Sale of property and the National Credit Act

One might think that only banks and other financial institutions need to register as credit grantors in terms of the National Credit Act. This is, however, not the case. Where credit is granted by a seller to a purchaser of immovable property, the National Credit Act might apply. If it does, several requirements have to be met.

If the Act does apply the seller has to register as a credit provider where either:

he makes more than 100 loans, other than “incidental credit agreements”, or
the total amount he lends is more than the threshold of R500 000.

The seller therefore has to register as a credit provider even if it is a once off transaction if the credit granted exceeds the R500 000. Failure to do so will lead to an invalid agreement.

This was confirmed in the case of Van Heerden v Nolte (19428/11) [2014] ZAGPPHC 12; 2014 (4) SA 584 (GP), although the buyer had actually borrowed money to the seller. The following happened:

the buyer bought the property for R700 000, paid the seller in full and took occupation;
he was, however, unable to take transfer when it emerged that a bond holder was owed money as a result of an unlawful transfer of the property to a third party;
to enable the seller to sort out this problem and to enable the transfer of the property to him, the buyer lent three amounts totalling R882 397 to the seller; the seller signed an acknowledgement of debt for that amount and then repaid R250 000;
the seller failed to repay the balance prompting the buyer to sue him.

The Court held that the buyer should have been registered as a credit provider in terms of the National Credit Act. The agreement was consequently held to be void.

It is therefore important to consider the National Credit Act whenever credit is

granted as part of a transaction for the sale of immovable property.

Volker Krüger