THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

REPORTABLE

Case number: 625/02

In the matter between:

JOHANNES HEINRICH GEUE **FIRST APPELLANT**
MONTSERRAT MARIA GEUE **SECOND APPELLANT**

and

PIETER BLOMERUS NOTLING VAN DER LITH **FIRST RESPONDENT**
WANDRAG & HORN INCORPORATED **SECOND RESPONDENT**

CORAM: MPATI DP, STREICHER, BRAND, CONRADIE and HEHER JJA
HEARD: 6 NOVEMBER 2003
DELIVERED: 20 NOVEMBER 2003

Summary:

Sale of portion of agricultural land without the consent of the Minister of Agriculture required by s 3(e)(i) of Act 70 of 1970 – agreement null and void despite suspensive condition rendering agreement subject to such consent being obtained.

JUDGMENT

BRAND JA/

BRAND JA:

[1] The owner of a farm sold an undivided portion of his land without the consent of the Minister of Agriculture required by s 3(e)(i) of the Subdivision of Agricultural Land Act 70 of 1970 ('the Act'), but subject to the suspensive condition of such consent being obtained. Is this agreement rendered void by the provisions of the Act? That is the question raised by this appeal. Though the parties have somehow accumulated a record of some 400 pages in the motion proceedings that gave rise to the appeal, the salient facts can be stated quite simply. The first respondent, ('Van der Lith') is the owner of the farm Canterbury 254 in the Limpopo Province. On 19 June 2001 he entered into a written agreement with the first and second appellants in terms whereof he sold a portion of Canterbury to them. For ease of reference I will refer to the appellants, who are married to each other in community of property, jointly, as 'Geue'. The farm Canterbury constituted 'agricultural land' as defined in s 1 of the Act. At the time of the agreement it was not divided into portions nor had the consent of the Minister of Agriculture for the subdivision or for the sale, as required by s 3 of the Act, been obtained.
[2] The preamble to the agreement recorded the common intention of the parties to have Canterbury subdivided in accordance with the Act, while the operative provisions declared the agreement subject to such subdivision. Since the subdivision was dependent on the Minister's consent, the suspensive condition effectively rendered the agreement of sale subject to such consent being obtained. Upon signature of the agreement, Geue became liable to pay part of the purchase price, in an amount of R200 000, to the attorneys responsible for the eventual transfer of the property. Geue duly complied with this obligation. Pending registration of transfer to Geue, the attorneys were instructed to keep this money in trust. Subsequently, Geue brought an application in the Pretoria High Court for an order declaring the agreement null and void by reason of the provisions of s 3(e)(i) of the Act. They also sought an order against the transferring attorneys, who were joined as second

respondent, for repayment of their R200 000. The attorneys did not oppose the application. Van der Lith, on the other hand, not only opposed the application by Geue but also brought a counter-application. He sought an order, *inter alia*, declaring that the agreement had become enforceable upon the fulfilment of the suspensive condition, the consent by the Minister of Agriculture for the subdivision of Canterbury having been obtained in the intervening period. The Court *a quo* (Van der Walt J) refused the application by Geue and granted Van der Lith's counter-application, in both instances with costs against Geue. The appeal by Geue against these orders is with the leave of this Court.

[3] The critical provisions of the Act are contained, firstly, in s 3(e)(i) and, secondly, in the definition of 'sale' in s 1. The relevant part of s 3(e)(i) provides that:

'[N]o portion of agricultural land, whether surveyed or not, and whether there is any building thereon or not, shall be sold or advertised for sale … unless the Minister [of Agriculture] has consented in writing.'

The definition of 'sale' was introduced for the first time by the Subdivision of Agricultural Land Amendment Act 18 of 1981 which came into operation on 4 March 1981. It reads as follows:

'"sale" includes a sale subject to a suspensive condition; and "sold" shall have a corresponding meaning'.

