THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not reportable

Case No: 20848/2014

In the matter between:

HANNES GELDENHUYS NO	**FIRST APPELLANT**
HENDRIK SNYMAN OOSTHUIZEN NO	**SECOND APPELLANT**
ABEL HERMAN GERHARDUS NELL NO	**THIRD APPELLANT**

and

SUSAN ROMAO-DUARTE DANIELS	**RESPONDENT**

Neutral citation: *Geldenhuys NO v Daniels* (20848/14) [2016] ZASCA 45 (31 March 2016)

Coram: Ponnan, Wallis, Petse and Dambuza JJA and Tsoka AJA

Heard: 11 March 2016

Delivered: 31 March 2016

Summary: Contract – offer to purchase immovable property irrevocable up to a stated date – effect of date passing – offer not lapsing but becoming revocable – acceptance of offer after stated date effective to constitute a binding contract.

ORDER

On appeal from: KwaZulu-Natal Local Division of the High Court, Durban (Gyanda J sitting as court of first instance).

The appeal is dismissed with costs.

JUDGMENT

Tsoka AJA (Ponnan, Wallis, Petse and Dambuza JJA concurring)

[1] This is an appeal brought with the leave of the court a quo, against the judgment and order of the KwaZulu-Natal Local Division, Durban, (Gyanda J) in favour of Ms Susan Romao-Duarte Daniels, the respondent, for the payment of damages in the sum of R328 835 together with interest and costs. Her claim arose from the cancellation of an agreement of sale of an immovable property. The three appellants are the joint trustees for the time being of the Hannes Geldenhuys Trust (the Trust)

[2] The facts giving rise to the dispute are uncomplicated and, in the main, common cause. In fact, it is surprising that the parties did not agree on a stated case for this court in terms of Rule 8(8)(*a*) instead of burdening us with unnecessary documents, which we were told had to be read.

[3] Briefly, the facts are the following. On 11 January 2008, the Trust, which was represented by the first appellant, Mr Hannes Geldenhuys, made a written offer to purchase the property from Ms Daniels for R1570 000. The important clause of the agreement is Clause 15 which reads –

'15. Offer lapses –

This offer is irrevocable until 24h00 on 18 January 2008 and is binding upon acceptance at any time prior hereto [which should read prior thereto], irrespective of notification of acceptance to the purchaser.'

Ms Daniels accepted the offer on 29 January 2008 by signing it and notifying the Trust of her acceptance.

[4] Subsequent to the acceptance, the Trust took occupation of the property; paid occupational rental; commenced major structural renovations; signed the transfer documents and paid the *pro forma* bill of the transfer costs. When the transferring attorneys sought to obtain rates clearance certificate, they learnt that there were problems with the building plans of the property, as a braai area constructed thereon was built 300 millimetres over the building line.

[5] Inevitably, the problem with the braai area had to be attended to before the clearance certificate could be issued. Without any delay, Ms Daniels instructed an architect to seek a relaxation of the building line from the municipality so that the clearance certificate could be issued. In August 2008 the municipality informed Ms Daniels that the relaxation sought would take a period of about two months. By then, the Trust had lost enthusiasm and interest to proceed with the transfer of the property. It repudiated the agreement. Ms Daniels accepted the repudiation and instituted an action for damages representing the difference between the purchase

price at which the property was sold to a third party and that which the Trust had agreed to pay.

[6] The court a quo held that the irrevocable offer having not been accepted by midnight on 18 January 2008 as stipulated, became a revocable one. And, as the Trust had not revoked the offer before 29 January 2008 when Ms Daniels accepted it, which acceptance was communicated to the Trust, that resulted in a binding agreement.

[7] The Trust defended the action on the ground that the offer had lapsed as it was not accepted by midnight on 18 January 2008. It thus contended that when Ms Daniels accepted the offer on 29 January 2008, she had made a counter-offer to the Trust which was not accepted. Accordingly, no binding agreement was concluded. The sole issue for determination is thus whether the acceptance of the offer by Ms Daniels on 29 January 2008 resulted in a binding agreement.

[8] A plain reading of the clause 15,[1] in my view, conveys no other meaning than that the offer made by the Trust on 11 January 2008 was irrevocable until midnight on 18 January 2008. If she accepted it before that time, even though she did not notify the Trust of her acceptance, that would result in a binding agreement.

[9] When Ms Daniels had not accepted the offer by that time, the irrevocable offer became a revocable one which the Trust was entitled to revoke at any time before 29 January 2008. Clause 15 did not say what would happen if the offer was

[1] *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; 2012 (4) SA 593 (SCA) para 18.

not accepted by midnight on 18 January 2008. Many such clauses provide that the offer will in that event lapse, but there is no such provision in clause 15. The result is simply that the irrevocable character of the offer fell away and it became revocable. But until revoked, it remained open for acceptance. And since the Trust did not revoke the offer, when Ms Daniels accepted it on 29 January 2008, it was still capable of being accepted. There is no suggestion that the period of 18 days from the date of the offer to the date of acceptance, was unreasonable. In my view, the acceptance gave rise to a binding agreement between the parties.

[10] The appellants' reliance on the heading of clause 15 which reads: 'offer lapses', hardly assist them. Properly construed, clause 15 reveals merely that the offer was irrevocable until 24h00 on 18 January 2008. The clause says nothing about the offer lapsing if not accepted by that time and that result cannot be inferred from the heading. So, an acceptance after that date would result in a binding agreement between the parties, provided the offer had not been revoked prior to the acceptance.

[11] It is apt to reiterate the observation made by this court in *Sentinel Mining Industry Retirement Fund & another v Waz Props (Pty) Ltd & another*[2] that:

'It seems to me common sense that where a heading conflicts with the body of the contract, it must be the body of the contract which prevails because the parties' intention is more likely to appear from the provisions they have spelt out than from an abbreviation they have chosen to identify the effect of those provisions; but that where the heading and the detailed provisions can be read together that should be done'.

[2] *Sentinel Mining Industry Retirement Fund & another v Waz Props (Pty) Ltd & another* [2012] ZASCA 124; 2013 (3) SA (SCA) para 10.

[12] In the instant case, the heading conflicts with the contents of clause 15 of the agreement. The heading and body of the clause are irreconcilable. The body must accordingly prevail over the heading.[3]

[13] In the result the following order is made:
The appeal is dismissed with costs.

M Tsoka
Acting Judge of Appeal

[3] *C/f Manna v Lotter & another* 2007 (4) SA 315 (C).

APPEARANCES:

For Appellant:	A Liversage Instructed by: Prinsloo Bekker Attorneys, Durban Symington & De Kok, Bloemfontein
For Respondent:	A Camp Instructed by: Jooste & Co Attorneys, Johannesburg Bezuidenhouts Inc., Bloemfontein