

IN THE NORTH GAUTENG HIGH COURT, PRETORIA  
(REPUBLIC OF SOUTH AFRICA)

CASE NO: 1694/2008

DELETED WHERE REVERSED NOT APPLICABLE

(1) REPORTED YES/NO

(2) OF INTEREST TO OTHERS YES/NO

(3) REVISED

16/3/2010

DATE

SIGNATURE

17/3/2010

IN THE MATTER BETWEEN:

WILLEM ELARDUS MEYER N.O.

FIRST PLAINTIFF

ELARDUS WILLEM MEYER N.O.

SECOND PLAINTIFF

And

F G JOUBERT

RESPONDENT

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JUDGMENT

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TOLMAY, J:

This matter was initially set down for trial, but after the opening address it became clear that the dispute between the parties was limited and consequently a stated case was prepared and argued before me.

### **BACKGROUND**

The plaintiff issued summons against the defendant and alleged that on 1 March 2004 the Elardus Trust ("the Trust") represented by the plaintiffs entered into a written lease agreement ("the lease agreement") with the defendant in his personal capacity. It was *inter alia* agreed that the Trust would lease Portion 8, 'n a Portion of Portion 2 of the Farm Diepkloof 186, Registration Division JS, Mpumalanga ("the property") for a period of 5 years from 1 April 2004.

In terms of the lease agreement the Trust had an option to buy the property for the amount of R250 000-00, which option was valid for the duration of the lease agreement. In terms of the lease agreement the Trust was obliged to exercise the option in writing at the defendant's chosen *domicilium citandi et executandi*. The Trust was furthermore obliged to pay the full purchase price on registration and transfer of the property in defendant's name.

### **THE STATED CASE**

In terms of the stated case I was asked to decide whether the extract from the minutes of the meeting of trustees dated 10 July constituted proper authority as contemplated by Section 2 of the Alienation of Land Act 68 of 1981 to the first plaintiff to exercise the option as was purported to be done with the Exercise of Option dated 11 July 2007.

If the aforementioned question is decided in favour of the plaintiff, then judgment should follow for the plaintiff in terms of prayers 1, 2 and 3 of the particulars of claim. If it is however decided in favour of the defendant then the claim of the plaintiff should be dismissed with costs.

In the stated case the parties agreed that the following facts were common cause between them:

1. The citation and *locus standi* of the parties.
2. That the plaintiffs were at all relevant times the duly appointed trustees of the Elardus Trust, which trust bore the registration number IT7436/03.
3. That the trust deed and letters of authority are exhibit "A1" to A10" respectively.
4. The Trust Deed does not provide for one trustee to act on his own, neither does it expressly prohibit same.
5. That the plaintiffs and the defendant on 11 March 2004 concluded a written lease agreement (the lease agreement) in respect of which the plaintiffs rented the property known as:

"Gedeelte 8 (in gedeelte van Gedeelte 2) van die plaas Diepkloof 186,  
Registrasie-Afdeling JS, Provinsie Mpumalanga.

Groot: 347,1810 hektaar

Gehou: Kragtens Akte van Transport T"

Which is exhibits "A11" to "A26".

6. That the lease agreement included an option to purchase the property referred to in paragraph 5 *supra*.
7. That the second plaintiff resided in the United States of America during the year 2007.
8. That the first plaintiff during or about July 2007 telephonically resolved with the second plaintiff that the trust should exercise the option referred to in paragraph 6 *supra* (the oral resolution).
9. That the first plaintiff, in pursuance of the oral resolution, on or about 11 July 2007, consulted the attorney Pierre de Villiers (De Villiers) of De Villiers Attorneys at Belfast.
10. That De Villiers on 11 July 2007 prepared the following documents:

10.1 The "Uittreksel uit die notule van 'n vergadering van trustees" (exhibit "A27(b)");

10.2 the letter dated 11 July 2007 (exhibit "A28") and

10.3 the "Uitoefening van opsie" (exhibit "A29").

11. That the first plaintiff signed the "Uitoefening van opsie" on 11 July 2007 (exhibit A28).
12. That the "Uittreksel uit die notule van 'n vergadering van trustees" (exhibit "A27(b)") was e-mailed to the second plaintiff in the United States of America on 11 July 2007 under cover of an e-mail (exhibit "A27(a)").
13. The Second Plaintiff on 11 July 2007 phoned the first plaintiff and informed him that he had signed the "Uittreksel uit die notule van 'n vergadering van trustees" (exhibit "A27") and that he would forward same to De Villiers by courier.
14. That De Villiers kept the letter (exhibit "A28") and the "Uitoefening van opsie" (exhibit "A29") on the file until receipt of the "Uittreksel uit die notule van 'n vergadering van trustees" (exhibit "A27") signed by the second plaintiff only.

15. That upon the receipt of exhibit "A27" as referred to in paragraph 13 *supra*, the first plaintiff signed it and only thereafter and on 25 July 2007 did De Villiers in purported exercise of the option dispatch exhibit "A28" to which was attached the "Uitoefening van opsie" (exhibit "A29") to the defendant at P O Box 327, Belfast being the chosen *domicilium citande et executandi* of the defendant.

