

Is a contract of sale of land signed by only one spouse married in community of property valid?

In terms of section 15(2)(b) of the Matrimonial Property Act, 88 of 1984 both spouses written consent attested by two competent witnesses is a requirement for the validity of a contract of sale of land where the parties are married in community of property. Section 15(9)(a) of the Act, however, protects a bona fide third party, who enters into such an agreement with a person, who is married in community of property, if the person did not know or could not reasonably have known that the persons spouse had to consent to the transaction or that the necessary consent was not obtained.

These sections were applied in the case of *Govender and Another v Maitin and Another* 2008 (6) SA 64 (D). Mr and Ms Govender brought an application to enforce an agreement of sale of Erf 258 situated at Grundell Road, Glenmore, Durban, Kwazulu-Natal for R1.8 million against the owner thereof, Mr Maitin. The Court had to decide on some factual disputes. Judge Ntshangase concluded that Mr Maitins version was the more probable one. The Court therefor had to rule on the validity of an agreement for the sale of land signed by the seller and only one of the spouses married in community of property as purchaser.

The Court found that the intention of the legislature was not to provide spouses married in community of property with a weapon in section 15(9) to enforce transactions against bona fide third parties where the spouses themselves had acted contrary to section 15(2). The idea of the section is rather to protect bona fide third parties in the circumstances described in the section.

The decision therefor was made in favour of the seller as the Court found that section 15(9)(a) does not apply in these circumstances. The agreement was therefore not valid and enforceable.

It is therefore important for any seller, purchaser or estate agent to ensure that both parties sign where they are married in community of property.

Even though section 15(9)(a) might come to the rescue of an innocent third party,

you do not want to run the risk that the section might not apply.

Furthermore, where someone avers being married out of community of property, in which case only that party needs to sign, this can be checked with a quick deeds office search.

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