**REPUBLIC OF SOUTH AFRICA**

**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG LOCAL DIVISION, JOHANNESBURG**

**CASE NO: 6220/2011**

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

**19th April 2022**

**……………………..** **………………………...**

**Date** **ML TWALA**

In the matter between:

**EAGLE VALLEY PROPERTIES 250 CC** **APPLICANT**

**And**

**JOHN CARTER FOURIE N.O.** **FIRST RESPONDENT**

**MOODIE & REBERTSON SECOND RESPONDENT**

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**JUDGMENT**

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**Delivered:** This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to Parties / their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date of the judgment is deemed to be the 19th of April 2022

**TWALA J**

[1] In this application, the applicant sought an order in the following terms against the respondents:

1.1 directing that the first respondent alternatively the second respondent, further alternatively, the first and second respondents, jointly and severally, make payment of the amount of R550 000 to the applicant.

1.2 interest thereon at a rate of 15.5 % per annum a tepore morae.

1.3 directing that the respondents pay the costs of this application in the event that they oppose same.

[2] The applicant is Eagle Valley Properties 250 CC, a close corporation duly registered and incorporated in accordance with the Close Corporation Act, No. 69 of 1984. The applicant is in the business of purchasing the abandoned inner city buildings which fall under the 'better building programme'.

[3] The first respondent is John Carter Fourie N.O., an adult male liquidator who is cited herein in his capacity as the sole liquidator in Philmin Properties (Pty) Limited (In Liquidation).

[4] The second respondent is Moodie and Robertson Attorneys, a firm of attorneys or partnership of duly admitted practising attorneys and conveyancers.

[5] The first and second respondents filed their opposition to the applicant's claim and raised two points in limine. The first point in limine was that the applicant's founding papers do not disclose a cause of action against the first respondent. The second point in limine was that the money which the applicant claims against the second respondent is no longer in the trust account of the second respondent since it has been paid over to the City of Johannesburg and the applicant has failed to join the City of Johannesburg in these proceedings.

[6] Whilst arguing the points in limine, it seemed to me that it was difficult to make a determination on the points in limine without going into the merits in the main case since the applicant's claim is based on a purchase and sale agreement of which the first respondent is a party and the second respondent is the conveyancing attorney for and appointed by the first respondent. Thus I directed the parties to argue the whole case and that I will make a determination of the points in limine in this judgment.

[7] The genesis of this matter is that on the 20th of November 2005 the applicant and the first respondent in his capacity as the Liquidator of Philmin Properties (Pty) Limited (in Liquidation) concluded an agreement of purchase and sale whereby the applicant bought the property known as Erf

952 Johannesburg, situated at 124 Kerk Street, Johannesburg and held by deed of transfer number T164/1940 for the total sum of R250 000 (Two Hundred and Fifty Thousand Rand only) from the first respondent.

[8] It is not in dispute that the purchase price agreed upon was the sum of R250 000 and was paid by the applicant together with the transfer costs. It is further undisputed that one of the conditions of sale was that the purchaser will only take occupation of the property on registration of the transfer of the property into its name. Furthermore, that the purchaser shall be liable for the rates and taxes of the property only beyond or after the registration of the transfer of the property into its name. However, it terms of the agreement of purchase and sale, it is the responsibility of the seller to pay and procure the rates clearance certificate from the City of Johannesburg to enable the seller's conveyancers to effect the transfer of the property into the name of the purchaser.

[9] Furthermore, it is undisputed that it was a condition of the purchase and sale agreement that the sale was subject to the approval of the Mayoral Committee which the seller was to obtain in writing before the rates clearance certificate could be issued. Failing to obtain the written approval of the sale from the Mayoral Committee, no rates clearance figures would be issued by the City of Johannesburg and no clearance certificate would be procured by the first respondent and thus the sale would become null and void.

