



**CASE NO: 49230/2021**

**ANIOMA PROPERTY (PTY) LTD v DMFT PROPERTY DEVELOPERS & 2 OTHERS**

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**SUMMARY**

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- [1] This matter involved a claim for specific performance in terms of which the applicant sought to compel the first respondent to pay the transfer costs for the registration of an immovable property into the name of the first respondent.
- [2] The applicant and first respondent concluded a written agreement of sale in respect of the abovementioned immovable property. Whilst the first respondent had paid the full purchase price, he failed to pay the transfer costs and subsequently sought to rescind the contract on the basis that the applicant had deliberately failed to disclose that the immovable property in question was being targeted by hijackers and further that, related to the hijacking, there was a caveat on the title deed.
- [3] The applicant contended that it had complied with its obligations as he had added a clause (clause 20.1) to the agreement of sale which stipulated that “[t]he seller shall remove all caveats that may be placed on the property and facilitate the transfer process”. The applicant further contended that there had never been an attempt to hijack the property and that rather, the caveat related to a third party attempt to have the applicant fraudulently liquidated. The applicant approached the court for an interdict and in the process, a caveat was noted against the title deed of the property prohibiting registration of transfer without an order of court. However, after concluding the agreement with the first respondent, the applicant had instructed the second respondent to uplift the caveat simultaneously with the

registration of transfer of the property into the first respondent's name (as contemplated in the agreement).

- [4] The Court was required to determine whether: (a) the language of clause 20.1 of the sale agreement was misleading and omitted pertinent facts; (b) there was a legal duty on the applicant to disclose the exact nature of the caveat; and (c) the non-disclosed facts were material thereby invalidating the contract.
- [5] The court noted that where a party has entered a contract, or otherwise been induced to enter said contract as a result of a false representation by the other party, this amounts to misrepresentation. It considered the case of *McCann v Goodall Group Operations (Pty) Ltd*<sup>1</sup> in which the court elaborated on instances where there was a duty to disclose certain facts when concluding a contract. The court found that, in order to prove that the applicant had a duty to disclose the exact nature of the caveat, the first respondent would have to prove that the details of the caveat fell within the exclusive knowledge of the applicant or, that the applicant had made a vague disclosure which required supplementation or elucidation.
- [6] In determining whether the applicant had exclusive knowledge of the caveat, the Court considered the judgments in *Speight v Glass*<sup>2</sup> and *ABSA Bank Ltd v Fouche*<sup>3</sup> and found that the details of the caveat did not qualify as falling within the exclusive knowledge of the applicant as envisioned by the courts in *Speight* and *Fouche*. The Court found that the information detailing the history of events that led to the filing of the caveat could be easily retrieved through a simple deeds search and subsequently accessed through the Deeds Office. The Court further found that since the property was never hijacked and the title deed was never compromised, and all litigation regarding the alleged fraudulent liquidation of the applicant was resolved, it was reasonable to assume that an "honest man" in the circumstances would not deem it necessary to disclose the entire nature of the caveat.

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<sup>1</sup> 1995 (2) SA 718 (C) at para 726C-G.

<sup>2</sup> *Speight v Glass and Another* 1961 (1) SA 778 (D).

<sup>3</sup> 2003 (1) SA 176 SCA.

- [7] In determining whether the applicant had used misleading language or omitted pertinent facts in clause 20.1, the Court considered the case of *Dormell Properties 658 (Pty) Ltd v Rowmoor Investments 513 (Pty) and Another*.<sup>4</sup> Based on *Dormell*, the Court concluded that clause 20.1 was, at best, unclear. The Court held that the applicant had intentionally added this clause and the first respondent, as an interested party, should have questioned why this was so. The Court further held that a reasonable person in the position of the first respondent would have sought clarity on the clause to ensure that there were no issues pertaining to the title of the property and to further ensure that there were no caveats on the title. A reasonable person, with as much investment in the matter as the first respondent, would have certainly questioned why the seller had specifically added that particular clause into the agreement.
- [8] Finally, in determining whether the non-disclosed facts were material, the Court found that the existence of the caveat did not affect the title deed nor did it prevent transfer from occurring. The Court held that a reasonable man in the position of the first respondent would have proceeded with the sale. Thus, the Court concluded that the applicant not disclosing the precise nature of the caveat was not material.
- [9] The Court ordered the first respondent to pay the outstanding transfer costs and the costs of the application.

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<sup>4</sup> [2013] ZAWCHC 152.