on 31st July 2004. Moreover they never disputed the Respondents' responsibility to pay the occupation rental of R7910.00. The argument that the agreement does not contain a clause that obliged the Respondents to pay occupational rental negates the factual situation that the provisions of clause 3.1 do not reflect the true intention of the agreement of the parties. It is for this reason that the court finds that the Respondents' argument that occupational rental was not payable in terms of clause 3.1 of the Agreement does not hold water. Accordingly this court rejects the the Respondents' argument that occupational rental was not patable.

[14] The next question the court is faced with is whether transfer duty was payable in the transaction. This question emanates from the Respondents' argument that transfer duty was not payable. The Respondents' view is that *"die applikant moet bewys dat daar hereregte ten opsigte van die transaksie betaal moet word".* The Respondents take the view that transfer duty is not payable in the matter because, according to the provisions of Section 7(1) of the Value -Added Tax Act NO: 89 of 1991,

"*Subject to the exemptions, exceptions, deductions and adjustments provided for in this Act, there shall levied and paid for the benefit of the National Revenue Fund* a *tax, to be known* as *Value Added Tax-*

(a) *on the supply by any vendor of goods or services supplied by him on or after the*

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commencement date in the course or furtherance of *any enterprise carried by him.*

(b)

(c)

calculated at the rate of 14 *per cent on the value* of *the property".* The Respondents are of the view that because the purchase price is R791000.00, value added is therefore payable by the Seller.

[15] The other reason advanced and argued on behalf of the respondents was that during all the relevant times of the negotiations, an impression was created or a representation was made by the applicant that the transaction the parties were negotiating was of such a nature that value added tax, and not transfer duty, would be payable because the Applicant was a registered vendor.

The First Respondent states further in his affidavit, and it was also argued on his behalf, that "*dit was voorts ook deur die Applikant verduidelik dat die bedrag wat* as *BTW op die transaksie betaalbaar is, ingesluit by die koopprys van R791000.00 en dat ons dit derhalwe nie addisioneel tot die R791 000.* 00 *hoef te bataal nie. "*

[16] In support of this view, the Respondents obtained the affidavits of two independent people. The affidavits of these two people are attached to the Resondents' answering affidavits as annexures NVH2 and NVH3. Annexure NHV2 is an affidavit by one Michelle Meyer, an estate agent attached to Lorna Eiendomme Bpk. She states in her affidavit that, during may 2004, she spoke to a certain a Mr Smit. During their discussion, she said to the said Mr Smit *"jy is 'n ontwikkelaar en Btw geregistreer wat beteken dat die Koper slegs die prokureurs* se *fooie betaal."*

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According to her, the said Mr Smit confirmed the remark. The second affidavit was made by Beverly Lynn Watt. She states, referring to Michelle Meyer, that "Sy *het die verkoper* se *volmagtigde geskakel en weereens aan my bevestig dat die Verkoper 'n ontwikkelaar is, geregistreer is vir Btw en dat die Koper slegs prokureurs kostes en nie hereregte betaal nie."* It is consequently on the basis of the purchase price and the alleged representations contained in annexures NVH2 andNVH3 that the Respondents now claim and argue that value added tax, and not transfer duty, is payable in this transaction.

[17] For the following reasons, there exists no genuine merit in the Respondents' argument that value added tax, and not transfer duty, is payable in the parties' transaction. In the first place, nowhere in the agreement was it agreed between the parties that value added tax would be payable. In terms of clause 2 of the agreement, the Respondents agreed to pay transfer duty. The most important question with regard to this issue is not whether or not Value Added Tax or Transfer Duty is payable but what the parties agreed on. When the parties concluded their agreement, did they agree that Value Added Tax should be payable or that Transfer Duty should be paid. In West Rand Estates Ltd v New Zealand Insurance Co Ltd 1925 AD 245 at 261 (A) at Kotze J.A. stated that:

"The parties by entering into the contract of *insurance must be taken to have intended that they were to be bound by the terms contained therein".*

Likewise this court must invariably find that by entering into an agreement of Purchase and Sale, the Applicant and First Respondent had intended that they were to be bound

