

## **Choose Your Conveyancer with Care! A Cautionary Tale of “Fraud Unravels All”**

### **“Fraud unravels property transactions even where innocent third parties are involved.” (Extract from judgment)**

Congratulations, you’re the proud new owner of your dream home! Your name’s on the title deeds, and your ownership is registered in the Deeds Office. That’s conclusive proof that the house is yours, right? Regrettably, this isn’t always the case...

Although registration is usually proof of ownership, there are exceptions. One exception is fraud. And a recent High Court case is a sharp reminder to every party to a property sale and transfer (seller, buyer, estate agent, conveyancer and bonding bank) that any sale and transfer tainted by fraud will almost certainly unravel.

As we shall see, a crooked “conveyancer” was at the heart of this particular saga, so perhaps the most important lesson here is one for sellers. Choose your conveyancer with care!

### **A crooked “conveyancer” defrauds both seller and buyer**

Many of the facts in this convoluted story were in dispute, but the Court’s decision rested on these findings:

The owner, since 2011, of a house in Bloemfontein lived there with her elderly mother. She signed an agreement in 2020 to sell it for R300k to a trust. The sole trustee’s wife was an attorney, but not a qualified conveyancer. Nevertheless, she was appointed in the sale agreement as the “conveyancer” to attend to the transfer.

Shortly after signing the deed of sale, the owner changed her mind and said she was cancelling the sale. Although her “cancellation” seems to have been accepted by the trust, it was invalid for lack of being recorded in writing and signed. What her attempt at cancellation did prove was that she no longer had any intention of passing transfer to the trust. Moreover, the whole sale agreement fell through when the trust failed to get a bond as required by the bond clause. In the end, the owner received not a cent of the R300k, and presumably she spent the next three years happily confident that the sale had fallen away.

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Imagine her shock when in 2023 she received an eviction application from a couple who had, without her knowledge, bought the house from the trust for R480k. Only then did she find out that the trustee and his attorney wife had secretly transferred her house, in consecutive transfers on the same day in 2022, firstly from her to the trust, and then from the trust to the couple. The couple were of course now convinced that the house belonged to them.

Off went our original owner to the High Court, which held that there was no doubt that the husband-and-wife team of trustee and attorney had acted in cahoots to defraud both the original owner and the eventual buyers. It accordingly declared both sales and transfers to be invalid and ordered the house to be re-transferred to the original owner.

### **Fraud unravels all**

At the heart of the Court's decision lies the old Roman concept of *fraus omnia vitiator* "fraud unravels all". There are some exceptions to the application of this principle in our modern law, but the general rule remains that where a property sale is tainted by fraud, any purported sale or transfer of ownership resulting from it is null and void.

Moreover, one can never pass on to another person more rights than one has. Since the sale to the trust was void, all subsequent sales must also be void regardless of registration of transfer. In any case, the second sale agreement had lapsed, again because of non-fulfilment of a bond clause.

For all those and a variety of other reasons, the original owner had never lost her ownership despite the transfers being registered in the Deeds Office.

The couple who bought the house for R480k must now presumably carry on paying their home loan instalments despite having no asset to show for it, and will be wondering whether they can recover their losses from anyone.

### **Everyone's at risk, innocent or not**

As the Court put it: "Fraud unravels property transactions even where innocent third parties are involved."

- Innocent or not, the seller might have lost her house had she been found to have enabled the fraud.



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- The buyers, despite being innocent of any fraud, did lose their house. They also have to pay legal costs (the Court criticised their delay in pursuing transfer and in finding out about the occupants) and have no guarantee of getting their money back from anyone.
- Even the estate agents and the bank might have found themselves accused of negligence, perhaps for failing to inspect the house and asking the occupants about the basis for their occupancy. Had they done that, they would have uncovered the fraud.

**Bottom line is this: Sellers, don't take chances when choosing your conveyancer!**