CAN A SUSPENSIVE CONDITION BE CONSIDERED FULFILLED IF A LESSER BOND AMOUNT IS OBTAINED BUT THE BALANCE IS SECURED TIMEOUSLY?

It is of utmost importance that a suspensive condition must be met in totality and timeously for a sale agreement to come into force. In the recent case of Basson and Another v Reddy and Others (1695 / 2017) [2018] ZAKZDHC 9, the court had to decide whether the purchaser, had fulfilled the suspensive condition by obtaining a 90% loan and depositing the balance into the transferring attorney's trust account, instead of obtaining 100% bond, as stipulated in the sale agreement.

In terms of the sale agreement between the purchaser and the seller, the purchaser had to obtain a bond for R1 300 000 within 21 days of signature, with the proviso that should she fail to do so, the sale agreement would fall away and be of no force and effect. The purchaser only secured a 90% bond, but paid the balance in cash within the 21 day period.

After receiving a better offer, the Sellers argued that the purchaser breached the agreement by not obtaining a bond for the full R1 300 000.00, the court, however, rejected this argument and found that our law acknowledges that a suspensive condition is there for the benefit of the purchaser and therefore a purchaser can unilaterally waive the protection of the condition. It was decided that the purchaser unilaterally waived a portion of the suspensive condition by accepting the lesser bond and paying the balance of the purchase price, and therefor the sale agreement was still valid and binding and the seller had to proceed with the sale agreement.

The implication of this decision is that in the event that a purchaser accepts a lesser bond amount, and pays in the balance before the due date of the suspensive condition, it is deemed unilateral waiver of a portion of the suspensive condition, without the necessity of any amendment of the bond amount per addendum, and the Seller has no other choice but to continue with the sale agreement. The safer option will be to enter into an addendum in which the amended terms is set out and signed by the parties