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SELLERS RIGHTS TO CLAIM INTEREST FOR DELAYS IN TRANSFERS

Transfers of properties are sometimes delayed as a result of a party failing to do something that party is obliged to do in terms of the sale agreement. Most often the delays are caused by the buyer. Property sale agreements generally have a *mora* clause which is intended to prevent the buyer from delaying the transfer of the property. The term *mora* simply means delay or default. If the transfer is delayed as a result of the conduct of the buyer, the seller is entitled to claim penalty or *mora* interest from the buyer.

In the recent case of Crookes Brothers Limited v Regional Land Claims Commission for the Province of Mpumalanga and others [2013] 2 All SA 1 (SCA), the Supreme Court of Appeal considered whether a seller is entitled to claim *mora* interest from a buyer in situations not specifically provided for in the sale agreement.

Crookes Brothers Limited ("Crookes") had sold a number of farms to the State in settlement of land claims by various communities. The State was represented by the Regional Land Claims Commission for the Province of Mpumalanga and the National Department of Land Affairs in the negotiations. The purchase price was to be secured by a written undertaking from the Chief Land Claims Commissioner that the purchase price would be paid no later than 10 days after the transfer date. The undertaking was to be provided within 14 days of written request by the Conveyancers. The Conveyancers requested the undertaking from the State but, despite written demands from the Conveyancers on behalf of Crookes, the State was unable to provide the undertaking for several months. The State eventually provided the undertaking after Crookes instituted legal proceedings against the State. As a result the transfer was delayed.

The sale agreement contained a *mora* clause which provided that, if any part of the purchase price was not paid on the date it was due, the State would be liable for interest on the outstanding amount. After the transfer was registered and the purchase price paid, Crookes demanded payment of *mora* interest from the date the purchase price should reasonably have been paid, had the State complied with its obligations in terms of the sale agreement, until the date it was actually paid. The State refused to pay the interest on the basis that, in terms of the *mora* clause in the sale agreement, it was only liable for *mora* interest if any portion of the purchase price was not paid within 10 days after the transfer date. It was not liable for *mora* interest if the undertaking was not delivered in time.

The court held that the obligation to provide the undertaking and the obligation to pay the purchase price were not separate obligations. Payment of the purchase price was dependant upon the State providing the undertaking and accordingly the State was liable for *mora* interest. The court held, further, that it is possible to place a buyer in *mora* even if there is no *mora* clause in an agreement or no specific date by when a party is required to perform an obligation. The other party merely needs to demand performance.

FURTHER ADVICE

The principle that emerges from this case is that, should a transfer be delayed as a result of the conduct of the buyer and the sale agreement does not contain a *mora* clause or does not stipulate a date for performance by the buyer, provided the seller sends a written demand to the buyer, the buyer will be liable for *mora* interest from the date the buyer is required to perform in terms of the demand.

Robin Westley
Partner
assisted by
Carol McDonald
Professional Assistant
Cox Yeats Attorneys
Umhlanga Ridge

If you require assistance or advice regarding property matters, our specialist property team can advise you. Contact us on 031-5368500 or email rgreen@coxyeats.co.za, rwestley@coxyeats.co.za or cmcdonald@coxyeats.co.za