According to the Afrikaans counterpart of the definition:

'[beteken] verkoop ook 'n verkoop onderworpe aan 'n opskortende voorwaarde'; en het "verkoop" wanneer dit as werkwoord gebruik word, 'n ooreenstemmende betekenis.'

[4] These provisions are commendably succinct and their meaning is, at least on first impression, clear. More pertinently, first impressions seem to indicate that, in view of the definition, the agreement under consideration falls squarely within the ambit of the prohibition contained in s 3(e)(i). After all, the agreement appears to be nothing other than a sale, subject to a suspensive condition, of a portion of agricultural land, which was concluded without the Minister's consent. The same sentiments were obviously held by Van der Walt J in the Court *a quo* when he said:

'Die statutêre bepaling van artikel 3(e)(i) van Wet 70 van 1970 is … ondubbelsinnig en duidelik en het oënskynlik betrekking op die onderhawige ooreenkoms wat

nietigheid van die ooreenkoms tot gevolg sou hê.'

[5] Nevertheless, the learned Judge then proceeded to find that, contrary to these first impressions, the agreement under consideration does in fact not fall within the compass of s 3(e)(i). On what grounds did he arrive at this somewhat surprising conclusion? Essentially, on the basis that the Legislature could not have intended to prohibit an agreement subject to a suspensive condition of the present kind, because such prohibition would be so glaringly absurd that it could never have been contemplated by the Legislature (see e g *R v Venter* 1907 TS 915). As to why it would be absurd, the learned Judge commenced his motivation by identifying the essential purpose of the Act as an attempt by the Legislature, in the national interest, to prevent the fragmentation of agricultural land into small uneconomic units. This proposition, incidentally, is well supported by authority (see e g *Van der Bijl and Others v Louw and Another* 1974 (2) SA 493 (C) 499C-E; *Sentraalwes Personeel Ondernemings (Edms) Bpk v Wallis* 1978 (3) SA 80 (T) 84E-F; and *Tuckers Land and Development Corporation (Pty) Ltd v Truter* 1984 (2) SA 150 (SWA) 153H-154A). In order to achieve this purpose, the Legislature curtailed the common law right of landowners to divide their agricultural property by imposing the requirement of the Minister's consent as a prerequisite for subdivision, quite evidently with the view

that the Minister should decline any proposed subdivision which would have the unwanted result of uneconomic fragmentation. Having regard to all this, so the Court *a quo* reasoned, an agreement of sale which is subject to a suspensive condition of the present kind can never be said to be in conflict with the object and purpose of the Act. On the contrary, by rendering the effective part of the agreement subject to the same requirement as the one imposed by the Act, i e the Minister's consent, the suspensive condition is promoting the very purpose of the Act. In the light of all this, so the Court *a quo* concluded, any interpretation of s 3(e) (i) which renders an agreement such as the one under consideration a contravention of the section, would be glaringly absurd.

[6] This conclusion immediately elicits the question why the Legislature found it necessary to introduce the extended definition of 'sale', by way of legislative amendment, so as to specifically include an agreement of sale which is subject to a suspensive condition. In short, what is meant by a 'suspensive condition' in the definition? The answer to this question, given by the Court *a quo,* was that the 'suspensive condition' contemplated by the definition of 'sale' is a condition which depends on the happening of any uncertain future event other than the Minister's consent. The Legislature's reason for introducing the extended meaning of a 'sale', so the Court *a quo* explained, is to be understood against the background of a long line of decisions, including decisions of this Court, that an agreement of sale which is subject to a suspensive condition does not constitute a 'sale' in legal parlance. In the light of these decisions, the Court stated, parties to a transaction involving the alienation of undivided agricultural land could circumvent the prerequisite of the Minister's consent, which is required for a ***sale,*** by making their agreement subject to a suspensive condition of some kind other than the Minister's consent. This would then take their agreement outside the ambit of a '***sale***'. While the Legislature obviously had good reason to

prevent this kind of avoidance, so the Court concluded, it is impossible to conceive why it would have intended to prohibit an agreement made subject to the suspensive condition of the Minister's consent where the very object is to ensure compliance with the requirement of the Act, as opposed to the avoidance of this requirement.