[10] Due to the delay in the registration of transfer of the property into the name of the applicant and in order to speed up the process of registration of transfer of the property, in 2009 the applicant took the initiative which culminated in the conclusion of an addendum to the purchase and sale

agreement of the parties. The addendum was concluded to facilitate the registration of transfer of the property since, as a condition that of the agreement, the sale was subject to the written approval of the Mayoral Committee. The seller could not obtain the approval of the sale of the property at the price of R250 000 from the Mayoral Committee – hence the parties concluded the addendum to the sale agreement. As a result of the addendum, the applicant paid a further sum of R550 000 into the trust account of the second respondent to enable it to secure the clearance figures and clearance certificate from the City of Johannesburg.

[11] It is further not in dispute that the rates clearance certificate valid from the 20th of January 2010 to the 30th of April 2010 was procured and issued by the City of Johannesburg after payment of the sum of R127 205.72 on the 18th of January 2010. The registration of transfer of the property into the name of the applicant was effected on the 5th of February 2010 – hence the applicant requires a refund or to be reimburses of the sum of R550 000 which it paid into the trust account of the second respondent to facilitate registration of the property for that amount was not used to pay for the rates clearance certificate as envisaged in the addendum.

[12] It was contended by the first respondent that, although it is a party to the agreement of purchase and sale and the addendum thereto, the applicant's founding papers do not disclose any cause of action against it. The first respondent, so the argument went, did not receive and or handled any monies paid by the applicant and therefore there is no cause for the applicant to make a claim against it. Furthermore, since it was a term of the agreement and a condition that the sale was subject to the approval by the Mayoral Committee, when the Mayoral Committee was presented with the agreement of sale of the property for R250 000, it refused to approve the sale and

indicated that it will approve a sale of the property in the sum of not less than R800 000 – hence the applicant had to make up the sum of R800 000 by raising a further payment in the sum of R550 000 which it paid into the trust account of the second respondent.

[13] It was contended by the second respondent that the applicant's claim is premised on the basis that the R550 000 it paid into the second respondent's trust account is still lying in the trust account. The R550 000 is no longer lying in the second respondent's trust account since it was paid over to the City of Johannesburg by the second respondent and the applicant knew this and should therefore have joined the City of Johannesburg as a party in these proceedings. At some point, so the argument went, the applicant did issue an application wherein the City of Johannesburg was cited as a party but later abandoned same. It was contended further that the second respondent is not liable to pay the applicant the said sum of R550 000 for it does not have it in its trust account since it was paid over to the City of Johannesburg as per the agreement.

[14] The respondents further averred that, although the addendum is titled 'Rates and Taxes' the additional R550 000 was paid by the applicant as part of the purchase price as demanded by the Mayoral Committee. The title of the addendum as 'rates and taxes' is misleading and was done at the request of the attorney for the applicant in order to avoid payment of a higher amount of the transfer duty and the transfer costs. On receipt of the sum of R550 000, the second respondent then paid it over to the City of Johannesburg – hence the Mayoral Committee approved the sale and the City of Johannesburg issued the rates clearance figures of R127 205.72 which were then paid by the first respondent and the clearance certificate was issued.

[15] The applicant contended that the first respondent is a party to the agreement of purchase and sale and to the addendum thereto as a result whereof the applicant made a payment of R550 000 to the second respondent who is the firm of conveyancing attorneys chosen and appointed by the first respondent. The payment of the sum of R550 000 was, so it was contended, made in order to effect the registration of transfer of the property because the first respondent could not raise the sum required by the City of Johannesburg to issue the rates clearance certificate. The agreement of purchase and sale is clear that the payment of rates and taxes and procuring of the clearance certificate to enable the conveyancers to effect the transfer of the property was the sole responsibility of the first respondent.

[16] The applicant averred further that the purchase price of the property is the sum of R250 000 and the first respondent was to pay for the rates clearance certificate from this amount and the applicant would assist if the clearance figures were more than the R250 000. However, the first respondent was unable to raise the required amount for the rates clearance – hence the delay in the registration of the transfer. All the documents for the transfer of the property demonstrate that the purchase price is the sum of R250 000 and the addendum as well stated that the amount paid to make up the sum of R800 000 was to be utilised for payment of the rates and taxes in order to obtain the clearance certificate. The amount of R550 000 was never intended to be forming part of the purchase price. However, it is only a sum of R127 205.72 that was paid for the rates clearance certificate and therefore the R550 000 should be refunded to the applicant for it was not used.

