

SOUTH AFRICA / JUDGMENT

Domel v Khumalo and Another (2020-34517) [2024] ZAGPJHC 164 (19 February 2024)

[2024] ZAGPJHC 164

COURT

South Gauteng High Court, Johannesburg

BEFORE

Z Khan

CASE / FILE NUMBER

2020/34517

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, JOHANNESBURG

Case

number: 2020/34517

1.REPORTABLE:

NO

2.OF

INTEREST TO OTHER JUDGES: NO

3.REVISED:

NO

In

the matter between: GISELA
 ANNA LIESBETH DOMEL
 Applicant
 and
 DENNY
 KHUMALO
 First Respondent
 CITY OF JOHANNESBURG
 METROPOLITAN
 MUNICIPALITY
 Second Respondent

Summary: Application
 for eviction – Allegation
 of an oral agreement to ‘rent to buy’

JUDGMENT

Z KHAN AJ

INTRODUCTION

- [1] This is an application for an eviction of the Respondent from residential property. The PIE Act applies and direction and service of the notice has been complied with. The municipality has been served but did not furnish a report in respect of alternative housing.
- [2] The Applicant (some 81 years of age) is the owner of the property. The Respondent initially occupied the property in terms of a written agreement of lease and thereafter in terms an oral agreement of lease calling on him to pay rent including consumption and other charges.
- [3] The Respondent has not paid rentals (or consumption charges) for a period in excess of 10 years. The Applicant has been liable to the municipality for such consumption charges that benefit the Respondent. The Applicant cancelled the agreement of lease during 2020.
- [4] The Respondents version is that he stopped paying rentals due to the Applicants breach of the lease agreement. There is no indication that Applicant was placed in breach or called upon to perform.
- [5] It is contended that Respondent enjoyed an option to purchase the property and as the Applicant could not be located, the Respondent was prejudiced in not being able to exercise his option to purchase the property, for at least the last 8 years. The Respondent is anxious to complete the sale and transfer of the property to him.

Not surprisingly, the Applicant denies any such option to purchase being given to the Respondent. It is for the Respondent to fully set out the terms of the option and to prove same. A vague and unsubstantiated version will not suffice.

- [6] The Respondent's opposing affidavit is unimpressive and contains scant details. There is an admission of an oral lease agreement but the terms are not fleshed out. There is an allegation of an option but the terms of such option are not set out. There is no indication of a tender of performance in terms of the option or the details of how such option was to be exercised. There is an admission of non-payment of rentals but no substantiated reasons for non-payment for a period in excess of 10 years is given.
- [7] No explanation for a failure to pay consumption charges are given. There is a terse affidavit by a Samantha Sithole who provides no details of the option. At best she refers to a verbal agreement to sell.
- [8] The opposing affidavit does admit the Respondents non-payment of rentals, a refusal to vacate the property and an obligation to pay for consumption. The Respondents version is that he seeks to enforce the agreement between the Applicant and him but he does not tender performance nor has he performed.
- [9] The opposing affidavit talks of an option to buy the property, a rent to buy and an agreement to sell. It also mentions the Respondent waiting for the property to be transferred to him – despite so sale documentation having been completed. These concepts are not explained by the Respondent in any detail.
- [10] The supplementary opposing affidavit also does not take the matter further.
- [11] There is nothing indicating a bona fidei dispute of fact.
- [12] This matter turns on non-payment of rentals and a breach of a lease agreement against the backdrop of a defence of a purported option to purchase coupled with Respondent not exercising such option for 8 years and his failure to pay any rental and consumption charges for 10 years.
- [13] An offer to purchase does not have to be in writing. It must however be a clear unequivocal offer that will result in a binding agreement.[1] I am satisfied that no option to purchase existed and even if it did, there is no purchase price or tender of performance by the

Respondent. Respondent ought to have counterclaimed for the enforcement of the option – against a tender of performance.

None of this appears in the papers before court.

- [14] I then turn to the eviction application. The Respondent admits not paying rentals and consumption charges. The lease has been properly cancelled by the Applicant.

- [15] What remains is the determination of the eviction date. The Respondent has placed no information before the court in relation to his personal circumstances. One does not know if there are elderly persons, children or female headed households on the property. Respondent has not told this court about his financial circumstances or his employment.
- [16] Based on this unavailability of information from Respondent, I am inclined to afford the Respondent a calendar month to vacate the property. This will afford him sufficient time to find alternative accommodation.
- [17] In the result, I grant the following order
1. The agreement of lease between the Applicant and First Respondent is cancelled;
 2. The First Respondent and all other persons occupying the premises situated at 6[...] H[...] A[...], C[...] P[...], J[...] are ordered to vacate the property on or before 30 March 2024;
 3. The Applicant is authorised to serve this order on the occupants of the premises by affixing same to the outer door and entrance gate of the property, such service to be evidenced by a photo of the order so affixed;
 4. In the event of the Respondent and all such persons referred to above failing to vacate the premises by no later than 30 March 2024 then the Sheriff for the district is hereby authorised to forthwith enter upon the property and evict the Respondent and all occupants thereof;
 5. The Respondent is ordered to pay the costs of this application.

Z KHAN

ACTING JUDGE OF THE HIGH COURT

This judgment was handed down electronically by circulation to the parties' and/or parties' representatives by email and by being uploaded to Caseline. The date and time for hand-down is deemed to as reflected on the Caseline computer system.

DATE OF HEARING: 19 FEBRUARY 2024

DELIVERED: 19 FEBRUARY 2024

APPEARANCES:

COUNSEL FOR THE APPLICANT:

E MALHERBE

ATTORNEY FOR THE APPLICANT:

WITZ INC

FOR THE RESPONDENT:

IN PERSON

[1] Aris Enterprises (Finance) (Pty) Ltd v. Waterberg Koelkamers (Pty) Ltd 1977 (2) SA 425 (A)

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