

REAL ESTATE ALERT

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SUBDIVISION – END OF THE ROAD? OPTIONS TO PURCHASE SUBDIVISION OF AGRICULTURAL LAND

It is trite that the Subdivision of Agricultural Land Act, No 70 of 1970 (SALA) proscribes the subdivision of agricultural land without first obtaining the consent of the Minister of the Department of Agriculture, Forestry and Fisheries (Minister). In 2004, the Supreme Court of Appeal (SCA) held in *Geue and Another v Van der Lith and Another* 2004 (3) SA 333 (SCA) that entering into a contract of sale in respect of a portion of agricultural land, subject to the suspensive condition that the Minister grants consent to the subdivision, was invalid and in contravention of SALA.

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The court reasoned that one had to have regard to the true nature of an option agreement, namely that once entered into, it is binding on the option grantor and can be enforced at the instance of the holder of the option.

The SCA has now made it clear that options to enter into an agreement of sale for a portion of agricultural land and all steps preliminary to entering into an agreement of sale, including advertising of a portion of land for sale and the giving of any public notice regarding a scheme to which agricultural property relates, are prohibited.



It is trite that the Subdivision of Agricultural Land Act, No 70 of 1970 (SALA) proscribes the subdivision of agricultural land without first obtaining the consent of the Minister of the Department of Agriculture, Forestry and Fisheries (Minister). In 2004, the Supreme Court of Appeal (SCA) held in *Geue and Another v Van der Lith and Another* 2004 (3) SA 333 (SCA) that entering into a contract of sale in respect of a portion of agricultural land, subject to the suspensive condition that the Minister grants consent to the subdivision, was invalid and in contravention of SALA.

Recently, the SCA focused its attention on option agreements in the context of SALA. In *Four Arrows Investments 68 v Abigail Construction CC and Another* 2016 (1) SA 257 (SCA) (Four Arrows), the court held that parties may not enter into an option for the sale of a portion of agricultural land unless the Minister had granted its consent to the subdivision prior to the conclusion of the option. The court reasoned that one had to have regard to the true nature of an option agreement, namely that once entered into, it is binding on the option grantor and can be enforced at the instance of the holder of the option. Once the option has been exercised, the parties will have entered into an agreement of sale for a portion of agricultural land without having obtained the Minister's consent. Therefore, the option agreement fell within the ambit of the prohibition contained in SALA.

Importantly in *Four Arrows* the court also stated that:

“...the Legislature has prohibited the advertisement of a portion of agricultural land for sale in the absence of ministerial consent, clearly indicates that the object of the legislation was not only to prohibit concluded sale agreements, but also preliminary steps which may be a precursor to the conclusion of a prohibited agreement of sale...”

The SCA has now made it clear that options to enter into an agreement of sale for a portion of agricultural land and all steps preliminary to entering into an agreement of sale, including advertising of a portion of land for sale and the giving of any public notice regarding a scheme to which agricultural property relates, are prohibited. It must therefore be accepted that the requirement of obtaining Ministerial consent is unavoidable.

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