[7] I agree with the proposition that the true reason for the introduction of the extended definition of 'sale' through the legislative amendment in 1981 needs to be sought against the background of previous decisions of our Courts. A good starting point in this investigation is the decision of this Court in *Corondimas and Another v Badat* 1946 AD 548. In that case the parties entered into an agreement for the sale of land which could, in terms of s 5(2) of the statutory enactment concerned, only be validly concluded under the authority of a permit issued by the Minister of the Interior. At the time of the agreement, such a permit had not been granted. The agreement was, however, made subject to the suspensive condition of the permit being obtained. Under these circumstances, it was held that s 5(2) of the enactment did not render the agreement invalid. The *ratio decidendi* appears from the following *dicta* by Watermeyer CJ at 551:

'… when a contract of sale is subject to a true suspensive condition, there exists no contract of sale unless and until the condition is fulfilled. In other words, the prohibited contract (e.g., a contract of sale), which is declared null and void by sec. 5 (2) of the Act unless the Minister consents to it, cannot come into existence unless and until that condition is fulfilled. Until that moment, in the case of a sale subject to a true suspensive condition, such as this is, it is entirely uncertain whether or not a contract of sale will come into existence at some future time. Until that moment there is certainly a legal relationship, contractual maybe …, existing between the parties, which may ripen into a contract of sale, but, in the particular case in which the coming into existence of a contract of sale is made, by agreement between the parties, to depend upon consent to it having been given by the Minister, that relationship is not one which is forbidden by the Act or declared by it to be of no force and effect . … It is not forbidden, because, unless and until the Minister gives his consent no contract "whereby one party acquires or purports to acquire land" comes into existence and so soon as he has given his consent, thereby bringing into existence a contract of that nature, the condition required by the Act for its validity (viz., the consent of the Minister) has been fulfilled.'

[8] *Corondimas* was subjected to severe criticism by academic writers. The notion that a sale is not a 'sale' simply because it is subject to a suspensive condition, so they said, constitutes a departure from our common law, in that the latter regards a sale subject to a suspensive condition as a 'sale', right from the start (see e g D P de Villiers, 1943 THRHR 13 at 18-19; P J J Olivier 1980 *De Jure* 238; De Wet and Yeats, *Kontraktereg en Handelsreg* 4ed 135-136; R H Christie, *The Law of Contract* 4ed 156-157. See also the minority judgment of Joubert JA in

Tuckers Land and Development Corporation (Pty) Ltd v Strydom 1984 (1) SA 1 (A) 19-24 for a comprehensive discussion of the common law on the subject.) In practice, however, the *Corondimas* case for many years had little effect. As explained by Van Heerden JA, writing for the majority in *Tuckers Land and Development Corporation (Pty) Ltd v Strydom supra* (14G-H), the import of *Corondimas* only gained real practical significance in the late 1970's as a result of two unrelated pieces of legislation. The one was s 3(e) of the Act under consideration, i.e. Act 70 of 1970, while the other was s 57A of the Town Planning and Township Ordinance 25 of 1965 (T) ('the Transvaal Ordinance'). Where s 3(e) of the Act, as we know, prohibited the sale of an undivided portion of agricultural land without the Minister's consent, the Transvaal Ordinance declared the sale of an erf in an unproclaimed township, to be of no force and effect. Under the present Act cases then came before the courts where undivided portions of agricultural land were sold without the Minister's consent, but subject to the suspensive condition of that portion being incorporated into the area of a municipality, in which event the Minister's consent would become unnecessary, since the property would cease to be 'agricultural land' as defined in the Act (see e g *Sentraalwes Personeel Ondernemings (Edms) Bpk v Nieuwoudt* 1979 (2) SA 537 (C) and *Sentraalwes Personeel Ondernemings (Edms) Bpk v Wallis supra).* Similar issues arose with reference to the Transvaal Ordinance where erven in unproclaimed townships were sold subject to the condition of the township ultimately being proclaimed (see e g *Wolmarans and Another v Tuckers Land & Development Corporation (Pty) Ltd* 1979 (1) SA 663 (T) and *Tuckers Land & Development Corporation (Pty) Ltd v Soja (Pty) Ltd* 1979 (3) SA 477 (W). Cf also *Palm Fifteen (Pty) Ltd v Cotton Tail Homes (Pty) Ltd* 1978 (2) SA 872 (A).) In all these cases it was held that contracts subject to these suspensive conditions were not hit by the legislative enactments concerned. The reasoning that formed the basis of these decisions was essentially that the agreement prohibited by both enactments was a **sale** whereas, in accordance with the decision of this Court in *Corondimas,* an agreement of sale subject to a suspensive condition cannot, pending fulfilment of the condition, be regarded as a 'sale'. It only becomes a sale when the condition is fulfilled, in which event there is no contravention of the statutory provisions involved.

