

Does the mere approval of a loan by a bank always fulfil the suspensive condition in an OTP relating to bond finance?

To better answer this question, reference can be made to the case of *Lategan_ & another V Leslie Mildenhall Trollip t/a Property Solutions*.

The case concerned an estate agent's claim for commission. The contract stated that the sale was subject to the suspensive condition that the purchaser be granted a loan on or before 23 November 2006 by a **“registered bank upon its normal terms and conditions”**. The condition further stated that **“the condition shall be deemed to have been fulfilled upon notification by the bank to the purchaser or his agent that the loan in question has been approved regardless of any conditions attached to such approval”**.

The purchaser subsequently obtained a Loan, which was made subject to two special conditions. Firstly, that the purchaser's existing home loan be settled in full and secondly, that building upon the land in question, commenced within 6 months of registration of the bond.

The First condition was not possible to fulfil, by the purchaser, causing the application for a loan to be re submitted to the bank to remove the condition. The condition was later waived by the bank, on 4 December 2006, after the date stipulated upon which the purchaser should obtain a loan from a bank.

No Addendum was entered into between the parties, to extend the suspensive condition, relating to bond finance, resulting in the purchaser cancelling the agreement on the basis that he could not obtain a loan as per the suspensive condition in the agreement of sale.

This therefore resulted in the matter going to court, seeing as the estate agent contended that the suspensive condition had been fulfilled due to the purchaser being granted a loan before 23 November 2006, regardless of any conditions attached to such approval.

The court found that the special conditions which were imposed by the bank upon the granting of the loan did not comply with agreement of sale, seeing as the loan was not granted by the bank on its **“normal terms and conditions”**. This was regardless of the contradictory provisions found later in the clause, deeming the suspensive condition to be fulfilled regardless of any condition attached to such approval.

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