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DOUBLE SALES: WHAT DOES THE LAW SAY?

If a property is sold by an owner to more than one purchaser, it can create problems. In the case of Fulsome Properties (Pty) Ltd v Selepe and Others Mrs. Selepe sold two units within the same sectional scheme to Fulsome Properties who performed within the first week of entering into the agreement. Fulsome Properties and Mrs. Selepe agreed to occupation of the properties from 31 October 2020 and Fulsome Properties put tenants into the property.

Later it came to light that Mrs. Selepe also sold the same two units about five weeks later to another purchaser, Lentse Investments (Pty) Ltd. Fulsome properties only found out about this when Lentse Investments started interfering with the tenants. Fulsome Properties applied to the court to stop Lenste Investments from interfering with the tenants and not to allow the property in question being transferred to another party.

The rule applicable is "first in time, first in law". Thus, in this case Fulsome Properties held the stronger right. The court stated that the purchasers' who first obtained the delivery of the property, is usually the party to acquire ownership unless the other party can show a balance of fairness in its favor. Lentse Investments could however not prove the latter and if an interdict was not granted to Fulsome Properties by the court, Lentse Investments would continue to try and gain access to the two units. Thus, Fulsome Properties succeeded in their application.

Agents who continue to market a property, pending fulfilment of the suspensive conditions of a first offer, must make the second offer subject to the cancellation or lapsing of the first offer. Contact us should you require advice in this regard