[17] It is now opportune for me to restate some of the relevant provisions of the agreement of purchase and sale and its addendum which provides as follows:

*"Clause 2. Purchase Price*

*The purchase price is the sum of R250 000 (Two Hundred and Fifty Thousand Rand) (exclusive of value added tax) payable by the Purchaser to the Company as follows:*

*2.1 20% deposit on acceptance;*

*2.2 the balance by way of acceptable guarantees within 30 days of confirmation of the sale. (Vat is only applicable if the seller is registered as a Vendor under the Value Added Tax Act).*

*Clause 8. Rates and Taxes*

*The purchaser shall be liable for the payment of all Rates, Taxes, Insurance premiums and other charges in respect of the property beyond the date of transfer as set out in Clause 4 hereof and shall refund to the Company any such monies which may have been paid in advance beyond such date.*

*The sale is subject to the Company obtaining a clearance certificate in respect of the outstanding Rates and Taxes related to the property from the relevant authority. Should such clearance certificate not be obtained by the Company this agreement will become Null and Void and neither party will have recourse against the other for damages that may result.*

*Clause 11. Suspensive Conditions*

*It is hereby agreed that acceptance of the Offer to Purchase is conditional on:*

*11.1 Court or the High Court to enter into this agreement;*

*11.2 the approval of the sale by the Mayoral Committee and Council having been obtained in writing; and*

*11.3 the Purchaser attends the Better Buildings Program and signs the Obligations Agreement, annexure "A" hereto.*

*Clause 12. Variation*

*This deed of sale constitutes the entire Agreement between the and no modification, variation or alteration thereto shall be valid unless in writing and signed by both parties hereto."*

[18] The addendum to the purchase and sale agreement between the parties is titled "Rates and Taxes" and provides as follows:

*"As per the sale agreement entered into between Eagle Valley Properties 250 CC "the purchaser" and Philmin Properties (Pty) Ltd (In Liquidation) "the Company" represented by its Liquidator John Carter Fourie, on 20th November 2005.*

*The Property being: Erf 952, Johannesburg*
*Registration Division IR*
*Gauteng Province*

*Situate at: 124 Kerk Street, Johannesburg*

*The parties agreed to the amendment set out below.*

*Rates and Taxes:*

*As agreed between the parties the purchaser will attend to make up the amount of R800 000 (Eight Hundred Thousand Rand) less the purchase price of R250 000 (Two Hundred and Fifty Thousand Rand)*

*together with interest, for the benefit of either party to be utilised for the payment of rates and taxes in order to obtain a clearance certificate.*

*The above is done in order to affect the transfer of the Property referred to above. The property is to be transferred on the name of the purchaser."*

[19] I am unable to disagree with the contentions of the first respondent. The applicant's cause of action is based on monies having been paid into the trust account of the second respondent of which the first respondent has no control or responsibility. Although the payment arose from the agreement and addendum thereto concluded between the applicant and the first respondent, the first respondent had no control of the R550 000 which was paid into the trust account of the second respondent. It is therefore my respectful view that there is no cause of action against the first respondent nor cause to join it in these proceedings. The irresistible conclusion therefore is that the applicant's application against the first respondent falls to be dismissed.

[20] I do not understand the applicant to be disputing that it should have joined the City of Johannesburg in these proceedings. The applicant says in its replying affidavit that it is necessary for it to join the City of Johannesburg in these proceeding because of their interest and involvement in the matter but reserves its rights to do so at a later stage. The applicant further submitted that the second respondent and the City of Johannesburg either colluded, incorrectly and or otherwise in the handling of the claim of the applicant which makes both liable to the claim of the applicant. Having acknowledged and recognised that the City of Johannesburg has an interest in this case, I

am unable to comprehend why the applicant chose not to join the City of Johannesburg in these proceedings. On this basis I am of the view that the applicant's case falls to be dismissed for failing to join a party which has an interest in the matter.