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by the terms of the said agreement. The court went further in that aforementioned case and stated that:

" The parties must be regarded as *having meant* a *business transactions and it is the duty* of *the court to construe their language in keeping with the purpose and object which they had in view, and* so *render that language effectual". Such is the*

principle of our law. *Thus Pothier obligations par.91* ff *citing lex* 219 *Verborum Signif Observes: "In agreements we should examine what is the common intention* of *the contracting parties, rather than the grammatical sense* of *the terms. Moreover we must construe the words in that sense which is most agreeable to the nature* of *the agreement'.*

IN Joubert v Enslin 1910 AD 6 Innes J.A. stated that:

"The Golden rule applicable to the interpretation of *the intention* of *the parties is to ascertain and follow the interpretation* of *the intention* of *the parties; and, if the contract itself, or any evidence admissible under the circumstances, affords* a *definite indication* of *the meaning* of *the contracting parties, then it seems to* me *that* a *court should always give effect to that meaning".*

[18] When one carefully reads the provisions if clause 1.4 of the agreement it is quite obvious that the contract price is mentioned as (R791 000) Seven Hundred and Ninety One Thousand Rands (R21 000.00 included for legal and transfer costs). No mention is made herein of Value Added Tax. Furthermore, a perusal of clause 2. of the said Agreement conclusively and undeniably indicates that the parties had agreed that

transfer duty would be payable. It is in the circumstances against the grain of both clauses 1.4 and 2 of the said agreement that Value Added Tax should be payable. To interpret the transaction as falling within the purview of the provisions of section 7(1) of Value Added Tax No: 89 of 1991, would be to read into the terms of the agreement

what the parties did not agree upon.

[19] Apart from clauses 1.4 and 2 of the agreement, there is, in keeping with the dicta in **Joubert vs Enslin,** "other admissible evidence"

" If the contract itself, or any evidence admissible under the circumstances affords a *definite indication of the meaning of the contracting parties ....."*. On the15th June 2004, Attorney W.D.Saayman, who had been appointed as the conveyancing attorneys, sent an estimate of the costs that would be involved in processing the transfer, to the Responsents' Attorneys. In that estimate, a sum of R46 180.00 was quoted as transfer duty. On the 1st July 2004, the Respondent replied to the Applicant's Attorney's letter and stated that:

"Ons verwys na bogemelde en gee U hiermee ons kantooronderneming om *die bedrag van R64624.00 aan u oor te betaal teen registrasie transport".* The amount of R64624.00 included a sum of R46180.00 in respect of transfer duty. In deed the said total of R64624.00 was deposited into the bank account of the Applicant's Attorneys on the 2nd August 2004. To my mind the actions of the parties up to this stage constitute a classical demonstration of the parties' intentions. The parties were, up to this stage *ad idem* that transfer duty was payable in this transaction. Accordingly the court accepts that the parties were, insofar as the nature of this transaction was concerned,

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of oneness in mind that transfer duty was payable and not Value Added Tax. The court finds that the parties' contract itself provided that transfer duty would be payable and that there is other admissible evidence that convincingly manifests the parties' agreement.

[20] Finally on this point, in The Principles of the Law of Contract, A.J. Kerr, 6th Edition p, 389, the Learned author states that!;

"*The standard approach to ascertaining the common intention* of *parties who disagree on the meaning* of *an express provision* of *their contract is to consider the nature" purpose and context* of *the contract".*

By these words the learned author was merely echoing the words of **Rumppff C.J.** in **Swart en in Ander v. Cape Fabrik (Pty)Ltd 1979, SA 195 A at 202c** where he said that:

"It is self-evident that when one considers the words of a *contract one must have regard to the nature and purpose* of a *contract* as a *whole".*

[21] It must be remembered that while it is the duty of a vendor to pay Vat to the South African Revenue Service, a certain amount from the purchase price in respect of service rendered, this amount is actually paid by the purchaser with the whole purchase price. The amount, which in terms of the law is 14% of the purchase price, will invariably be shown separately so that when the purchaser signs a document, like this Agreement, he is aware of the fact that, inter alia, he will pay a certain amount as Value Added Tax.