[9] In at least two of the judgments referred to, it was pertinently decided that, in construing the legislation concerned, it must be assumed that the Legislature intended the term 'sale' to be understood in accordance with the meaning attributed to that term by the courts in

earlier cases. Any inference that a different meaning was intended, so it was held, would require a clear indication by the Legislature to that effect (See *Sentraalwes Personeel Ondernemings (Edms) Bpk v Wallis supra* 88A and *Sentraalwes Personeel Ondernemings (Edms) Bpk v Nieuwoudt supra* 544H). In this regard specific reference was made to the well known presumption in the interpretation of statutes that where words are used which have received previous judicial construction the Legislature is presumed, in the absence of any indication to the contrary, to have intended those words to bear the meaning ascribed to them by the courts (see e g *R v Ismail and another* 1958 (1) SA 206 (A) 211).

[10] One of the High Court decisions that I have referred to in connection with the provision of the Transvaal Ordinance, namely the *Soja* case, was challenged on appeal (see *Soja (Pty) Ltd v Tuckers Land and Development Corporation (Pty) Ltd* 1981 (3) SA 314 (A).) In this Court Trollip JA, writing for the majority, expressed himself as follows (at 321C-H):

'The Court *a quo*, relying on *Corondimas* v *Badat* 1946 AD 548 and other decisions referred to in its judgment, held that, because the sale of the erven embodied in the agreement was suspended and subject to "the due proclamation of the said township", it was not hit and invalidated by s 57A. …

I should mention here that the principle laid down in several cases and affirmed in the *Corondimas* case that an agreement embodying a sale subject to a suspensive condition is not a contract of sale until the condition is fulfilled has been trenchantly criticised by writers. … The thesis is that the principle is wrong according to our common law, for the latter regards such a contract as being one of sale *ab initio* although it is subject to the suspensive condition. The author of the article suggests that the legislature should intervene to correct the error. However, the correctness of the decision and reasoning of the *Corondimas* case was not impugned before us; indeed, it was accepted by counsel for both parties as being correct. Hence that case is decisive of the present dispute unless s 57A of the Ordinance, construed in the context of the other relevant provisions of the Ordinance, manifests an intention by the legislature also to forbid the entering into of suspensive contracts of sale of erven of the kind in question here prior to the declaration of the township as an approved one. Ultimately, in the hearing of the appeal before us, the argument for Soja was confined to this latter, narrow ground.'

In the event, the majority found that s 57A of the Ordinance did not manifest such an intention on the part of the Legislature, essentially for the reasons that appear from the following statement by Trollip JA (at 324 *in fine* – 325A):

'The section was much more likely intended to refer only to the common or ordinary contracts of sale. If it were intended to hit also suspensive contracts of sale of the kind in question here, that would surely have been done expressly and explicitly, especially in view of the decision in the *Corondimas* case *supra* … And in case of any doubt or uncertainty as to its true meaning on that score (as is evident from the division of opinion between us) it should in my view be construed in its narrower

sense as comprehending only the common or ordinary contracts of sale.'