#### **THE EXTRACT OF THE MINUTES**

The relevant extract of the minute of the meeting of trustees read as follows:

"UITTREKSEL UIT DIE NOTULE VAN 'n VERGADERING VAN DIE TRUSTEES  
VAN DIE ELARDUS TRUST Nommer I Trust 7463/2003 ("die trust")

Gehou op 10 JULIE 2007

BESLUIT:-

1. Dat die opsie om te koop soos vervat in klousule 17 van die Huurkontrak tussen FRANCOIS GERHARDUS JOUBERT en DIE ELARDUS TRUST, deur DIE ELARDUS TRUST uitgeoefen word.
2. Dat WILLEM ELARDUS MEYER gemagtig word om die opsie namens die Trust uit te oefen en alle dokumente te teken vir die doeleindes daarvan sowel as vir die oordrag van die eiendom na Trust.

Gesertifiseer as korrek.

(Get) W E MEYER

(GET) E W MEYER"

**THE EXERCISE OF THE OPTION**

The exercise of the option read as follows:

**"UITOEFENING VAN OPSIE**

Ek die ondergetekende WILLEM ELARDUS MEYER in my hoedanigheid as Trustee van DUE ELARDUS TRUST I Trust 7463/2003 behoorlik hiertoe gemagtig, gee hiermee kennis aan FRANCOIS GERHARDUS JOUBERT kragtens klousule 17.2 van die huurooreenkoms aangegaan tussen gemelde FRANCOIS GERHARDUS JOUBERT en DIE ELARDUS TRUST die opsie uitoefen om die eiendom synde: -

GEDEELTE 8 ('N Gedeelte van Gedeelte 2)  
Van die plaas DIEPKLOF 186  
Regustrasie Afdeling J.S. Provinsie MPUMALANGA  
Groot : 347 . 1810 Hektaar  
GEHOU : Kragtens Akte van Transport T33598?1987  
Te koop.

GETEKEN TE BELFAST op hierdie 11de dag van JULIE 2007.

AS GETUIES:

1. (GETEKEN )  

(GET) W E MEYER  
Namens ELARDUS TRUST
2. (GETEKEN)"

### CONCLUSION

Both these documents were properly signed by the trustees.

On 25 July 2007 the plaintiff's attorney sent a letter to the defendant indicating the Trust exercised its option to purchase the property in writing. The written exercise of option was attached to this letter.

In the decision of **Thorpe and Others v Trittenwein and Another 2007 (2) SA 172** the following was said on p 176 G:

[9] As observed by Cameron JA in *Land and Agricultural Bank of South Africa v Parker and Others* 2005 (2) SA 77 (SCA) ([2004] 4 All SA 261) at para [10] at 83H (SA) a trust is "an accumulation of assets and liabilities". Although forming a separate entity, that entity, like a deceased estate, is not a legal *persona*. The assets and liabilities constituting the trust vest in the trustees and it is they who must administer them. They are therefore not the agents of the trust, nor for that matter of the beneficiaries (*Hoosen and Others NNO v Deedat and Others* 1999 (4) SA 425 (SCA))



([1999] 4 All SA 139) at para [21]). It is moreover trite that unless the trust deed provides otherwise, trustees must act jointly. In the absence of a contrary provision in the deed they may, however authorise someone to act on their behalf and that person may be one of the trustees. (See *Nieuwoudt and Another NNO v Vrystaat Mielies (Edms) Bpk* 2004 (3) SA 486 (SCA) 1 All SA 396) at para [16] and [23].)

The trustees in this instance had a discussion that culminated in the written resolution that the option be exercised. It is quite clear in this instance that the trustees were of one mind that the option should be exercised and did that in writing. The extract of the minutes of the meeting clearly authorized the first plaintiff to exercise the option, which was subsequently done by the first plaintiff.

Consequently the extract of the minutes of trustees constituted a proper authority as contemplated by Section 2 of the Alienation of Land Act 68 of 1981 to the first plaintiff to exercise the option as was purported to be done with exhibit A29, and called "Uitoefening van opsie".

Consequently the following order is made:

1. **A declaratory order is issued that the option to purchase was properly and legally exercised and that a legal and enforceable sale agreement was concluded between the Elardus Trust and the**

defendant pertaining to the sale of the property to the Elardus Trust.

2. An order is issued in terms whereof the defendant is ordered to take all steps and to sign all documents to enable the transfer of the property to the Elardus Trust, alternatively and in the event of the defendant failing to do so the sheriff of the district of Belfast is ordered to sign all documents on behalf of the defendant to enable such transfer.
3. The defendant is ordered to pay the costs.

  
R G TOLMAY  
JUDGE OF THE HIGH COURT

**WILLEM ELARDUS MEYER N.O.**

**ELARDUS WILLEM MEYER N.O**

**Vs**

**F G JOUBERT**

**CASE NO: 1694/2008**

**JUDGE TOLMAY**

**ATTORNEYS FOR PLAINTIFF:**

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PRETORIA

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**ADV FOR PLAINTIFF: ADV L DE KONING**

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**ADV FOR DEFENDANT: M GRANOVA**

**DATE OF HEARING: 9 MARCH 2010**

**DATE OF JUDGMENT 17 MARCH 2010**