[21] However, since I have listened to argument of the whole matter, I am of the view that I will be failing in my duty in not making a determination on the merits of this matter. The crux of the applicant's case is based on the agreement of sale and the addendum thereto – hence the applicant urged me not to consider any extrinsic evidence that may contradict, add or modify the meaning of the agreement between the parties in breach of the parole evidence rule. It was further urged upon me that the agreement provided a non-variation clause as the agreement was intended to provide a complete and sole memorial of the agreement between the parties.

[22] It is a trite principle of our law that the privity and sanctity of a contract should prevail and the Courts have been enjoyed in a number of decisions to enforce such contracts. Parties are to observe and perform in terms of their agreement and should only be allowed to deviate therefrom if it can be demonstrated that the contract is tainted with fraud or a particular clause in the agreement is unreasonable and or so prejudicial to a party that it is against public policy.

[23] In *Mohabed's Leisure Holdings (Pty) Ltd v Southern Sun Hotel Interests (Pty) Ltd (183/17) [2017] ZASCA 176 (1 December 2017)* the Supreme Court of Appeal reaffirmed the principle of the privity and sanctity of the contract and stated the following:

> "*paragraph 23 The privity and sanctity of contract entails that contractual obligations must be honoured when the parties have*

*entered into the contractual agreement freely and voluntarily. The notion of the privity and sanctity of contracts goes hand in hand with the freedom to contract, taking into considerations the requirements of a valid contract, freedom to contract denotes that parties are free to enter into contracts and decide on the terms of the contract.*"

[24] The Court continued and quoted with approval a paragraph in *Wells v South African Alumenite Company 1927 AD 69 at 73* wherein the Court held as follows:

> "*If there is one thing which, more than another, public policy requires, it is that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts, when entered into freely and voluntarily, shall be held sacred and enforced by the courts of justice.*"

[25] Recently the Constitutional Court in *Beadica 231 and Others v Trustees for the Time Being of Oregon Trust and Others CCT 109/19 [2020] ZACC 13* also had an opportunity to emphasized the principle of pacta sunt servanda and stated the following:

> "*paragraph 84 Moreover, contractual relations are the bedrock of economic activity and our economic development is dependent, to a large extent, on the willingness of parties to enter into contractual relationships. If parties are confident that contracts that they enter into will be upheld, then they will be incentivised to contract with other parties for their mutual gain. Without this confidence, the very motivation for social coordination is diminished. It is indeed crucial to economic development that individuals should be able to trust that all contracting parties will be bound by obligations willingly assumed.*

*Paragraph 85 The fulfilment of many of the rights promises made by our Constitution depends on sound and continued economic development of our country. Certainty in contractual relations fosters a fertile environment for the advancement of constitutional rights. The protection of the sanctity of contracts is thus essential to the achievement of the constitutional vision of our society. Indeed, our constitutional project will be imperilled if courts denude the principle of pacta sunt servanda."*

[26] However, it is salutary to remember the trite principles in interpreting documents and or contracts. It has been decided in a number of decision that the point of departure in interpreting documents is the wording used in the document and the background facts. If the wording is not clear, plain and unambiguous, then the words cannot therefore be read objectively. If the wording cannot be read objectively and given its grammatical meaning because there is some ambiguity, it therefore becomes necessary to consider the context in which the words were used because it is said that context gives life and meaning to what is said or written.

[27] In *Novartis v Maphil [2015] ZASCA 111*, the Supreme Court of Appeal alluded to the following:

"*[27] I do not understand these judgments to mean that interpretation is a process that takes into account only the objective meaning of the words (if that is ascertainable), and does not have regard to the contract as a whole or the circumstances in which it was entered into. This court has consistently held, for many decades, that the interpretative process is one of ascertaining the intention of the parties – what they meant to achieve. And in doing that, the court must consider all the circumstances*

*surrounding the contract to determine what their intention was in concluding it. KPMG, in the passage cited, explains that parole evidence is inadmissible to modify, vary or add to the written terms of the agreement, and that it is the role of the court, and not witnesses, to interpret a document. It adds, importantly, that there is no real distinction between background circumstances, and surrounding circumstances, and that a court should always consider the factual matrix in which the contract is concluded – the context – to determine the parties' intention.*

