

NOTARIAL PRACTICE / NOTARIËLE PRAKTYK

27 FEBRUARY / FEBRUARIE 2020

ANSWERS / ANTWOORDE

PLEASE NOTE THAT THE GUIDELINE ANSWERS TO PREVIOUS PAPERS MAY NOT BE A CORRECT REFLECTION OF THE LAW AND/OR PRACTICE AT THE MOMENT OF READING.

NOTE TO EXAMINER: *This guideline records the views of the drafters. There may be justifiable variations in practice which are brought out in the answers. When this happens the examiner should apply his discretion in marking the answer.*

QUESTION 1

[20]

1.1 To release the three cranes as security under the bond by signing a consent to release and then register Special Notarial collateral bond over the new rigging cranes in favour of Steel Company South Africa (Pty) Ltd. (3)

1.2

Prepared by me

CONVEYANCER
A SMITH

CONSENT TO RELEASE

I, the undersigned,

Duly authorised hereto by a Resolution of the directors of

STEEL COMPANY SOUTH AFRICA PROPRIETARY LIMITED
Registration Number 1990/002309/06

the legal holder of the undermentioned bond, namely

NUMBER : BN37948/2019

PASSED BY : ABC SUPPLIES PROPRIETARY LIMITED

IN FAVOUR OF : STEEL COMPANY SOUTH AFRICA PROPRIETARY LIMITED

Registration Number 1990/002309/06

AMOUNT : R3 000 000.00 (Three Million Rand)

ADDITIONAL SUM: R500 000.00 (Five Hundred Thousand Rand)

DO HEREBY CONSENT TO THE RELEASE FROM THE OPERATION OF THE SAID NOTARIAL BOND OF THE FOLLOWING MOVABLE ASSETS HYPOTHECATED THEREUNDER, NAMELY;-

1. Rigging Crane (Model No. 79476/08)
2. Rigging Crane (Model No. 84761/07)
3. Rigging Crane (Model No. 592763/04)

DATED at Cape Town on _____ 2019

AS WITNESSES:

1. _____
2. _____

Protocol No.

SPECIAL NOTARIAL COLLATERAL BOND

KNOW ALL WHOM IT MAY CONCERN THAT on this the _____ day of _____ in the year Two Thousand and Nineteen (2019), before me

ANNE SMITH

Notary Public, admitted and practising as such in Cape Town and in the presence of the subscribing competent witnesses, there appeared personally-

JACOBS JOHANNES BESTER

being duly authorised hereto by a Resolution of the directors of-

ABC SUPPLIES PROPRIETARY LIMITED
NUMBER 2000/305978/07

A company having its registered office at 50 Adderley Street, Cape Town and carrying on business as a crane rigging company at that address and in Johannesburg at 15 Smith Street and Durban at 125 Main Road. ("the Debtor")

AND THE APPEARER DECLARED THAT:

WHEREAS the Debtor is truly and lawfully indebted and held and firmly bound to and in favour of

STEEL COMPANY SOUTH AFRICA (PTY) LTD
Number 1990/002309/06
("the Mortgagee")

in the sum of R3 000 000.00 (THREE MILLION RAND) (" the capital sum") arising from and being in respect of monies lent and advanced under a credit facility agreement dated 14 April 2017, as security for which indebtedness the Debtor has registered Notarial Bond No. BN37948/2009 ("the principal bond") in the Deeds Registry at Cape Town over the movable property thereby especially hypothecated.

AND WHEREAS the Mortgagee requires the indebtedness of the Debtor under the principal bond to be further secured by the hypothecation of the undermentioned property as collateral security therefore.

NOW THEREFORE the Appearer, on behalf of the debtor, renounced the legal exceptions "*non numeratae pecunia*", "*non causa debiti*", "*errore calculi*", and "*no value received*", with the force and effect of which he declared the Debtor to be fully acquainted, and all other exceptions which might or could be taken to the Mortgagee's claim for payment of all or any of the amounts secured hereunder, and did by these presents declare and acknowledge the Debtor to be held and firmly bound to and in favour of the Mortgagee, its order, successors in title or assigns, in the aforesaid sum of THREE MILLION RAND (R3 000 000.00) together with the sum of FIVE HUNDRED THOUSAND RAND (R500 000.00) as a preferent charge for cost and other charges, as more fully set out in the principal bond, and as collateral security for the due and proper repayment of the aforesaid sums with interest on the said capital sum and for the due and proper fulfilment of all terms and conditions mentioned or referred to in the principal bond.

