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CONTRACTUAL CAPACITY - CLOSE CORPORATION

Northview Shopping Centre v Revelas Properties (275/09) [2010] ZASCA 16 (18 March 2010)

A close corporation, like a company, is a legal fiction. It can enter into legal transactions only through natural persons. The question for decision in this appeal was whether an agent of a close corporation, who was not a member, was required to have written authority from a member to enter into a contract for the sale of land.

Section 2(1) of the Alienation of Land Act provides:

"No alienation of land after the commencement of this section shall... be of any force or effect unless it is contained in a deed of alienation signed by the parties thereto or by their agents acting on their written authority."

Northview Properties had offered to purchase property, at a considerable price, from Revelas Properties, a close corporation. The contract was signed on behalf of Revelas by the husband of the sole member of the close corporation. Northview instituted action claiming performance of the contract.

Revelas excepted (raised a legal defence that there was no cause of action) on the basis that there was no allegation that he had written authority to bind the close corporation. The South Gauteng High Court (Johannesburg) upheld the exception finding that the contract would not be binding in the absence of written authority. This court dismissed the appeal against that order. It held that while a member of a close corporation does not require written authority to bind it to a contract for the sale of land, in the same way as a partner would not need such written authority, being able to bind a partnership without such authority, an outside agent must have written authority from a member to enter into a valid contract for the sale of land.

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