*[28] The passage cited from the judgment of Wallis JA in Endumeni summarizes the state of the law as it was in 2012. This court did not change the law, and it certainly did not introduce an objective approach in the sense argued by Norvatis, which was to have regard only to the words on the paper. That much was made clear in a subsequent judgment of Wallis JA in Bothma-Botha Transport (Edms) Bpk v S Bothma & Seun Transport (Edms) Bpk [2013] ZASCA 176; 2014 (2) SA 494 (SCA), paragraphs 10 to 12 and in North East Finance (Pty) Ltd v Standard Bank of South Africa Ltd [2013] ZASCA 76; 2013 (5) SA 1 (SCA) paragraphs 24 and 25. A court must examine all the facts – the context – in order to determine what the parties intended. And it must do that whether or not the words of the contract are ambiguous or lack clarity. Words without context mean nothing.*

*[29] Referring to the earlier approach to interpretation adopted by this court in Coopers & Lybrand & others v Bryant [1995] ZASCA 64; 1995 (3) SA 761 (A) at 768A-E, where Joubert JA*

*had drawn a distinction between background and surrounding circumstances, and held that only where there is an ambiguity in the language, should a court look at surrounding circumstances, Wallis JA said (para 12 of Bothma-Botha):*

*'That summary is no longer consistent with the approach to interpretation now adopted by South African courts in relation to contracts or other documents, such as statutory instruments or patents. While the starting point remains the words of the document, which are the only relevant medium through which the parties have expressed their contractual intentions, the process of interpretation does not stop at a perceived literal meaning of those words, but considers them in the light of all relevant and admissible context, including the circumstances in which the document came into being. The former distinction between permissible background and surrounding circumstances, never very clear, has fallen away. Interpretation is no longer a process that occurs in stages but is "essentially one unitary exercise" [a reference to a statement of Lord Clarke SCJ in Rainy Sky SA v Kookmin Bank [2011] UKSC 50, [2012] Lloyd's Rep 34 (SC) para 21].*

*[30] Lord Clarke in Rainy Sky in turn referred to a passage in Society of Lloyd's v Robinson [1999] 1 All ER (Comm) at 545, 551 which I consider useful.*

*'Loyalty to the text of a commercial contract, instrument, or document read in its contextual setting is the paramount principle of interpretation. But in the process of interpreting the meaning of the language of a commercial document the court ought generally to favour a commercially sensible construction. The*

*reason for this approach is that a commercial construction is likely to give effect to the intention of the parties. Words ought therefore to be interpreted in the way in which the reasonable person would construe them. And the reasonable commercial person can safely be assumed to be unimpressed with technical interpretations and undue emphasis on niceties of language.'*

*[31] This was also the approach of this court in Ekurhuleni Metropolitan Municipality v Germiston Municipal Retirement Fund [2009] ZASCA 154; 2010 (2) SA 498 (SCA) para 13. A further principle to be applied in a case such as this is that a commercial document executed by the parties with the intention that it should have commercial operation should not lightly be held unenforceable because the parties have not expressed themselves as clearly as they might have done. In this regard see Murray & Roberts Construction Ltd v Finat Properties (Pty) Ltd [1991] ZASCA 130; 1991 (1) SA 508 (A) at 514B-F, where Hoexter JA repeated the dictum of Lord Wright in Hillas & Co Ltd v Arcos Ltd 147 LTR 503 at 514:*

*'Business men often record the most important agreements in crude and summary fashion; modes of expression sufficient and clear to them in the course of their business may appear to those unfamiliar with the business far from complete or precise. It is accordingly the duty of the court to construe such documents fairly and broadly, without being too astute or subtle in finding defects.'"*

[28] In the recent past, the Constitutional Court had an opportunity to deal with the issue of interpretation of documents in *University of Johannesburg v*

*Auckaland Park Theological Seminary and Another (CCT 70/20) [2021] ZACC 13; 2021 (8) BCLR 807 (CC); 2021 (6) SA 1 (11 June 2021)* wherein it stated the following:

