12 August 2022

THE INTERPRETATION OF AN AGREEMENT

It is well established in our contract law that the interpretation of the contract must be made in a way that ensures that no "insensible or unbusinesslike result' occurs that would render the aim of the contract unattainable. This principle has particular application in situations where a dispute arises between a seller and purchaser of a property. In the recent case of McGrane v Cape Royale The Residence (Pty) Ltd (2021), Cape Royale, the seller, argued that the purchaser McGrane was required to secure a mortgage bond, even though the purchase price was paid in cash, to comply with the contract in terms of clause 5 of the agreement, which stipulated: "In the event of the Purchaser requiring a mortgage loan to finance the acquisition of the Unit….". The court ruled in line with the above-established principle and found that the clause does not oblige the purchaser to obtain a loan and that the agreement was valid and enforceable.

This is an example of a situation that often occurs when one party in the agreement wishes to escape their responsibilities flowing from the agreement. The McGrane case highlights that our courts do not look favourably on such attempts. The interpretation of any clause must be made in relation to the purpose of the contract. Agents are therefore advised to ensure that their contracts are drafted and completed in such a way as to avoid "creative" interpretation, which may tempt a party to attempt to resile from the agreement.