

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

Case number: 2020/9520

In the matter between:

FIRSTRAND BANK LIMITED

Judgment Creditor

-and-

TUCKER, KYLE ANTHONY

(IDENTITY NUMBER: 890223 5056 08 1)

Judgment Debtor

**CONDITIONS OF SALE IN EXECUTION
OF IMMOVABLE PROPERTY**

DESCRIPTION OF PROPERTY AND PARTICULARS OF SALE

The immovable property ("the property") which, on 19 October 2021 at 11:00 will be put up to auction at Sheriff's Office Halfway House, 614 James Crescent, Halfway House, Midrand consists of:

CERTAIN: a Unit consisting of Section No 229 as shown and more fully described on Sectional Plan No. SS802/2013, in the scheme known as Rosa Royale I in respect of the land and building or buildings situated at Erf 1151 Summerset Extension 16 Township, Local Authority: City of Johannesburg Metropolitan Municipality

SITUATED AT: Unit 229, Block 9, Door 11, Rosa Royale I, 1151 Mimosa Street, Summerset Ext 16, Midrand

CONSISTS OF: 1 x lounge, 1 x kitchen, 2 x bedrooms, 1 x bathroom, 1 x shower, 1 x WC, 1 x carport, 1 x covered balcony

MEASURING: 81 (eighty one) square metres

AS HELD UNDER DEED OF TRANSFER NUMBER ST48092/2019

THE PROPERTY IS ZONED: Residential

THE SALE SHALL BE CONDUCTED ON THE FOLLOWING CONDITIONS:-

THE SALE

1. The sale is conducted in accordance with the provisions of Rule 46 of the Uniform Rules of the High Court, as amended, as well as the provisions of the Consumer Protection Act, no 68 of 2008, the Regulations promulgated thereunder and the "Rules of Auction", where applicable. These provisions may be viewed at www.acts.co.za (the Act) and www.info.gov.za (the Regulations).

2. The headings to the clauses are for the purposes of convenience and reference only, and shall not be used in the interpretation of, nor modify, nor amplify the conditions of this sale nor any clause. In these conditions, unless a contrary intention clearly appears, words importing any one gender shall include the other two genders, the singular includes the plural and vice versa, and natural persons include created entities (corporate or otherwise) and vice versa.

3. The property shall be sold by the sheriff to the highest bidder subject to such reserve price, if any, as may be stipulated by a preferent creditor or local authority in terms of Court Rule 46(5)(a).

MANNER OF SALE

1. The sale shall be conducted in accordance with the provisions of Rule 46 of the Uniform Rules of Court and all other applicable law.
 2. The property shall be sold by the sheriff to the highest bidder without reserve.
 3. The sale shall be for South African Rands and no bid increment of less than R1,000.00 (one thousand Rand) shall be accepted.
 4. If any dispute arises about any bid, the property may again be put up for auction.
- 5.1. If the Sheriff makes any mistake in selling, such mistake shall not be binding on any of the parties, but may be rectified.
 - 5.2. If the Sheriff suspects that a bidder is unable to pay either the deposit or the balance of the purchase price, the sheriff may refuse to accept the bid of such bidder, or accept it provisionally until the bidder satisfies the sheriff that such bidder is able to pay the deposit and the balance of the purchase price.
 - 5.3. On the refusal of a bid under circumstances referred to in paragraph Error: Reference source not found, the property may immediately be put up for auction again.

SIGNATURE & CAPACITY

- 6.1. The purchaser shall, as soon as possible after the sale and immediately on being requested by the sheriff, sign these conditions of sale.
- 6.2. If the purchaser purchases in a representative capacity, the purchaser shall disclose the name of the principal or person on whose behalf the property is being purchased.
- 6.3. The purchaser shall not be entitled to nominate a third party to obtain transfer of the property in his/her/its stead. This clause may not be overruled by adding the words "or nominee" or similar wording to the signature of the purchaser or anywhere else.

DEPOSIT & BALANCE OF PURCHASE PRICE

- 7.1. The purchaser shall pay to the sheriff a deposit of 10% of the purchase price in cash or by bank guaranteed cheque or by way of electronic funds transfer on the day of the sale.

- 7.2. The balance shall be paid against transfer and shall be secured by a guarantee issued by a financial institution approved by the execution creditor or his or her attorney, and shall be furnished to the sheriff within 21 days after the date of sale. Should the purchaser fail to furnish the sheriff with a bank guarantee within 21 days after the date of sale, the sheriff may in his/her sole discretion grant the purchaser a 5 day extension within which to provide the required bank guarantee.
- 7.3. If the transfer of the property is delayed by the purchaser in any manner due to the failure to comply with these conditions or any demand in terms thereof the purchaser shall be liable for payment of interest at the rate of 9.85% Nominal Annual Compounded Daily to the execution creditor, and to any other bondholder at the rate due to them, on the respective amounts of the award in the plan of distribution from date of delay.

