

CASE NO.486/98

IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

In the matter between

Jacobus Pretorius

Appellant

and

Anton Jacobus Slabbert

Respondent

BEFORE: VAN HEERDEN DCJ, GROSSKOPF, HOWIE, SCHUTZ JJA
AND FARLAM AJA

HEARD: 15 SEPTEMBER 2000

DELIVERED: 22 SEPTEMBER 2000

W P SCHUTZ

Non-joinder - raised *mero motu* - not to speculate on what uninvited party might wish to say - appeal postponed.

J U D G M E N T

SCHUTZ JA:

The appellant sold a farm to the respondent in 1988. The final balance of the price was payable by 31 August, 1997. On the following day the appellant issued a *mora* notice threatening cancellation if the balance were not paid within 14 days. After the 14 days had run he purported to cancel the sale. The respondent sued him for transfer, tendering a guarantee of payment. The issue in the trial before Le Roux J, sitting in the Transvaal Provincial Division was whether the appellant had divested himself of the right to issue the notice and cancel the sale, in the light of the admitted fact that he had ceded the rights arising from the deed of sale *in securitatem debiti* to Syfrets Bank (“Syfrets”) in 1989. The court *a quo*

held in the respondent's favour and granted an order substantially as prayed.

Syfrets was not joined and there is no clear indication in the record what its attitude to the proceedings might have been.

Leave to appeal having been granted below, the appeal was set down before us. Three days before the appeal was heard the parties were asked by this court to address the question whether there had not been a non-joinder. At the hearing neither counsel was able to give us a definite answer as to whether Syfrets had been given proper notice of the proceedings, nor as to what its attitude to them might be.

Mr Louw, for the respondent, sought to persuade us that Syfrets had no material interest in the proceedings, so that the appeal might proceed. There is an immediate difficulty with this argument, as it appears to contradict the very contention upon which the respondent succeeded below and wishes to succeed here, namely that the appellant's rights in the deed of sale (reversionary rights excepted) had become vested in Syfrets. Depending upon a variety of possible

considerations, upon which the record throws no clear light, Syfrets might have an interest. For instance, it may have something to say about the form of order, which envisages payment to the appellant and not itself as cessionary. But more to the point, as was rightly said in *Selborne Furniture Store (Pty) Ltd. Steyn NO 1970* (3) SA 774 (A) at 780 G, the substantial question is whether it is proper for this court to proceed to draw an inference as to Syfret's rights, without giving it an opportunity of being heard in regard thereto. The answer is no.

Counsel were agreed that if this conclusion were reached the argument on the merits of the appeal would have to be postponed, in order that the attitude of Syfrets could be ascertained and demonstrated. Because of the general uncertainty that prevails the proper order as to costs is to reserve them.

The following order is made: The appeal is postponed *sine die* in order to allow the appellant to demonstrate what the stand of Syfrets is. This is to be done within two months of this order by the filing of appropriate papers. Thereafter

either party may move to have the appeal set down for hearing. Costs of the appeal are reserved.

W P SCHUTZ
JUDGE OF APPEAL

CONCUR
VAN HEERDEN DCJ
GROSSKOPF JA
HOWIE JA
FARLAM AJA