IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE HIGH COURT, CAPE TOWN

CASE NO: 22745/2010

In the matter between:

LANCELOT FUELBIZ STELLENBOSCH (PTY) LIMITED	Applicant
and	
CHRISTOPHER PETER VAN ZYL NO	First respondent
JURGEN STEENKAMP NO	Second respondent
MARK BRADLEY BEGINSEL NO	Third respondent
GALENCIA PROPERTY (PTY) LIMITED	Fourth respondent
AMALGAMATED AUCTION (PTY) LTD	Fifth respondent
THE MASTER OF THE HIGH COURT	Sixth respondent
THE REGISTRAR OF DEEDS, PRETORIA	Seventh respondent

JUDGMENT DELIVERED ON 20 DECEMBER 2010

BLIGNAULT J:

[1] This is an opposed application, brought as a matter of urgency, in which an order is sought setting aside a sale of immovable property and ancillary relief.

[2] Applicant is Lancelot Fuelbiz Stellenbosch (Pty) Limited, a company incorporated under the laws of the Republic of South Africa.

[3] Mr Christopher Peter van Zyl (first respondent), Jurgen Steenkamp (second respondent) and Mark Bradley Beginsel (third respondent) are the joint liquidators of the company, Black River (Pty) Limited in liquidation ("Black River"). First, second and third respondents are referred to herein as "the liquidators".

[4] Fourth respondent is Galencia Property (Pty) Limited, a company incorporated under the laws of the Republic of South Africa.

[5] Fifth respondent is Amalgamated Auction (Pty) Limited, a company incorporated under the laws of the Republic of South Africa.

[6] Sixth respondent is the Master of the High Court, Cape Town. Seventh respondent is the Registrar of Deeds, Pretoria. No relief is sought against sixth and seventh respondents.

[7] Black River was liquidated by an order of this court on 28July 2009. The liquidators were appointed as such on 16 October 2009.

[8] As at the date of its liquidation Black River was the owner of, inter alia, the immovable property described as Portion 479 of the Farm Randjesfontein No 405, Registration Division JR. This immovable property will be referred to herein as the Midrand property.

[9] On 4 November 2009 the liquidators sold the Midrand property to applicant at a purchase price of R11,25 million. After applicant had paid the full purchase price to the liquidators but before transfer could be passed, fifth respondent brought an application to restrain the liquidators from transferring the property to applicant and to have the sale to applicant set aside. Fifth respondent contended, inter alia, that the purchase price of R11,25 million was below market value and that the property should have been sold at a public auction.

[10] The application was settled and the settlement was made an order of court in June 2010. Clause 1 thereof recorded that the

application had been withdrawn and clause 2 that the sale agreement between the liquidators and applicant in respect of the Midrand property had been cancelled. The content of clauses 3 and 4 gave rise to the present litigation. They read as follows;

> *"3. The property shall be sold by public auction.*
>
> *4. In the event that the auction does not realise a gross selling price of R9,000,000.00, the fourth respondent* [the present applicant] *agrees at its option to either purchase the property by private treaty and otherwise on the terms and conditions of the sale agreement for an amount of R9,000,000.00 or to pay the shortfall between the auction price and the amount realised to the liquidators of the company within 14 (fourteen) days of the auction date."*

[11] The liquidators retained an amount of R9 million of the R11,25 million which had been paid by appellant to them pursuant to the first sale and repaid the balance of R2,25 to applicant.

[12] The Midrand property was auctioned on 15 July 2010 but the highest bidder disappeared and did not sign the conditions of sale or pay the deposit. The liquidators thereafter negotiated with various parties and this resulted in an agreement between the liquidators and fourth respondent, concluded on 31 August 2010,

for the sale of the Midrand property to fourth respondent at a purchase price of R10,5 million.

[13] Applicant thereupon launched the present application. It seeks orders that the agreement of sale of the Midrand property between the liquidators and fourth respondent be set aside and that the liquidators be compelled to give effect to the provisions of clause 4 of the settlement agreement that was made an order of court. The application is opposed by the liquidators.

[14] The parties' opposing contentions may be summarised as follows. As the auction of the Midrand property did not realise a gross selling price of R9,000,000.00, applicant contends that it obtained an enforceable right in terms of clause 4 to purchase the property from the liquidators for an amount of R9 million. The liquidators, on the other hand, contend that they obtained an enforceable right to sell the property to applicant for R9 million and that applicant did not obtain a right to purchase it from them for R9 million.

[15] Although the settlement agreement was made an order of court it falls to be interpreted according to the ordinary principles

relating to the interpretation of contracts. See *Engelbrecht v Senwes Ltd* 2007 (3) SA 29 (SCA). These principles are for the most trite and do not require any particular discussion for purposes of this judgment.

[16] I have come to the conclusion that the liquidators' contention is correct. I say so for the following reasons.

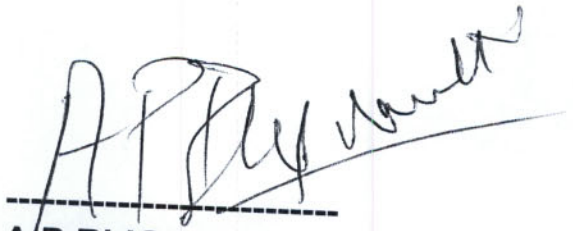
[17] The term *agree* in the operative part does not amount to an agreement in the conventional sense. The settlement agreement was already such an agreement and the word *agree* refers to a typical option, in the legal sense, granted by appellant ie an offer coupled with an undertaking to keep it open for acceptance by the other party. (Cf *De Ujfallusy v De Ujfallusy* 1989 (3) SA 18 (AD) at 22F). In my view it is in this sense that *agree* is used in clause 4 and the grantor of the option is applicant and not the liquidators.

[18] The expression *agree ... to ... purchase reinforces* this meaning of clause 4. It is trite that an agreement of sale is defined as an agreement in terms of which the one party, called the seller, makes available a thing to another, called the purchaser, in return for the payment of a price. In the present case an agreement to

keep open an offer to purchase the property is therefore an undertaking made by applicant to purchase the property if so required by the liquidators.

[19] The final indication of the parties' intention is to be found in the composite expression following the words *agree at its option.* The word *option,* viewed on its own, might have given rise to some confusion. Upon analysis in context, however, its meaning becomes quite clear. The *option* granted to applicant here is to do one of two things. It can either purchase the property for R9 million or it can pay the shortfall between R9 million and the auction price to the liquidators. The second choice open to applicant is only consistent with a situation where applicant is acting as purchaser for a sum of less than R9 million.

[20] In the result, the application is dismissed with costs.



A P BLIGNAULT