

## A CASE OF BUYER'S REMORSE?

### A Case Study

Most Deeds of Sale have a mortgage bond clause which is a suspensive condition. Suspensive conditions must be met perfectly and on time, or otherwise the Deed of Sale will become null and void. Most mortgage bond clauses will have a time period in which the buyer must obtain the loan, the amount, and a sentence which says the loan will be on the bank's normal terms and conditions.

What happens when a mortgage bond is initially granted within the time period, but is withdrawn later? Does the agreement become suspensive again?

In the case *Dharsey vs Shelly*, Dharsey bought a property and paid a deposit. He had to obtain a mortgage bond. The mortgage bond was granted for the agreed amount, in time, and subject to the bank's normal conditions. The sale therefore became un-suspensive or final.

While the conveyancing was progressing Dharsey received two unpleasant tax assessments from SARS and realized that his purchase had just become unaffordable. He sent the tax assessments to the bank and asked them to review his financial qualification for the bond. The Bank promptly withdrew his bond. When the sale could not proceed, Shelly cancelled the sale and took the deposit for damages. Dharsey wanted his money back and went to Court. The Court found that once a suspensive condition has been met properly – in this case his mortgage bond – the sale does not become suspensive again if the bond is withdrawn. Therefore a buyer cannot sabotage his sale by getting his bank to withdraw the loan. All that happens is that he is now left high and dry without the ability to pay for the property or give the required guarantee. Such a Buyer will lose his deposit and be faced with damages claim. Beware of Buyer's remorse! Also bear in mind, a buyer who creates additional debt after the granting of a bond but before the registration could also see his bond withdrawn and be in the same trouble.