> *"Paragraph 65: This approach to interpretation requires that 'from the outset one considers the context and the language together, with neither predominating over the other'.' In Chisuse, although speaking in the context of statutory interpretation, this Court held that this 'now settled' approach to interpretation, is a 'unitary' exercise. This means that interpretation is to be approached holistically: simultaneously considering the text, context and purpose.*
>
> *Paragraph 66: The approach in Endumeni 'updated' the position, which was that context could be resorted to if there was ambiguity or lack of clarity in the text. The Supreme Court of Appeal has explicitly pointed out in cases subsequent to Endumeni that context and purpose must be taken into account as a matter of course, whether or not the words used in the contract are ambiguous. A court interpreting a contract has to, form the onset, consider the contract's factual matrix, its purpose, the circumstances leading up to its conclusion, and knowledge at the time of those who negotiated and produced the contract.*
>
> *Paragraph 67: This means that parties will invariably have to adduce evidence to establish the context and purpose of the relevant contractual provisions. That evidence could include the pre-contractual exchanges between the parties leading up to the conclusion of the contract and evidence of the context in which a contract was concluded.*

*Paragraph 69: Let me clarify that what I say here does not mean that extrinsic evidence is always admissible. It is true that a court's recourse to extrinsic evidence is not limitless because 'interpretation is a matter of law and not of fact and, accordingly, interpretation is a matter for the court and not for witnesses'. It is also true that 'to the extent that evidence may be admissible to contextualise the document (since 'context is everything') to establish its factual matrix or purpose or for purposes of identification, one must use it as conservatively as possible'. I must, however, make it clear that this does not detract from the injunction on courts to consider evidence of context and purpose. Where, in a given case, reasonable people may disagree on the admissibility of the contextual evidence in question, the unitary approach to contractual interpretation enjoins a court to err on the side of admitting the evidence. There would, of course still be sufficient checks against any undue reach of such evidence because the court dealing with the evidence could still disregard it on the basis that it lacks weight. When dealing with evidence in this context, it is important not to conflate admissibility and weight."*

[29] It was urged upon me by the respondents that I should consider the context in which the addendum was concluded between the parties. The respondents averred that the addendum was concluded in order to comply with the condition of the agreement that the sale is subject to the written approval of the Mayoral Committee. To obtain the approval of the sale, the Mayoral Committee demanded the purchase price to be set at R800 000. The Mayoral Committee's approval was necessary in order to facilitate the issuance of the clearance figures by the City of Johannesburg to enable the first respondent to obtain the clearance certificate as it was obliged in terms of the agreement of purchase and sale to pay for the rates and taxes and to obtain the clearance

certificate. The addendum, so it was contended by the respondents, was concluded not to make money available for payment of the rates clearance certificate but was to comply with the condition of agreement which made the sale subject to the approval of the Mayoral Committee.

[30] The respondents further averred that the purchase and sale agreement concluded between the parties in the amount of R250 000 was presented to the Mayoral Committee for approval but it was rejected and this meant that the purchase and sale agreement became null and void. It appears from the correspondence between the parties that the City of Johannesburg was a secured creditor to the property and it was owed rates and taxes of about R2 049 655.30 as at the 21st of August 2008. Under cover of the letter of the 14th of May 2009, the attorneys for the applicant requested details by how much the Council wanted to increase the purchase price.

[31] The applicant, having been informed that the Mayoral Committee would approve the sale only if the purchase price is increased and set at R800 000 and being eager to continue with the agreement and salvage the situation, made an offer to purchase the property for R800 000. On the 26th of June 2009 the applicant was informed that its offer to purchase the property for R800 000 was accepted and that the Mayoral Committee would approve the sale. Furthermore, that once payment of the difference in the purchase price of the sum of R550 000 is made into the trust account of the transferring attorneys, the Mayoral Committee undertook to authorise the issuance of the rates clearance figures and would write off the balance of the debt owed to it.