AND as security therefore the Appearer, on behalf of the Debtor, declared to cede and assign to the Mortgagee and to pledge and hypothecate in terms of the Security by Means of Movable Property Act No. 57 of 1993 the following movable assets of the Debtor as specific security, namely:

- (i) Rigging crane (Model No: 5324/2009)
- (ii) Rigging crane (Model No: 7967/2003)
- (iii) Rigging crane (Model No: 5954/2004)

AND the Appearer, on behalf of the Debtor, declared that this notarial special collateral bond shall be subject to all the terms and conditions set out in the principal bond BN37948/2019 as fully and effectually as if the same had been inserted herein and to the special condition that

upon payment and discharge of all obligations secured under the principal bond, this notarial collateral bond shall be nil and void but shall otherwise be and remain of full force and effect.

SIGNED AT CAPE TOWN on the day, month and year first aforewritten, in the presence of the subscribing competent witnesses.

AS WITNESSES:

1. _____

2. _____

QUOD ATTESTOR

NOTARY

(17)

QUESTION 2

[25]

a)

PROTOCOL NO.

NOTARIAL DEED OF CESSION OF USUFRUCT

IT IS RECORDED THAT:

1. On this the _____ 2019, before me, MARY JACKSON of Cape Town, Province of the Western Cape, a duly admitted and sworn Notary Public and in the presence of the undersigned witnesses, there appeared

1.1 TOM SMITH in his capacity as the Executor of the Estate of the Late David Jones No. 2000/2019, acting under letter of Executorship issued to him by the assistant master of the High Court (Western Cape Provincial Division) on the 12 June 2019 ("the grantor") and

1.2 EDNA JONES
Identity No. 400825 2163 08 2
UNMARRIED
("The grantee")

Which Letters of Executorship were exhibited to me.

2. The land described as

Erf 1460 Cape Town
Province of the Western Cape
Extent 2000 (Two Thousand) square metres

("The property")

Is registered under Deed of transfer No T380/1995 in the name of the said late David Jones, who died on 14 April 2016, and who, in terms of the Last Will and testament dated 30th of April 2012. (A certified copy of which has been exhibited to me) he bequeathed the property to his widow, the grantee, subject to a *fideicommissum* in favour of his children, Peter Jones and Mary Ford or the survivor of them, to whom he also bequeathed the residue of his estate.

3. AND WHEREAS in terms of a redistribution agreement entered into between the grantee and the said children on 30th April 2018, which redistribution agreement was accepted by the Master of the High Court on 21 November 2018, the grantee is entitled to the life usufruct hereafter described.

4. The grantor accordingly declared to cede to the said

EDNA JONES
Identity No. 400825 2163 08 2
UNMARRIED

The personal servitude of life usufruct over the property held aforesaid, subject to the following condition as contained in the Will, namely:

"I direct that all inheritances and benefits accruing to beneficiaries under this Will shall not form part of joint estate of beneficiaries married in community of property."

5. The grantee hereby accepts, insofar as this may be necessary, the benefits of the aforesaid servitude.

SIGNED at CAPE TOWN on the said date in the presence of the undersigned witnesses:

AS WITNESSES:

1. _____

2. _____

QUOD ATTESTOR

NOTARY

(12)

b)

PROTOCOL NO.

NOTARIAL DEED OF CANCELLATION OF USUFRUCT

IT IS RECORDED THAT:

1. On this the 2019, before me, Mary Jackson, of Cape Town, Province of Western Cape, a duly admitted and sworn Notary Public and in the presence of the undersigned witnesses, there appeared

1.1 EDNA LAWRENCE (formerly JONES)
Identity Number 400825 2163 08 2
MARRIED OUT OF COMMUNITY OF PROPERTY

("The usufructuary")

and

1.2.1 PETER JONES
Identity Number 640501 6253 08 1
MARRIED OUT OF COMMUNITY OF PROPERTY

1.2.2 MARY FORD
Identity Number 671220 5235 08 3
MARRIED IN COMMUNITY PROPERTY TO RYAN FORD (which community of property is excluded by virtue of a Will condition)

(Herein collectively called the *bare dominium* owners)

2. The land described as

Erf 1460 Cape Town
Province of Western Cape,
In extent 2000 (Two Thousand) square metres

Is registered in the names of the *bare dominium* owners by virtue of Deed of Transfer No. T75200/2018 and is subject to a personal servitude of life usufruct in favour of the usufructuary as created by Notarial Deed of Cession of Usufruct No. K379/2018.

3. The Usufructuary did on 20th November 2018 agree with the owners to cancel the aforesaid usufruct against payment to her of a consideration of R50 000.00 (Fifty Thousand Rand).

NOW THEREFORE the Appearer declared that:

- i) the personal servitude of life usufruct in the usufructuary's favour referred to above and held by her as aforesaid over said Erf 1460 Cape Town under Notarial Deed of Cession No. K...../2018 shall be and is hereby cancelled.
- ii) This deed shall be registered in the office of the Registrar of Deeds against the title deeds affected thereby and all costs of and incidental to its negotiations, preparation and registration, including any and all transfer duty and any other taxes, shall be paid by the *bare dominium* owners.
- iii) The consideration aforementioned shall be paid by the *bare dominium* owners to the usufructuary against registration of this deed and shall be secured by a guarantee acceptable to the usufructuary and issued by a bank or other financial institution.
- iv) The *bare dominium* owners hereby accept the benefits of the aforementioned cancellation subject to the aforesaid conditions.

