18 August 2023

PARTIAL COMPLIANCE AFTER THE FACT DOESN'T SALVAGE AN AGREEMENT

Can the purchaser's failure to meet financial responsibilities be rectified after the agreement has been cancelled by the seller? The court had to decide on this in the matter of Richard Pollack (NO) and Others v Peacock Inn (Pty) Ltd.

In this matter, Peacock Inn (Pty) Ltd (hereafter the purchaser) failed to meet its financial obligations in the buying of property from In-Out Panel Beaters CC (hereafter the seller) – which was a deposit of R1.2 million to be paid before 28 February 2022. The purchaser also took occupation of the property and had to pay occupational rent, calculated at 1% of the purchase price. After failing to make payment, the seller sent a letter of demand to the purchaser for payment of the occupational rent and deposit. The purchasers then made payment of R150 000 towards the occupational rent, which was in an arrears of R193 000.

The purchaser further undertook to pay all outstanding amounts, which they did not, and the agreement of sale was consequently cancelled by the seller. The question arose whether the seller was entitled to cancel the agreement of sale and evict the purchaser after such a substantial contribution was made towards the occupational rent. The Court held that the right to evict an occupant once their right to occupy the property has come to an end, is not trumped by belated payments. The Court also upheld the principle of parties to a contract must be held to their obligations and that the court must exercise its own discretion in deciding whether to grant an eviction order or not. Based hereon, the Court in this matter ruled that the seller acted rightfully in terminating the agreement of sale and consequently evicting the purchaser.