



**THE SUPREME COURT OF APPEAL  
OF SOUTH AFRICA**

Not Reportable  
Case no: 54/05

In the matter between:

**OOS VRYSTAAT KAAP BEDRYF BEPERK** Appellant

and

**ISABELLA FREDRIKA JOHANNA VAN ASWEGEN** Respondent

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**Coram:** *Scott, Streicher et Navsa JJA*

Date of hearing: **23 February 2006**

Date of delivery: **17 March 2006**

**Summary:** Whether clause in document amounts to an irrevocable offer to sell maize at a stipulated price – clause meant that the offer could be accepted within 14 days – not that it could not be withdrawn within that time period.

**Neutral citation:** This judgment may be referred to as *Oos Vrystaat Kaap Bedryf Beperk v Van Aswegen* [2006] SCA 14 (RSA).

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**JUDGMENT**

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NAVSA JA

NAVSA JA:

[1] This appeal concerns the interpretation of the following clause in a document:

'Hierdie ooreenkoms word eers van krag by ondertekening daarvan deur die Verkoper of sy skriftelike gevolmagtigde en 'n gemagtigde van die Koper. In ieder geval sal die Koper, indien hy besluit om hierdie ooreenkoms te onderteken, dit aldus onderteken nie later nie as 14 dae na datum waarop die Verkoper of sy verteenwoordiger hierdie ooreenkoms onderteken het, by gebreke waaraan geeneen van die partye gebonde sal wees aan die terme hiervan nie.'

[2] Upon signature by both seller and purchaser of the document in which the clause appears, it would undoubtedly have constituted an agreement of sale of 500 metric tons of maize at a price of R580-00 per ton. However, the crisp question for determination in this appeal is whether, upon signature of the document by *only* the seller, this clause operated so as to constitute an offer by the seller, irrevocable for 14 days, to sell to the purchaser that quantity of maize at the stipulated price.

[3] Van der Merwe J, who heard the matter in the Bloemfontein High Court, considered the clause (clause 21) and after referring to authorities concluded as follows (at 427 C-D):

'In die onderhawige geval kan ek nie met die vereiste mate van sekerheid bevind dat klousule 21 van die koopkontrak meer bevat dan of onderskei kan word van 'n aanbod om te verkoop wat verval na 14 dae na datum van ondertekening daarvan deur die verkoper of sy verteenwoordiger nie. Soos Roper R in *Greenberg v Wheatcroft* [1950 (2) PH A56 (W)] meen ek dat dit nie duidelik is dat afgewyk word van die normale regsreël dat 'n aanbod te eniger tyd voor aanvaarding daarvan herroepbaar is nie. Ook meen ek dat klousule 21 minstens dubbelsinnig is in hierdie opsig en derhalwe *contra proferentem* uitgelê moet word. . .'

In essence the learned judge was of the view that the clause in question did not constitute an offer that was irrevocable for 14 days and that it meant no more than that the offer could be accepted within 14 days but not that it could not be revoked within that period.

[4] The history of the matter is relatively uncomplicated. The appellant company Oos Vrystaat Kaap Bedryf Beperk (OVK) conducts business in the Free State province as a farmers' co-operative and inter alia purchases grain actually harvested and in production which it then sells through an exchange. OVK's head office is in Ladybrand. It operates silos to and from which grain is delivered. The respondent Mrs Isabella Fredrika Johanna van Aswegen (Van Aswegen) is a farmer on the farm *Lynplaas* in the district of Excelsior in the Free State province.

[5] On 26 October 2000 at OVK's farming supplies store situated in Excelsior, approximately 13 kilometres from Lynplaas, Van Aswegen's husband, Mr Andries van Aswegen, signed the document in which the clause in question appears, purportedly signifying his intention, on her behalf, to sell the maize as described earlier to OVK. The document was thereafter delivered to OVK's office in Ladybrand. On 9 November 2000, within the envisaged 14-day period, the document was signed on behalf of OVK by the head of its grain division, Mr Stephan Oberholzer.

[6] The document is a standard form used by OVK which it makes available to farmers through a number of outlets. The document is entitled 'Graanaankooporeenkoms'. It contains spaces for particulars such as the quantity of grain, the quality, the price and the expected delivery date to be inserted. At the end of the document space is provided for signatures for or on behalf of the purchaser and seller and witnesses thereto.

[7] When the final date for delivery as stipulated in the document had passed, namely 31 August 2001, and the grain had not been delivered, OVK wrote to Van Aswegen threatening to impose a penalty for non-delivery. She replied through her attorneys, denying that she had entered into any agreement with OVK and denying further that anyone was authorised to conclude an agreement on her behalf. Further correspondence ensued to no avail. OVK instituted action against

Van Aswegen in the Bloemfontein High Court, claiming damages in an amount of R180 500-00 which it alleged flowed from her failure to deliver the maize.