/15 ..... According

[22] According to the Respondents, the issue of whether or not Vat is payable, is a question of law and not of the interpretation of the agreement. The question whether or not value added duty or transfer duty is, in any particular transaction payable, is not an issue that is left to the agreement of the parties but is an issue that is determined by the operation of the law. The first and most important step in establishing whether or not a transaction is subject to transfer duty or value added tax, is to determine the status of the seller. If the seller is a vendor for the purposes of the particular transaction, then it goes without saying that vat is payable. If the seller is not a vendor for the purposes of that particular transaction, then transfer duty is payable. In terms of section 23 of the Vale Added Tax Act, a vendor is a person who carries on an enterprise or business and whose annual income exceeds R3000000.00. The law obliges such a person to register as a vat Vendor. It is common course in this particular case that the Applicant is a Vat Vendor.

[23] The next question is: Is the Seller a vat vendor for the purposes of this transaction? Section 7 of the Act provides that:

"... There shall be levied and paid for the benefit of the National Revenue a *tax, to be known* as *Value Added Tax-*

(1) on the supply by any vendor or services supplied by him on or after the commencement date in the course or furtherance of any enterprise carried on by him".

According to annexure "B" of the Applicant's Founding affidavit, the principal business

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of the Applicant is described as follows: "Investment in and letting out property". Clearly this describes the business or enterprise that the Applicant carries on. The Applicant's business is nowhere described as " selling of fixed property" or, for that matter, anything akin to that. In order to attract value added tax, the Applicant must have sold the said property *"in the course or furtherance of its enterprise or business"* . The property that the Applicant had agreed to sell to the Respondents, must have been linked to the business with which it earned income. Even if the courts accepts the Respondents' argument that the question whether or not value added tax or transfer duty is payable is a matter for law and not a matter for the agreement of the parties, the Respondents have failed to prove that the Applicant is a Vat Vendor for the purposes of the transaction of selling the said fixed property to the Respondents.

{24} It was further argued on behalf of the Respondents that, during the negotiations, an impression was created or a misrepresentation was made by the Applicant that the transaction in question would be subject to the Vat Act. It is for this purpose that the Respondents obtained affidavits of two independent people to placed evidence before this court about what transpired during the negotiations and what they were told by other people. This argument has no substance when one has regard to the provisions of Clauses 10.1 and15 of the agreement. Clause 10.1 of the agreement provides as follows: "Die VERKOPER sal nie verbind wees deur of aanspreeklik wees vir enige voorstellinge ander dan die hierin vervat nie". Clause 15 states that: "Die partye erken dat hierdie ooreenkoms die gehele kontrak tussen hulle uitmaak en dat geen ander voorwaardes, waarborge of voorstellinge van watter aard ook al gemaak is deur een

of die ander party of sy/haar agent(e) behalwe soos hierin vervat nie .....partye daartoe nie". In view of the contents of these two clauses, the court must unfortunately opine that the Respondents' argument on this point does not take their case any further and accordingly the court rejects it.

In the premises and insofar as it relates to the Agreement, the court finds that the Applicant has succeeded in proving that the transfer duty was payable in terms of the Agreement. The court finds that, even if the Respondents' argument may be correct within the context of the provisions of Sec. 7(1) of Act 89 of 1991, it could not be correct insofar it relates to terms of this Agreement or transaction.

[25] In a registered letter dated the 9th September 2004 from the Applicant's attorneys to the Respondent, certain clauses in respect of which the Respondents were alleged to have been in breach, were indicated. These clauses appear in the second paragraph of the letter in question. It is however, very important to refer to a few aspects of this letter. Firstly, the letter was addressed to the First Respondent in particular at 'Bishop Bud Street, Eagles Nest 7, Centurion, 0157. The letter, despite the word "Bud", reached its destination and this has become a non-issue. The fact of the matter is that the Respondents received the letter. It is no fault of the Applicant that the Respondents received the letter late because they had moved house. In the premises the court finds that the letter dated 9th September 2004 was a proper demand.

