

What does huur gaat voor koop mean?

The simplest manifestation of this principle of the Roman-Dutch Law can be found when a property that is rented by a Lessee, is sold by the owner to a third party.

Here the effect of “huur gaat voor koop” is that the Purchaser is bound to the lease agreement and the Lessee is entitled to remain in occupation in accordance with the terms thereof. The Purchaser cannot plead ignorance and the right of the Lessee is stronger than the right of ownership of the Purchaser regardless of whether the Purchaser had notice of the existence or the terms of the lease.

In 1989, the Appeal Court explained that the Purchaser acquires all the rights and obligations which the Seller had in terms of the lease except collateral rights unconnected with the lease. The Court found that an option to renew a lease is such an obligation due by the Lessor and accordingly not “collateral” or unconnected with the lease. An option to renew a lease therefore also “gaat voor koop”.

What about an option in a lease to purchase the leased property? In the recent case of Spearhead Property Holdings Ltd vs E&D Motors (Pty) Ltd the Supreme Court of Appeal considered this question. The majority of judges (4 against 1) came to the conclusion that the obligation arising from an option to purchase the leased property, granted by the Lessor, are not, by the operation of the “huur gaat voor koop”-rule transferred by law to the Purchaser of the property. A Lessee must exercise his option against the Seller who granted the option and not against the new Purchaser. If however the Purchaser had knowledge of this option, the Lessee, after having exercised his option, should be entitled to claim transfer of the property from the Purchaser. The Court emphasized that this ruling will not be by operation of the “huur gaat voor koop”-rule, but because the Purchaser took transfer with knowledge of the Lessee’s prior right to purchase it.

It is of the utmost importance that a Purchaser of a fixed property, which is occupied by a Lessee, should make sure that he/she is well aware of the contents of the lease agreement. Ignorance of the lease, or the contents, will in most cases not be an excuse. If there is uncertainty, a Purchaser should request the Seller for

a guarantee and/or indemnification in the Deed of Sale.