[8] Van Aswegen denied that a binding agreement had been concluded. First, she relied on the fact that there had been no written authorisation for signature on her behalf, as required by the document in question. Second, that her husband in fact had no authority to bind her. Last, that even if he had been so authorised, his signature on the document meant no more than that the document constituted a revocable offer, which was in fact revoked before it was accepted by OVK. In other words the clause in question did not have the effect of constituting an irrevocable offer as contended for by OVK.

[9] Evidence was adduced by both parties and Van der Merwe J held, in respect of Van Aswegen's first ground, that the clause in the document which provided that authorisation for signature on behalf of the seller should be in writing was inserted for the benefit of OVK. It could thus waive that requirement and in the present matter had done so.

[10] It was common cause that a similar document relating to a prior harvest in the same year had been signed by Van Aswegen's husband on her behalf which signature she subsequently ratified. That agreement was beneficial in that the maize price dropped dramatically after that agreement was signed and she was thus placed in the favourable position of having secured a higher price than the price subsequently prevailing at the time of delivery. The remainder of that prior harvest had been sold at a much lower price than that agreed with OVK. However, soon after the document presently under discussion was signed, the market moved in the opposite direction and the maize price started rising. Van Aswegen was concerned that, this time, the stipulated price might prove a bad bargain.

[11] The learned trial judge was unimpressed by Van Aswegen. He concluded that her evidence that she had not authorised her husband to sign the document under discussion was not credible. He also drew an adverse inference from her husband's failure to testify. For present purposes it is not necessary to discuss further the reasons for his conclusion in this regard.

[12] The learned trial judge accepted (in my view, correctly) the evidence of a former employee of OVK, Mr Wynand Louw Steyn. The witness testified that Van Aswegen's husband had contacted him a day or two after he had signed the document to inform him that she was no longer willing to sell her maize to OVK. Considering that evidence Van der Merwe J held that the offer had therefore been withdrawn before acceptance and dismissed OVK's claim with costs. The judgment of the court below is reported as *Oos-Vrystaat Kaap Bedryf Bpk v Van Aswegen* 2005 (4) SA 417 (O). Leave to appeal to this court was granted by Van der Merwe J.

[13] Ordinarily an offer may be revoked at any time before acceptance. In my view the court below was correct in its conclusion that the clause in question did not constitute an irrevocable offer and meant no more than that the offer could be accepted within the 14 day period. It is clear that the purpose of the 14 day period during which the offer may be accepted is to provide OVK with an opportunity at head office to scrutinise the document and to arrive at a considered decision concerning the purchase of the maize in question. The clause itself envisages that the document will be of *no* force and effect unless signed by both parties within the 14-day period. Nowhere does it state that the seller is bound by the offer until the expiry of that period. In other words, the clause does not expressly state that the seller has bound himself not to revoke the offer within that period, nor can such an obligation be implied.

[14] In light of this conclusion, it is not necessary to deal with the interesting discussion in R H Christie *The Law of Contract* 4 ed pp 58-59 about whether a

unilateral declaration of irrevocability has to be accepted before it becomes binding. The court below discussed that issue (at 425E-426H) and took a contrary view to that taken by Professor Christie. In this regard, Van der Merwe J stated the following (at 427E-F):

'My bogemelde gevolgtrekking lei in ieder geval tot die gevolgtrekking dat daar nie 'n eensydige verklaring namens verweerderes gemaak is dat die aanbod om te verkoop nie herroep sal word nie en kon selfs op daardie basis nie 'n verpligting ontstaan het om die aanbod om te verkoop oop te hou nie. Selfs ook op die basis dat 'n aanbod om die aanbod om te verkoop nie terug te trek nie, gemaak is, is daar in hierdie saak geen getuienis waarop bevind kan word dat aanvaarding van daardie aanbod aan die verweerderes of haar gevolmagtigde gekommunikeer is nie, ten minste nie tydig nie.'

[15] As stated earlier it is for present purposes not necessary to explore the matter beyond the first issue identified by the learned judge in the passage quoted in the preceding paragraph. The court below cannot be faulted in its conclusion on that issue and that conclusion is determinative of the appeal.

[16] It was submitted on behalf of Van Aswegen that in the event of the appeal being dismissed she was entitled to the costs of two counsel. This case turns on a narrow issue of no complexity and she is thus not entitled to the costs of two counsel.

[17] The appeal is dismissed with costs.

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M S NAVSA  
JUDGE OF APPEAL

CONCUR:

SCOTT                   JA  
STREICHER           JA