

SOUTH AFRICA / JUDGMENT

Ferreira NO v Langeveld and Others (8941/13) [2013] ZAGPPHC 403 (6 December 2013) [2013] ZAGPPHC 403

COURT

North Gauteng High Court, Pretoria

BEFORE

Swartz

CASE / FILE NUMBER

8941/13

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IN

THE HIGH COURT OF SOUTH AFRICA

(NORTH

GAUTENG HIGH COURT)

Case

No: 8941/13

Date:

6 December 2013

In

the matter between:

DAWID

FERREIRA N.O. Applicant

and

HENDRIK

JOACHIM LANGEVELD First Respondent

MASTER

OF THE HIGH COURT (PRETORIA) Second Respondent

INTERIM

TRADING 0015 CC Third Respondent

JUDGEMENT**SWARTZ AJ**

1. The Applicant claims interim relief for payment of an amount of R2.3 million, which amount is to be paid into the Applicant's

attorneys' trust account pending the conclusion of an action that Applicant intends instituting against the first Respondent

2. The Applicant acts in his capacity as duly appointed executor in the estate of the late Leon Christian Uys ("the deceased"),

who died on 5 November 2012. The Applicant was appointed as executor of the deceased estate on 23 January 2013. By virtue of his

appointment the Applicant is authorised as such to liquidate and distribute the estate of the deceased.

3. The first Respondent is one Hendrik Joachim Langeveld.

4. The second Respondent is the Master of the High Court. The third Respondent is a Close Corporation known as Interim Trading 0015 CK and the fourth Respondent is one Simon Matthysen.

5. No relief is sought against the second, third and fourth Respondents.

6. The Applicant seeks an interim interdict preventing the first Respondent from using, appointing, employing, applying, utilising and dispensing of proceeds of an Altrisk Life Policy ("the policy") taken on the life of the deceased.

7. During the period 2004 - 2005 the deceased and the first Respondent became joint registered members, holding 50% members' interest each, of the third Respondent.

8. They traded with the name 'Teasal Motors' which business venture mainly entailed the buying and selling of new and second - hand motor vehicles and motor spares.

9. On 19 August 2009 and at Roodepoort, the first Respondent and the deceased, both acting personally, concluded a written Buy and Sell Agreement ("the agreement"), the material terms for present purpose, included the following:

The deceased and the Respondent had an interest of 50% each in the 3rd Respondent;

Upon the death of one of the members, the interest of the deceased member, may only be purchased by the surviving member, at an agreed purchase price;

The members would acquire life insurance policies to finance the purchase of the members' interest in the amount of R 2.3 million.

Immediately after receipt of the net proceeds of the Life Policy on the life of the deceased, the survivor should make payment to the executor of the estate of the deceased.

The agreement would be terminated upon the withdrawal of any of the parties from the 3rd Respondent; by written agreement between the parties to terminate the agreement and the liquidation of the 3rd Respondent and the sequestration of the estate of any of the parties.

The monthly premiums of the respective policies were paid by the 3rd Respondent to the insurance company, Altrisk Pty Ltd.

Consequent to the deceased's death and in accordance with the contract, Altrisk (Pty) Ltd paid the purchase price of R2,3 million to the 1st Respondent.

The Applicant must show a prima facie right, and well-grounded apprehension of irreparable harm (if the interim relief is not granted and the interim relief eventually granted), and a balance of convenience in favour of granting the interim relief and finally, the absence of any other satisfactory remedy.

The 1st Respondent opposes the relief sought on the basis that the Buy-and- Sell agreement between the deceased and the 1st Respondent never came to fruition, which immediately disentitles the Applicant in his representative capacity to lay claim to any of the proceeds of the policy.

On behalf of the 1st Respondent it was submitted that the buy and sell agreement was not enforceable. It was submitted that upon the death of the deceased,

the 1st Respondent established that the deceased had reduced his member's interest by 30% without the knowledge and consent of the 1st Respondent and had in fact received R1 million for such interest from the 4th Respondent, but had failed to deposit the funds into the 3rd Respondent's business account.

It was further submitted on behalf of the 1st Respondent that the 4th Respondent was registered as a member of the 3rd Respondent on 13 September 2012, which was apparently during the time when the 1st Respondent was incapacitated after a violent and criminal attack at home.

It was submitted that the agreement between the deceased and the 1st Respondent never came into being because the deceased had transferred the majority of his members' interest in the 3rd Respondent to a third party, i.e. the 4th Respondent, and is consequently no longer able to tender 50% of his members' interest. Had the deceased informed the 1st Respondent that he had sold 30% of his members' interest, the 1st Respondent would have objected to the addition of a member. At best, the Applicant would only be able to recover 20% of the proceeds of the policy, being R900 000 thereof.

This is an application for interim relief only. The contentions made on behalf of the 1st Respondent regarding the renunciation of the deceased of any entitlement to money as a result of misconduct and breach of fiduciary duties toward 3rd Respondent, or the deceased's repudiation of the agreement, are not issues to be decided upon by this court, hearing the application for interim relief only.

The 3rd Respondent had paid the monthly premiums of the policy that eventually paid out the R2, 3 million to the 1st Respondent upon the death of the deceased. This was paid out to the 1st Respondent precisely because of the existence of the agreement between the deceased and the 1st Respondent. Consequently, I am not persuaded by the argument on behalf of the 1st Respondent that an agreement did not exist between the deceased and the 1st Respondent. On what other basis would the proceeds of the policy then have been paid out to the 1st Respondent? Factually the proceeds of the policy were paid to the 1st Respondent on death of the deceased.

I am also not persuaded by the argument on behalf of the 1st Respondent, that the interim relief sought in this application would effectively result in a death penalty being imposed on an already crippled business, when regard is had to the fact that the so-called 'key man' policy in the amount of R3 million, was paid, which proceeds were destined for the 3rd Respondent.

Further, I am not persuaded by the submission on behalf of the 1st Respondent that the deceased had secretly sold his 30% members' interest to the 4th Respondent, when regard is had to the resolution, co-signed by the 1st Respondent, dated 01 October 2012 and referred to as "RA3" on paginated page 115.

I am satisfied that the Applicant has shown a prima facie right to secure the R 2, 3 million into an interest bearing trust account that irreparable harm could potentially be suffered if the interim relief is not granted and the balance of convenience favours the Applicant by granting the interim relief.

In the result I make the following order:

1. Interdicting the 1st Respondent from using, appropriating, employing, and or dispensing the proceeds, to wit of R2.3 million, of an Altrisk Life policy number 59..... on the life of the late Leon Christian Uys (ID 55.....);
2. Ordering the 1st Respondent to pay the amount of R2,3 million referred to into 1 to Jaques Venter Attorneys trust account, and directing the said attorneys to forthwith invest same in an interest bearing account;
3. That the orders referred to in 1 and 2 above shall remain in force pending the conclusion of an action that the Applicant intends instituting against the 1st Respondent;

4. The Applicant shall institute the action referred to in 3 above, within 20 days of the granting of this order, failing which the order shall lapse and Applicant shall pay costs of this application.
5. Directing the 1st Respondent to pay the costs of this application on an attorney and client scale.

E SWARTZ

ACTING JUDGE OF THE HIGH COURT

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Prepared on 12 October 2026 · Esheria