[11] In the subsequent case of *Tuckers Land and Development Corporation (Pty) Ltd v Strydom supra* this Court was asked to reconsider the correctness of the conclusion reached in the *Soja* case. The facts of the two cases were, for all intents and purposes, the same. This time, however, the contention was squarely advanced that *Corondimas* was wrongly decided in that it was in conflict with the principles of our common law. From the three judgments delivered in the *Strydom* matter it is apparent that all the members of the Court had some sympathy with the criticism against *Corondimas.* However, only Joubert JA (19 *et seq*) found it incumbent on him to make the pertinent finding that *Corondimas* was wrongly decided. According to the majority judgment (by Van Heerden JA) it was unnecessary to decide that issue, because the jurisprudential correctness or otherwise of the decision in *Corondimas* had no direct impact on the interpretation of s 57A of the Ordinance. As the basis for the later view, Van Heerden JA relied on the principle of statutory interpretation to which I have already referred, namely, that, where the Legislature uses words that were judicially construed in the past, it is presumed, in the absence of clear indication to the contrary, to have intended those words to bear the meaning ascribed to them by the courts. In the many years that have elapsed since

Corondimas, so Van Heerden JA held (at 17F *et seq*), the courts have interpreted the term 'sale' to exclude a sale subject to a suspensive condition. In the light of this, the Legislature must have intended the term 'sale' to convey that meaning, and no other, when it again used this term, without any qualification, in s 57A of the Transvaal Ordinance. Consequently, Van Heerden JA held, the technical correctness or otherwise of *Corondimas* was not the real issue in determining the meaning of s 57A. If the Legislature wanted the courts to ascribe a meaning to the term 'sale' which differed from how this term was understood in the past, it would have had to give some clear indication to that effect; where necessary, through legislative amendment.

[12] Significantly, in all the cases referred to the suspensive condition related to the very requirement prescribed by the legislative enactments concerned. In all the cases the eventuality of the contract coming into operation was made subject either to the Minister's consent becoming unnecessary or the proclamation of the township, as the case may be. Upon reflection, this is not fortuitous. The reason why the suspensive condition could not relate to any event other than the one required by the statutory provision involved was succinctly formulated as follows by Watermeyer CJ in *Corondimas* (at 551-552)

'The position which would arise if the suspensive condition does not relate to the consent of the Minister and no consent is given, is not raised in the present case, but in that event a contract of sale would come into existence if the condition is fulfilled, and, if the condition is fulfilled, the contract which comes into existence must necessarily be an illegal contract because the Minister has not consented to it.

Consequently, it would seem that a sale subject solely to a suspensive condition of any other sort would necessarily be null and void.'

(See also Feetham AJA at 559-560.)

The same considerations were reformulated somewhat differently by Trollip JA in *Soja (Pty) Ltd v Tuckers Land & Development Corporation (Pty) Ltd supra* 322A when he said:

'(I should explain here that we are only concerned with this limited particular kind of suspensive condition – the due proclamation or approval of the township. If the suspensive condition was of some other kind it would seem that the agreement would be invalidated by the prohibition in s 57A for that condition may be fulfilled and the agreement perfected before due proclamation …).'