SIGNED at Cape Town on the date in the presence of the undersigned witnesses:

AS WITNESSES TO ALL SIGNATURES

1. _____ EDNA LAWRENCE (FORMERLY JONES)

2. _____ PETER JONES

3. _____ MARY FORD

QUOD ATTESTOR
NOTARY PUBLIC

(8)

c)

In respect of question **a)** to be lodged at the Deeds Office:

- Notarial usufruct
- Title Deed
- Redistribution Agreement
- Certified copy of Will
- Transfer duty exemption certificate

In respect of question **b)**:

- Title Deed
- Notarial Deed of Cancellation
- Transfer Duty exemption certificate

To be lodged in Notaries Protocol:

- Identity documents of parties
- Marital status of parties
- Notarial Deed

(5)

QUESTION 3

[20]

3.1 The parties need to enter into a Deed of Partition allocating to each party his/her specific unit and exclusive use area. For this they will require the normal documentation to be filed when opening a sectional title register, which would include sectional plans indicating the exclusive use areas. The register will be opened in the names of both parties jointly in undivided shares, as will the certificates of registered sectional and certificate of exclusive use areas. The units will then be transferred to each party by way of partition transfer. However, this is not possible as far as the exclusive use areas are concerned, as it is not seen as “land” under the definition of the Act. The only way to achieve this is for each party to cede his/her one half undivided share in the specific exclusive use area to the other party, the deed of partition however remaining the causa. The properties being of the same value, the transaction will be exempted from the payment of transfer duty i.t.o. Section 9(1)(g) of the Transfer Duty Act 40 of 1949.

Note to examiner: obviously two similar documents should be prepared. The candidate may simply refer to this fact. To disclose to the candidate that two documents will be required would alert him/her thereto that a “normal” partition will not suffice.

(8)

3.2

PROTOCOL NO. _____

NOTARIAL CESSION OF EXCLUSIVE USE AREAS

[In terms of Section 27(1) of the Sectional Titles Act No. 95 of 1986]

BE IT HEREBY MADE KNOWN:

THAT at PRETORIA on this the 12 July 2018, before me

HARRY WILLIAMS

of Durban, in the Province of Kwazulu Natal, Notary Public, by lawful authority duly admitted and sworn and in the presence of the subscribing witnesses personally came and appeared:

1. SAM BOTHA
Identity Number 680407 0152 086
Married out of community of property

(hereinafter called the “Cedent”); and

2. SALLY BOTHA
Identity Number 680407 0152 086
unmarried

(hereinafter called the “Cessionary”)

AND THE SAID APPEARERS DECLARED THAT:

WHEREAS the Cedent and the Cessionary are co-owners of all units in the scheme known as BOTHAS VILLA in respect of the land and buildings situated at Springfield, Durban as well as of the land and of the following exclusive areas:

1. An exclusive use area described as Garden G1 measuring 125 (ONE HUNDRED AND TWENTYFIVE) square metres being as such part of the common property comprising the land in the scheme known as BOTHAS VILLA in respect of the land and building and buildings situate at Springfield, in the Ethekwini Municipality, and shown and more fully described on Sectional Plan SS

Held by Certificate of Real Rights SK _____

2. An exclusive use area described as Garden G2 measuring 115 (ONE HUNDRED AND FIFTEEN) square metres being as such part of the common property comprising the land in the scheme known as BOTHAS VILLA in respect of the land and building and buildings situate at Springfield, in the Ethekwini Municipality, and shown and more fully described on Sectional Plan SS

Held by Certificate of Real Rights SK _____

AND WHEREAS in terms of Deed of Partition dated _____, (the “Agreement”) the Cedent and the Cessionary, agreed to the partition of the said land and sectional units by assigning same according to their respective interest therein, and to exchange their undivided shares in the units and the exclusive use areas allocated thereto equally so that each may hold title of such units and exclusive use areas in severalty.

AND WHEREAS the Cessionary accepts the rights conferred on her in terms of the agreement;

NOW THEREFORE the Appearer on behalf of the Cedent hereby cedes in terms of Section 27(1) of the Sectional Titles Act 95 of 1986, to:

SALLY BOTHA
Identity Number 680407 0152 086
unmarried
One half (½) share in:

An exclusive use area described as Garden G1 measuring 125 (ONE HUNDRED AND TWENTY FIVE) square metres being as such part of the common property comprising the land in the scheme known as BOTHAS VILLA in respect of the land and building and buildings

situate at Springfield, in the Ethekwini Municipality, and shown and more fully described on Sectional Plan SS

Held by Certificate of Real Rights SK_____

Subject thereto that a Notarial Deed of Cession in respect of the Cessionary's undivided share in Garden G2 to be ceded to the Cedent will be registered simultaneously with this Cession.

