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TRUSTS AND MAJORITY VOTES

When entering into an agreement of sale and transacting with trusts, it is of utmost importance to consider the 2020 landmark decision of Henque 1273 CC v Du Plessis and Others. The judgment deals with disputes that arose when a trust cancelled an agreement of sale and agreed to sell the property to a different purchaser on the basis of a majority vote from two out of three trustees. The first purchaser argued that the trust was not properly before the court, as the resolution was inadequate. The court held in the first purchaser's favour.

This judgment highlighted two important principles to keep in mind when transacting with trusts. Firstly, a trust does not have legal personality. The trust's estate, which is an accumulation of assets and liabilities, is a separate entity and vests in the trustees who administer such trust estate, as specified in the trust deed.

Secondly, in the absence of authorisation in the trust deed, trustees must act jointly. Our courts have held that it was imperative for a minority trustee to be kept informed of the meeting, the agenda and proposed resolution; so that he could have exercised the various options open to him in making known his views.