

A Bond Clause Deadline Whooshes by and a Sale Dies – Can You Revive it?

**“I love deadlines. I love the whooshing noise they make as they go by.”
(Douglas Adams in The Salmon of Doubt)**

Contracts often contain suspensive conditions, a common example being the bond clause in a property sale agreement. The standard bond clause provides that the buyer must obtain a bond by a set deadline, and everyone's rights and obligations under the agreement are suspended until the bond is granted. If the bond isn't granted by the deadline, there is no sale.

In practice, the buyer often struggles to meet the set deadline and asks for an extension. If that happens to you, be sure to structure the extension correctly and to get it done and dusted before the deadline expires.

Parties often think “oops, we both missed the deadline, but no worries, we want the sale to succeed so all we need do is agree to revive the agreement.” But that's a fatal mistake, because if a suspensive condition fails, the contract dies and all your attempts to bring it back to life – usually by way of an addendum or an extension of the time limit – are doomed to fail. **You will need a brand new contract if both of you still want to proceed.**

Let's illustrate this point with a Supreme Court of Appeal (SCA) decision in which the parties attempted to “revive” their agreement after the bond clause had already failed.

A deadline passes and a R5m house sale dies

In February 2020 (i.e. shortly before the economic shock of the pandemic), the buyers of a R5.15m house paid the agreed deposit on time but couldn't raise the required bond of R4.95m before the deadline set out in the bond clause. A first addendum to the sale gave them another few days, and that addendum was valid because both parties signed it **before** the deadline expired.

But then the parties made a fatal mistake. Only **after** the extended deadline had whooshed merrily past did they sign a second addendum, agreeing to extend the date again and thus, they both believed, saving the sale.

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The buyers now did more than just get a bond – they paid R1.95m in cash and provided bank guarantees for the rest. And they did all that before the second deadline expired, so all seemed well with the sale. Until Covid struck. That left the buyers with financial problems, so they tried to exit the sale and get their money back. “No deal,” said the seller, “the agreement is still valid and enforceable, you have to take transfer.”

Off to court went the buyers, eventually ending up in the SCA, which held the sale to be void and ordered the seller to refund them their R1.95m. The Court couldn't have been clearer in ruling that when a suspensive condition (like a bond clause) isn't fulfilled, the whole contract becomes unenforceable. This despite the fact that both buyer and seller clearly intended to proceed with the sale and thought they were validly reviving it with their second addendum.

Our law is clear – **when a sale agreement has already lapsed, there is nothing you can do to revive it.** Only a new agreement could have saved the sale, and the Court, on the facts, rejected the seller's attempts to convince it that the second addendum was actually a new agreement. It was, said the Court, just an invalid attempt to revive a dead contract.

Here's what to do to keep that sale alive and well

Every situation will be unique, but at the very least follow these three principles.

1. Failed suspensive conditions (in particular bond clauses) are notorious sources of dispute when property sellers and buyers come to blows. Make sure yours is clearly worded and reflects exactly what you have agreed to. **A professionally drawn sale agreement** tailored to your needs really is a no-brainer here.
2. Keep an eye on those deadlines! If you need to extend one, do so **before** it expires with a full, clear and signed addendum.
3. If you happen to miss the boat there, a **whole new agreement** is essential. It may well incorporate the same terms and conditions as the original (updated where applicable of course) but nothing less than a brand new deed of sale will pass muster.

As always, sign nothing until we've checked it for you!