CANCELLATION OF SALE & EVICTION

- 8.1. If the purchaser fails to carry out any obligation due by the purchaser under the conditions of sale, the sale may be cancelled by a judge summarily on the report of the sheriff after due notice to the purchaser, and the property may again be put up for sale.
- 8.2. In the event of the circumstances in Error: Reference source not found above occurring, the purchaser shall be responsible for any loss sustained by reason of such default, which loss may, on the application of any aggrieved creditor whose name appears on the sheriff's distribution account, be recovered from the purchaser under judgment of a judge pronounced on a written report by the sheriff, after such purchaser has been given notice in writing that such report will be laid before the judge for such purpose.
- 8.3. If the purchaser is already in possession of the property, the sheriff may, on notice to affected parties, apply to a judge for an order evicting the purchaser or any person claiming to occupy the property through the purchaser or otherwise occupying the property.
- 8.4. In the event of the sale being cancelled as aforesaid, the deposit and any money already paid towards the purchase price shall be retained in trust for such a period that is stipulated in the judgment in terms of Rule 46(11) or if no such period is stipulated therein then until such time that the property has been sold and transferred to a third party and the execution creditor's damages have been quantified and judgment has been granted in respect thereof.

SHERIFF'S COMMISSION

- 9.1. The purchaser shall immediately on demand pay the sheriff's commission calculated as follows:

6% on the first R100,000.00 of the sale and;

3.5% on R100,001.00 to R400,000.00; and

1.5% on the balance of the proceeds of the sale, and

subject to a maximum commission of R40,000.00 in total plus VAT and a minimum of R3,000.00 plus VAT (inclusive in all instances of the sheriff's bank charges and other expenses incurred in paying the proceeds into his or her trust account)

OBLIGATIONS OF PURCHASER

9.2. The purchaser shall be liable for and pay, within 10 days of being requested to do so by the appointed conveyancer, the following:

9.2.1. all amounts due to the municipality servicing the property, in terms of section 118(1) of the Local Government Municipal Systems Act, 2000 (Act No.32 of 2000), for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties that may be due to a municipality; and

9.2.2. where applicable all levies due to a body corporate in terms of the Sectional Title Act, No.95 of 1986 or amounts due to a home owners association which renders services to the property; and

9.2.3. the costs of transfer, including conveyance fees, transfer duty and any other amount necessary for the passing of transfer to the purchaser.

9.3. In the event that the purchaser being the execution creditor who is also a consumer exempted in terms of Section 5(2)(b) from the provisions of the Consumer Protection Act, 68 of 2008, the execution creditor shall not be required to make any deposit nor furnish a guarantee as provided for above.

9.4. The purchaser shall immediately upon demand furnish the conveyancer with all information and documents necessary to enable him or her to comply with the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001) and draft all necessary documentation. Further, the purchaser shall within 5 days of being requested to do so by the conveyancer sign all necessary documentation in order for the conveyancer to attend to the registration of transfer of the property.

9.5. The purchaser shall at his/her own cost obtain a valid electrical installations certificate of compliance and test report, in the prescribed form, as required in the Electrical Installation Regulations, 2009 and an electric fence system certificate of compliance in the prescribed form as required in the Electrical Machinery Regulations, 2011 issued in terms of the Occupational Health and Safety Act, 1993. The purchaser agrees that this undertaking relieves the sheriff and the execution creditor from any duty that may be imposed upon either or both of them in terms of Section 10 of the Occupational Health and Safety Act, 1993. The purchaser accordingly agrees that there is no obligation on the sheriff or execution creditor to furnish the said electrical installations certificate of compliance and test report.

9.6. If required, the purchaser shall at his/her/its own cost obtain a valid Entomologist's certificate.

9.7. If required, the purchaser shall at his/her/its own cost obtain a valid gas installation and plumbing certificate of compliance and test report.

POSSESSION, RISK & OCCUPATION

10.1. The property may be taken possession of after signature of the conditions of sale, payment of the deposit and upon the balance of the purchase price being secured in terms of these conditions.