No consideration shall be payable by any one party to the other, upon the understanding that the Cessionary's one half (1/2) undivided share in the remaining exclusive use area, which is of equal value, shall simultaneously with this cession be ceded to the Cedent in exchange for the rights hereby granted.

THUS DONE AND EXECUTED on the day, month and year aforewritten in the presence of the subscribing witnesses and of me, the Notary.

AS WITNESSES:

1. _____

SAM BOTHA

2. _____

SALLY BOTHA

QUOD ATTESTOR

NOTARY PUBLIC

(12)

QUESTION 4

[20]

4.1 PRISCILLA MABOLA

Identity number xxxxxxxxxxxx

A minor, duly assisted herein by

PETER PUMPKIN in his capacity as Commissioner of Child Welfare for the District of Polokwane, acting in terms of Section 25(2) of the Marriage Act 25 of 1961, as amended

(2)

4.2 In consideration of the intended marriage the husband hereby

(i) donates and undertakes to give to the wife as her exclusive property Erf 456 Polokwane, held by him under Deed of Transfer T1000/2015, and to cause that property to be transferred into the name of the wife at his expense;

(ii) undertakes to cede to the wife Life Assurance policy no 123456X12 on his life with Lifeplan Insurance Limited and undertakes to procure that such cession is registered in the books of the said company and to pay on due date all premiums that may be or become payable in respect of the said policy;

The above settlements are subject to the express condition that, should the wife predecease the husband or should the intended marriage be dissolved through divorce for whatever reason, such settlements shall revert to and become the sole and absolute property of the husband.

The wife gratefully accepts the aforesaid settlements subject to the aforesaid conditions. (6)

4.3 The trustee will succeed. Section 27 (1) of the Insolvency Act 24 of 1936 provides that no "immediate benefit" under a registered antenuptial contract given in good faith by a man to his wife shall be set aside as a disposition without value unless the man's estate was sequestrated within two years of the registration of the antenuptial contract. Section 27(2) defines an "immediate benefit" as meaning a benefit given by a transfer, delivery, payment, cession, pledge, special mortgage of property completed before the expiration of a period of three (3) months as from date of marriage. In order for the settlement of the property to enjoy the protection of section 27(1) the property must be delivered or transferred within three months of date of marriage. (4)

4.4.1 No accrual claim shall lie at the instance of a spouse (or the estate of such spouse)

(i) whose estate is at the dissolution of the marriage de facto insolvent, in the sense that the liabilities of such spouse exceed such spouse's assets; or

(ii) who at the dissolution of the marriage is an unrehabilitated insolvent; (4)

4.4.2 In the event of the dissolution of the intended marriage by divorce, the satisfaction of any accrual claim in favour of either spouse shall be effected in two equal instalments, respectively being payable on the dates six (6) and eighteen (18) months after the grant of the decree of divorce. During the said period of deferment such claim shall be free of interest, and the spouse obliged to effect payment shall not be required to furnish any security to the other spouse for the satisfaction of the latter's accrual claim. (4)

QUESTION 5 [15]

5.1 The minor, assisted by his/her guardian. Sect 80 of Act 66 of 1965 does not apply. (RCR 65 of 1961) (1)

5.2.1 Yes (1)

5.2.2 No (1)

5.2.3 No (1)

(Section 28 of Act 25 of 1961)

5.3 Application in terms of section 68(1) of Act 47/1937 (RCR 17 of 1974) (1)

- 5.4 It is not possible to cancel a praedial servitude unilaterally, not even where the holder of the right abandons that right (RCR 10/1987) (1)
- 5.5 Yes (RCR 53 of 1960) (1)
- 5.6 It is important for the parties to act quickly, as prior to solemnisation of marriage the parties may exercise their common law right to amend their contract, provided that the amendment is registered in the Deeds Office prior to date of marriage. After date of marriage they will have to approach the Court for authorisation to amend a contract that does not reflect their true intention. (RCR 4 of 1969, RCR 52 of 2011) (2)
- 5.7 ABC
Identity numberxxxxxxxxx
And
ZYX
Identity number yyyyyyyyyy
- Partners in a civil partnership in community of property and registered in terms of the Civil Union Act 17 of 2006 (2)
- 5.8 The bondholder and cessionary (RCR 26 of 1988) (1)
- 5.9 Both rights to the exclusive use areas must be cancelled by virtue of notarial agreement, as provided for in section 27(5) of Act 95 of 1985, and re-ceded by the body corporate to the rightful owner. (3)

TOTAL: [100]

LAW SOCIETY
OF SOUTH AFRICA