[26] At the time the Applicant Attorney wrote the said letter dated 9th September 2004, it would, in all likelihood, seem that they had not been made aware that the

/18 ..... Respondents

Respondents had, on the 2nd August 2004, already paid the sum of R64624.00, which included the transfer duty and part of the costs. There is no indication whatsoever in the papers that the conveyancing attorneys had advised Messrs E.Y. Stuart that the transfer duty had been paid already. There is also no explanation in the papers as to why it never was disclosed by Messrs S.D Saayman that the transfer duty had been paid in on the 2nd August 2004. Consequently to the extent that the Applicant purported to cancel the agreement on the basis of non-payment of transfer duty, it would be unlawful. There is no fault on the Respondents that Messrs E.Y. Stuart were not aware of the fact that the transfer duty had been paid.

[27] Apart from the fact that the Respondents were in breach of the agreement inasmuch as they had failed to the pay rental, the Applicant relied on another breach committed by the Respondents, in relation to clause 1.3 of the said agreement. The said clause or part of it provides as follows:

"Die koper sal binne 30 *dae na aanvaarding hiervan, bank waarborge uitruik soos versoek deur die verkoper* of sy *genomineerde aan die verkoper* of sy *genomineerde vir die volle balans van die koopprys betaalbaar teen registrasie "van oordrag".*

This clause is connected with clause 1.4. This clause is a suspensive clause. **It** provides that:

"Hierdie koop kontrak is onderhewig aan die opskortende voorwaarde dat die KOPER (of die Verkoper of *die Agent in die Koper* se *belang) in staat is* om *'n lening aan te gaan teen die sekuriteit van die verband(e) wat teen die eiendom passeer word in 'n*

/19 ..... bedrag

bedrag van nie minder as *R791 000.00 Seven Hundred and Ninety One Rand (R21 000 included for legal and transfer costs) teen heersende bank koers en voorwaardes binne* 30 *dae na die datum van aanvaarding van hierdie die aanbod. Die nakoming van hierdie opskorting voorwaarde sat geag word* as *bewerkstellig wanneer die uitlener in brief uitruik aan die lener dat uitlener bereid is* om *in lening toe te staan aan die lener soos uiteengesit in die vorige sin, en hierdie koopkontrak sat daaarna beskou word* as *onvoorwaardelik. Indien sodanige lening(s) nie verkry word binne die bogenoemde tydperk* of *dergelike ander datum* soos *skriftelike ooreengekom deur die partye, sat hierdie koopkontrak verder van nul en gener waarde wees nie".*

[28] Respondents failed to comply with the terms of clauses 1.3 and 1.4 of the Purchase Agreement. In the premises the Applicant was entitled to cancel the agreement as it did. Accordingly the applicant's application for eviction of the Respondents is granted and the court hereby makes the following order:

[1]. THAT clause 3.1 of the Purchase Agreement be and is hereby rectified by the substitution of the word "Registration" by the date "31st July 2004".

[2] THAT the Respondents' counter-application be and is hereby dismissed

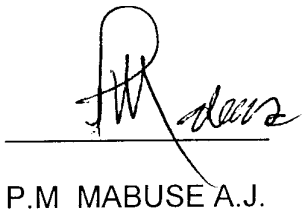
[3]. THAT the Applicant's cancellation of the Purchase Agreement be and is hereby confirmed.

[4]. THAT the First and Second Respondents be and are hereby ordered to vacate, the premises known as 977 Swartpiek Crescent, Nina park Extension 32, within 48 hours of this order.

/20 .... THAT .....

4. THAT the Sheriff of Wonderboom District be and is hereby authorised and empowered to remove the First and Second Respondents and their personal belongings from the premises known as 977 Swartpiek Crescent, Nina Park Extension 32, Pretoria, should the Respondents fail to comply with the order in [4] supra.

5. THAT the First Respondent and Second Respondent, the one paying and the other to be absolved, be and are hereby ordered to pay the costs of this Application.



P.M MABUSE A.J.