10.2. Should the purchaser receive possession of the property, the purchaser shall be liable for occupational rental, payable to the execution creditor, at the rate of 1% of the purchase consideration per month from date of occupation to date of transfer. The purchaser shall pay the occupational rental on due date into the following account:

Name: KA TUCKER

Bank: Firststrand Bank Limited t/a First National Bank

Account number: 3-000-015-634-099

Branch: 250 655

- 10.3. Upon the purchaser taking possession, the property shall be at the risk and profit of the purchaser.
- 10.4. The execution creditor and the sheriff give no warranty that the purchaser shall be able to obtain personal and/or vacant occupation of the property or that the property is not occupied.
- 10.5. The purchaser shall be solely responsible for ejecting any person or other occupier claiming occupation, including a tenant, at the purchaser's cost. No obligation to do so shall vest in the sheriff and/or the execution creditor.

TRANSFER

11. The purchaser shall be entitled to obtain transfer forthwith upon payment of the whole purchase price and full compliance with these conditions.

INSURANCE

- 12.1. The sheriff may demand that any improvements to the property sold shall be immediately insured by the purchaser for their full value, proof of insurance given to the sheriff and such insurance policy kept in force until transfer is registered.
- 12.2. Should the purchaser fail to comply with the obligations in paragraph 15.1 Error: Reference source not found above, the sheriff may effect the necessary insurance, the cost of which insurance shall be for the purchaser's account.

TITLE DEED, SERVITUDES & CONDITIONS OF ESTABLISHMENT

- 13.1. The property is sold as represented by the title deeds and diagram or sectional plan, subject to all servitudes and conditions of establishment, whichever applies to the property.
- 13.2. The sheriff and the execution creditor or any representative of the execution creditor, shall not be liable for any deficiency that may be found to exist in the property.

TRANSFERRING ATTORNEY

14. The execution creditor shall appoint the conveyancer to effect transfer of the property to the purchaser: Provided that the sheriff shall be entitled to appoint a new conveyancer should the conveyancer appointed by the execution creditor not proceed timeously or satisfactorily with the transfer. The execution creditor appoints **CHARL CILLIERS INC ATTORNEYS**, 1st Floor, No 1 Albury Park, cnr Jan Smuts Ave & Albury Rd, Hyde Park, Johannesburg, P O Box 412389, Craighall 2024, Docex 55 Randburg, Tel: 011 325 4500/6/7, Fax: 011 325 4503, e-mail general@charlcilliers.co.za

SALE SUBJECT TO EXISTING RIGHTS

15. Where the Property is subject to a lease agreement the following conditions apply:

- 15.1. Insofar as the property is let to tenants and the Sheriff is aware of the existence of such tenancy then:
- 15.1.1. if that lease was concluded before the execution creditor's mortgage bond was registered, then the property shall be sold subject to such tenancy;
 - 15.1.2. if the lease was concluded after the execution creditor's mortgage bond was registered, the property shall be offered first subject to the lease and if the selling price does not cover the amount owing to the execution creditor as reflected on the Warrant of execution plus interest as per Writ, then the property shall be offered immediately thereafter free of the lease.
- 15.2. The property is furthermore sold subject to any lien or liens in respect thereof.

JOINT & SEVERAL LIABILITY

16. In the event of there being more than one purchaser, they will be jointly and severally liable in terms hereof.

ADDRESS FOR LEGAL PROCEEDINGS

17. The purchaser chooses the address set out in Annexure "A" hereunder as his/her/its address for the service of all forms, notices and documents in respect of any legal proceedings which may be instituted following from this sale or its cancellation (*domicilium citandi et executandi*). In the event of the purchaser failing to choose a *domicilium citandi et executandi* hereunder, the property which is the subject matter of the sale will be deemed to be the purchaser's *domicilium citandi et executandi*.

I certify hereby that today the day of 20.... In my presence the hereinbefore mentioned property was sold for R..... to

with lease

without lease

.....
SHERIFF

I, the undersigned, residing at
in the district of do hereby bind myself as the purchaser of the aforementioned property on the conditions of sale as contained herein

.....
PURCHASER

If not married by way of a duly registered Antenuptial Contract in terms of the laws of South Africa, then both spouses are to sign.

(and where applicable on behalf of the below mentioned principal being duly authorised in terms of a power of attorney / mandate which is attached hereto as Annexure "A") **ANNEXURE "A"**

Information for Conveyancer:

1. Full names:.....
2. Spouse's Full Names:
3. Married/Divorced/Widowed/Single:
4. If married – Date:
By Antenuptial Contract / Married in Community of Property
5. Where married:
(husband's domicilium citandi et executandi at the time of the marriage)
6. Identity number:
7. Physical address (domicilium citandi et executandi):
.....
.....
8. Postal address:
.....
9. Email address:
10. Telephone numbers:
Home:Work:.....
Telefax (if any) Cell Number:.....

ANNEXURE "B"

POWER OF ATTORNEY