[32] Under cover of the letter of the 13th of July 2009, the applicant’s attorneys stated the following:

- *"As agree between the parties, the purchase price together with the interest less R800 000 (Eight Hundred Thousand Rand) will be payable in respect of Rates and Taxes*
- …………………….
- *In any event we fail to understand despite our offices having agreed that the purchase price still be reflected as R250 000 (Two Hundred and Fifty Thousand Rand), bearing in mind that the new amount will incur higher Transfer Duty and Transfer Costs.*

[33] It should be recalled that the terms of the addendum should be interpreted in conjunction with the terms of the main agreement between the parties. It cannot be interpreted in isolation since it is not a stand-alone document. As it was a condition of the agreement that the sale is subject to the approval of the Mayoral Committee, when the Mayoral Committee refused to approve the sale of the property for R250 000, the agreement became null and void – hence the parties started the negotiations which culminated in the conclusion of the addendum in order to salvage the situation. The Mayoral Committee insisted on the purchase price of the property to be R800 000 because the valuation of the property at the time was R820 000. The City of Johannesburg would not have issued the rates clearance figures had the Mayoral Committee not approved the sale which was then approved at the price of R800 000. Since this is the case for the respondents, it is this version that must prevail on the trite principles set out in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd [1984] (3) SA 623 (A).*

[34] It is therefore my view that the purchase price of R250 000 was rejected by the Mayoral Committee and when a counter offer to purchase the property at

the sum of R800 000 was made and was accepted by the Mayoral Committee, it is then that the City of Johannesburg issued the rates clearance figures which resulted in the rates clearance certificate being paid and procured in the sum of R127 205.72 by the first respondent. I am of the respectful view therefore that the payment of the R550 000 by the applicant into the trust account of the second respondent was not meant to be utilised for the payment of rates and taxes in order to obtain a clearance certificate but was to comply with the condition set by the Mayoral Committee which set the purchase price at R800 000 before it could approve the sale and authorised the issuance of the rates clearance figures and the rates clearance certificate.

[35] There is no merit in the applicant's argument that all the transfer documents reflect the purchase price as R250 000. It should be recalled that it was the applicant's view that it was not necessary to make another offer to purchase the property in the amount of R800 000 rather to conclude an addendum to the initial offer to purchase and requested that the purchase price should still be reflected as R250 000 and not R800 000 to avoid it paying a higher transfer duty and transfer costs. This was agreed upon between the parties which was an agreement with the attorneys to enable the applicant to defraud the fiscus. The applicant is now going against this agreement and is using it against the respondents in an attempt to further benefit from this unlawful arrangement. It does not bring any comfort that the second respondent now says it is going to pay whatever was due to the fiscus based on this transaction and have recourse against the applicant.

[36] Furthermore, it is on record that the second respondent does not have the sum of R550 000 in its trust account for it has been paid over to the City of Johannesburg. It should be recalled that the Mayoral Committee undertook

to do all that is necessary to enable the City of Johannesburg to issue the rates clearance figures once payment of the R550 000 is made into the trust account of the second respondent. The fact that the payment of the R550 000 was made after the transfer of the property was effected or after the rates clearance certificate was issued in the sum of R127 205.72 is of no moment. Payment of the R550 000 over to City of Johannesburg by the second respondent was not dependant on whether the rates certificate has been issued or not.

[37] I am therefore of the considered view that the only interpretation that can be discerned from the surrounding facts demonstrates that the clear intention of the parties in concluding the addendum in this case was to comply with the condition in the agreement that the sale is subject to the approval of the Mayoral Committee. The rates clearance certificate was issued in terms of section 118 of the Municipal Systems Act, 32 of 2000 which covers a period of two years for the outstanding rates and taxes and not the whole amount of rates and taxes owing to the council. The City of Johannesburg would not have issued the rates clearance figures had the Mayoral Committee not approved the sale. Thus the applicant had to make up the purchase price of R800 000 set by the Mayoral Committee and to achieve this – an addendum was concluded for payment of or making up the purchase price in the sum R800 000, less the R250 000 and interest already earned on the R250 000 which was invested in the trust interest bearing account.

[38] For the above reasons, it follows ineluctably therefore that the applicant has failed to establish a case against the respondents and this application falls to be dismissed.

[39] In the result, the following order is made:

The applicant's application is dismissed with costs.

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**TWALA M L**

**JUDGE OF THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG LOCAL DIVISION**

**Date of Hearing:** **16th of March 2022**

**Date of Judgment:** **19th of April 2022**

**For the Applicant:** **Advocate R Carvalheira**

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**For the Respondents:** **Advocate J Both SC**

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