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Integrity PERSONALISED
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Registration Does Not Guarantee Ownership

Most people are of the view that once a transfer is registered in the Deeds Office, they are guaranteed ownership of the property. South Africa has an abstract system of transfer of immovable property rather than a causal system. In a causal system, there has to be a valid underlying cause giving rise to the transfer of ownership of a property. If the cause of the transfer is invalid, the transfer will be void. In an abstract system, there is no need for a valid underlying cause for the transfer. Both parties to the transaction merely need to agree to the passing of ownership.

This principle was approved in the case of Commissioner of Customs and Excise v Randles, Brothers and Hudson Ltd 1941 AD 369 and has been followed since. It was confirmed in Legator McKenna Inc v Shea 2010 (1) SA 35 (SCA). The Supreme Court of Appeal has again confirmed the principle in the recent case of Nedbank Ltd v Mendelow and Another NNO 2013 (6) SA 130 (SCA).

The facts of the case were that a son forged his mother's signature on a sale agreement in terms of which a property owned by his mother was sold to a company of which he, his mother and his brother were directors. The mother died before the property was transferred to the company. The son was appointed the sole executor of her deceased estate. The son thereafter:

1. Forged his brother's signature on the Consent to Sale required by the Master of the High Court before the Master would sign the certificate on the Power of Attorney to transfer to authorise transfer of the property;
2. Procured the transfer of the property to the company;
3. Had his brother removed as a director of the company, result-

ing in his becoming the sole director of the company; and

4. Registered a mortgage bond over the property in favour of Nedbank.

The court reaffirmed the principle that if the owner of the property has no real intention to transfer ownership, then the purported registration of transfer and the registration of any other real right such as a mortgage bond, have no force or effect. The court held that, as the son forged his mother's signature on the sale agreement and subsequently forged his brother's signature on the Consent to Sale, his brother did not have the intention to transfer the property.

Accordingly, the Power of Attorney to transfer, endorsed by the Master of the High Court on the strength of the signed Sale Agreement and the signed Consent to Sale, was premised on fraud and forgery. As such, ownership did not pass to the company and the bond registered in favour of Nedbank was not valid. The Court ordered that the property be transferred back to the deceased estate and the bond in favour of Nedbank be cancelled.

The lesson to be learnt from this case is that there are instances where, as a result of fraud or forgery, the fact that transfer of a property has been registered in the Deeds Office does not guarantee that the purchaser is in fact the owner of the property. It is imperative that parties deal with well known and reputable estate agents and conveyancers to reduce the risk of fraud.

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If you require assistance or advice regarding property matters, our specialist property team can advise you. Contact us on 031-5638500 or email rwestley@coxyeats.co.za, rgreen@coxyeats.co.za, cmcdonald@coxyeats.co.za or tvilakazi@coxyeats.co.za