[13] The reasoning that emerges from these statements seems to provide the answer to the theory proposed by the Court *a quo* as to why the Legislature found it necessary to introduce the extended definition of a sale by way of the 1981 amendment. It will be remembered that, according to the theory advanced by the Court *a quo*, the amendment was necessary to close the loophole of a suspensive condition being used as a mechanism to avoid the requirement of the Minister's consent. Since, in accordance with *Corodimas,* an agreement subject to a suspensive condition is not a sale, so the Court *a quo* reasoned, the parties to an agreement of sale of undivided agricultural land could, but for the amendment, have circumvented the Minister's consent by making their agreement subject to some other suspensive condition unrelated to the Minister's consent being obtained. From the *dicta* of Watermeyer CJ and Trollip JA quoted above, it is plain, however, that any attempt to avoid the Minister's consent in this manner would be doomed to failure. The moment the suspensive condition is fulfilled, it becomes a 'sale' for which the Minister's consent is required. Consequently, such an agreement can never become enforceable without the Minister's consent. If the purpose of the legislative amendment was therefore to prevent this type of 'circumvention', the amendment would be an exercise in futility. Furthermore, if I accept, as I do, that the Legislature is not oblivious to judicial pronouncements in the past, the Legislature must also be assumed to have been aware of explanations such as those given in *Corondimas* and *Soja* as to why the Minister's consent cannot be avoided through the imposition of a suspensive condition. On this assumption the Legislature would therefore have been aware that the concern attributed to it by the Court *a quo* would be unfounded.

[14] In these circumstances, the inference is unavoidable that the Legislature's intention with the introduction of the extended definition of sale in 1981 could not have been the one ascribed to it by the Court *a quo*. Deductive reasoning appears to indicate, as the only remaining

alternative, that the extended definition of a 'sale' was aimed at the very type of suspensive condition involved in this case, i e one which renders the agreement of sale subject to the Minister's consent being obtained. Since this is the only possible inference, the suggestion by the Court *a quo* that such an inference would be absurd, is clearly untenable.

[15] In any event, I do not agree with the Court *a quo*'s conclusion of absurdity. The conclusion is based on the premise that a suspensive condition of the present kind ensures that the Legislature 'gets exactly what it wants'. This presupposes that what the Legislature wants, is only to prevent an owner of agricultural land from parting with an undivided portion of that land without the Minister's consent. I do not think the supposition is valid. The purpose of the Act is not only to prevent alienation of undivided portions of land. The target zone of the Act is much wider. This is clear, for example, from s 3(e)(i) which also prohibits ***advertisements*** for sale. Since advertisements obviously precede the actual sale or alienation of an undivided portion, it is by no means absurd to infer that the Legislature intended to prohibit any sale of an undivided portion of farmland, whether conditional or not, unless and until the subdivision has actually been approved by the Minister. Courts are not entitled, under the guise of absurdity, to avoid the Legislature's clear intention because they regard particular consequences to be harsh or even unwise. Moreover, once the intention of the Legislature is clearly established, it can be dangerous to speculate as to why the Legislature would have intended a particular result (see e g *Shenker v The Master and Another* 1936 AD 136 at 143; *Hatch v Koopoomal* 1936 AD 190 at 212). In the circumstances it will serve no real purpose to enter into the realm of speculation as to why the Legislature would have intended to prohibit a sale which is subject to a suspensive condition of the present kind. Nevertheless, I find the inference quite plausible that the Legislature did not want undivided portions of agricultural land to be sold and occupied by the purchaser for an indefinite period of time pending the consent of the Minister, which may then not even be sought. Another inference which comes to mind is that the Legislature wanted to protect unwary or unsuspecting purchasers from binding themselves into onerous agreements, subject to an event of uncertainty that may remain unresolved for an extended period of time.

[16] For these reasons I believe that an agreement such as the one under consideration was of the very kind that the Legislature wished to include in the prohibition in s 3(e)(i) of the Act when it specifically extended the definition of a 'sale' in 1981. Unlike the Court *a quo,* I am therefore of the view that the agreement under consideration did indeed

constitute a contravention of s 3(e)(i) of the Act.

[17] The alternative contention on behalf of Van der Lith was that, even if the agreement under consideration is held to constitute a contravention of s 3(e)(i), it does not follow that the agreement is null and void. In support of this contention it was pointed out that, unlike, for example, s 57A of the Transvaal Ordinance, the Act contains no express declaration to the effect that an agreement entered into in conflict with s 3(e)(i) is null and void. It is true, so the argument went, that a contravention of s 3(e)(i) is rendered a criminal offence by s 11(d) of the Act. But the sanction for this offence, so the argument concluded, is not the invalidity of the agreement itself, but the penalties provided for in s 11, i e a fine not exceeding R1 000 or imprisonment for a maximum period of two years.

