

28 July 2023

DAMAGES SUFFERED WHEN THERE IS A SECOND SALE FOR A LOWER PRICE

In the case of *Klopper N.O. and Others v Marais and Another* (2023), Ms Marais bought a property from the G & M Trust (the Trust). A Mr Delport signed an undertaking with the Trust that he would stand in for the debt if Ms Marais could not pay. Neither Ms Marais nor Mr Delport could honour their payment obligations and the sale agreement was cancelled, due to the breach of the purchaser.

Later in the same year, Ms Marais concluded a second sale agreement with the Trust for the same property and again Mr Delport undertook to pay if Ms Marais could not make the payments. This sale agreement also fell through. The Trust then appointed an estate agent who helped them to secure a sale for the property. This sale was however R250 000 below what they first agreed upon with Ms Marais.

The Trust approached the court with regards to damages suffered by them in the amount of R250 000 as well as the agent's commission the Trust had to pay. The court held that in the case of breach of contract, the innocent party must take reasonable steps to limit its losses. The onus is on the party in breach of contract to prove that the steps and expenses claimed is not reasonable.

The court found that the Trust proved its claim against Ms Marais for damages of R250 000 as well as their claim for the agent's commission and Mr Delport was ordered to pay the damages plus the agent's commission to the trust in terms of his undertaking to make payment on behalf of Ms Marais.