Did you ask your trust if you can buy it?

Are you a trustee of a trust? Make sure to always act in accordance with the provisions of the trust deed.

In the matter of Pretorius NO v Chweu Local Municipality, the high court once again highlighted the importance of trustees to always act in accordance with the provisions of the trust deed.

In this matter, the applicants, Mr. Pretorius and Ms Loots (hereinafter referred to as 'the new trustees'), were the trustees of the Luanza Swanepoel Familie Trust. They were appointed as trustees during 2021.

The trust bought two immovable properties from the municipality in terms of a deed of sale in 2011, at which time, Mr and Ms Swanepoel were the trustees of the trust. Ms Swanepoel signed a resolution purporting to be a decision by the Trust to purchase the properties. Mr Swanepoel was not aware of the deed of sale.

The new trustees only became aware of the properties when they received accounts from the municipality for the outstanding rates and taxes. The new trustees approached court to declare the deed of sale void, as the trust deed provided that all decisions of the trustees must be taken by a majority vote. They alleged that the trust could not have properly consented to purchase the properties while one of the trustees was unaware of the transaction.

The court emphasized the importance of the content of the trust deed relating to the powers of the trustees. The court found that it was clear that only one trustee, signed the documents. This was not in line with the provisions of the Trust Deed, which required the majority of the trustees to make decisions on behalf of the Trust.

The court declared the sale transaction and the transfer of the two immovable properties invalid. The deeds office was ordered to amend its records to cancel the transfer of the properties into the name of the trust and the municipality was ordered to repay the purchase price of the two properties, to the trust.

This case shows why it is important to ensure that trustees have the necessary powers to act on behalf of the trust and that the provisions of the trust deed have been complied with.

It is always important to have a deed of trust drafted by an attorney specialising in trusts, to ensure that the deed of trust is valid and executable. Contact us for assistance.

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