[18] It is a settled principle of our law that a contract which contravenes a statutory provision is not *ipso iure* void, unless, of course, the statute contains an express statement to that effect. In every case the question whether the contract is void or not depends on whether such an intention is to be imputed to the Legislature. As was explained by Solomon JA in *Standard Bank v Estate Van Rhyn* 1925 AD 266 at 274:

'The contention on behalf of the respondent is that when the Legislature penalises an act it impliedly prohibits it, and that the effect of the prohibition is to render the act null and void, even if no declaration of nullity is attached to the law. That, as a general proposition, may be accepted, but it is not a hard and fast rule universally applicable. After all, what we have to get at is the intention of the Legislature, and if we are satisfied in any case that the Legislature did not intend to render the Act invalid, we should not be justified in holding that it was.'

(See also e g *Sutter v Scheepers* 1932 AD 165 at 173-174; *Swart v Smuts* 1971 (1) SA 819 (A) 829C-830C; *Oosthuizen and Another v Standard Credit Corporation Ltd* 1993 (3) SA 891 (A) 902H-903F and the authorities there cited.)

[19] As far as s 3(e) of the Act is concerned, it has been held in a number of decisions of the High Court that, on a proper interpretation of the provisions of the section, in accordance with the recognised tenets of construction, the Legislature's intention was that agreements prohibited by the section should be visited with invalidity (see e g *Tuckers Land and Development Corporation (Pty) Ltd v Truter* 1984 (2) SA 150 (SWA); *Tuckers Land and Development Corporation (Pty) Ltd v Wasserman* 1984 (2) SA 157 (T); *Smith v Tuckers Land and Development Corporation (Pty) Ltd* 1984 (2) SA 166 (T) and *Hamilton-Browning v Dennis Barker Trust* 2001 (4) SA 1131 (N) 1135I-J.

[20] Counsel for Van der Lith accepted that these High Court cases were correctly decided on their own facts. His argument was, however, that the agreements concerned in those cases are distinguishable in

that, unlike the present agreement, they were not specifically rendered subject to the Minister's consent being obtained. It is this suspensive condition, so his argument went, which makes the whole difference. Because the suspensive condition seeks to ensure compliance with the very requirement imposed by s 3(e)(i), he argued, the agreement can never be said to be in conflict with the section. This being so, he submitted, any inference that the Legislature intended to visit an agreement such as this with invalidity, is untenable. I do not agree with this submission. In my view it is fundamentally flawed. Once it is accepted that an agreement such as this is prohibited by s 3(e)(i), despite the fact that it is subject to a suspensive condition, there is simply no room for an argument that the agreement is not in conflict with the Legislature's intention. On the contrary, since it is accepted that an agreement of this kind is one of those specifically prohibited by s 3(e)(i), its recognition as valid and enforceable would give legal sanction to the very situation which that section was designed to avoid (cf *Pottie v Kotze* 1954 (3) SA 719 (A) 726H and *Oosthuizen and Another v Standard Credit Corporation Ltd supra* 904G-H).

[21] For these reasons, Geue's contention that the agreement between the parties was rendered null and void by the provisions of s 3(e)(i) of the Act, should therefore, in my view, be endorsed.

[22] The following order is made:

a. The appeal is upheld with costs.

b. The order of the Court *a quo* is set aside and in its stead the following order is made:

'1. The agreement of sale entered into between the first and the second applicants and the first respondent, dated 19 June 2001, in terms of which an undivided portion of the farm Canterbury 254 was sold to the applicants, is declared null and void.

2. The second respondent is ordered to pay the amount of R200 000 to the applicants' attorneys.

3. The first respondent is ordered to pay the costs of the application.

4. The first respondent's counter-application is dismissed with costs.'

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F D J BRAND
JUDGE OF APPEAL
Concur:
MPATI DP
STREICHER JA
CONRADIE JA
HEHER JA