

SOUTH AFRICA / JUDGMENT

Forster v Phambili Group CC and Others (35997 / 14) [2015] ZAGPPHC 455 (9 July 2015)

[2015] ZAGPPHC 455

COURT

North Gauteng High Court, Pretoria

BEFORE

N Mavundla

CASE / FILE NUMBER

35997 / 14

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IN

THE NORTH GAUTENG HIGH COURT, PRETORIA

[REPUBLIC

OF SOUTH AFRICA]

CASE

NUMBER: 35997 / 14

DATE:

09 JULY 2015

In

the matter between: QUENTIN
 SINCLAIR
 FORSTER.....APPLICANT
 And
 PHAMBILI
 GROUP
 CC.....FIRST
 RESPONDENT
 PORTIA
 WYNGARD.....SECOND
 RESPONDENT
 ALL
 OCCUPIERS OF [31 T.....]
 STREET,.....THIRD
 RESPONDENT
 [R.....],
 ALSO KNOWN AS [ERF 4.....],
 REGISTRATION DIVISION I.Q GAUTENG

JUDGMENT

MAVUNDLA, J.

- [1] The applicant sought the eviction of the respondents from the property known as [31 T.....] Street, [R.....], [Erf 4.....], Registration Division I.Q, Gauteng, hereinafter referred to as the property.
- [2] It is common cause that the applicant is the registered owner of the relevant property. It is also common cause that the applicant and the first respondent on the 23 March 2013 concluded a lease agreement in respect of the said relevant property. The duration of the lease agreement was from 01 May 2013 and to expire on the 30 April 2014. The lessee had an option for the lease to be renewed for a further negotiated period of 12 months, provided the renewal option was excised on or before 28 February 2014.
- [3] According to the applicant the property is being occupied by the second respondent who is an employee of the first respondent. The applicant contended that the lease has expired and was not renewed and as such the further occupation of the property by the respondents is illegal and therefore must be evicted.
- [4] The second respondent, who on her own admission is the sole member of the first respondent, contended in her answering affidavit that: she was approached by the applicant who offered to sell the property to the respondents below its market value, for an amount of R400 000. 00, if the respondents were to take occupation and sign a lease agreement. The applicant informed them that the municipality value was R1, 750

000. 00 and he will sell it to them for R1, 300 000.00; the reason for the conclusion of the said agreement was because the property was in a very bad state and lot of work needed to be done on it. It was further agreed upon that the respondents would improve the property by, inter alia, installing a solar geyser and gas stove to reduce electricity, for the sole purpose of buying the property at the end of the lease period.
- [5] The respondents further contended that they expended more than R100 000. 00 in effecting improvements on the property with the hope that, they will eventually purchase it. They further contended that they concluded a purchase agreement and also an amended lease agreement. The respondents further contend that the applicant on realising that the improvements have enhanced the value of the property and would realise more money by selling the property and therefore reneged from the initial agreement of sale.
- [6] The respondents further contended that during April 2014, while they were negotiating the new lease the applicant proposed that:
- 6.1 The amended lease agreement be finalized and signed;
- 6.2 The respondents proceed with the offer to purchase at the termination of the lease agreement;
- 6.3 The respondents proceed to sell the property and only pay him the amount of R1, 350 000. 00 from the proceeds and keep the balance for the improvements of the property.
- [7] The respondents in their opposing papers stated that they agree and tendered to vacate the property as soon as:
- 7.1 They have an alternative residence; and
- 7.2 The applicant reimbursed them for the improvements done to the property as a result of the applicant's fraudulent and misleading actions.
- [8] It was correctly pointed out by counsel for the respondents that, in motion proceedings: "...where in proceedings a notice of motion dispute of fact has arisen on the affidavit, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant's affidavit which have been admitted by the respondent, together with the facts alleged by the respondent, justify such order..." vide *Plascon-Evons Paints Limited v Van Riebeeck Paints (Pty) Ltd.*[1]
- [9] In the respondents' own version, it is admitted that the lease agreement has not been renewed, thus admitting the applicant's version that their occupancy is unlawful. I am therefore satisfied that "on the facts stated by the respondent, together with the admitted

facts

in the applicant's affidavits, the applicant is entitled to relief sought."; vide Room Hire Co (Pty) Ltd vJeppe Street Mansions (Pty) Ltd[2].

- [10] According to the applicant, any agreement of sale was conditional on the respondents securing a mortgage bond for an amount of R1, 3 million, which they have failed to secure and therefore there is no valid sale agreement. The respondents have not refuted the applicant's contention in this regard and therefore this Court is bound to accept the version of the applicant and consequently conclude that there is no valid sale agreement.
- [11] The respondents have attached annexure "PW4"[3] which is supposed to be the invoice of their incurred expenses in the amount of R114 762.63 inclusive VAT for the improvements effected on the property. This document, saves for the figures, does not provide any explanation what these figures are in respect of and therefore does not prove anything. There is therefore no documentary supporting invoices proving any alleged expenses incurred by the respondents for the alleged improvements effected. In my view, the respondents can always bring an action at a later stage in another appropriate forum to claim for the alleged improvements they effected on the property. They cannot seek to resist eviction for the property on flimsy and unsubstantiated and vague "lien right".
- [12] The second respondent is the sole member of the first respondent. The very fact that the respondents were prepared to purchase the property for an amount of R1.5 million, demonstrate, in my view, that the second respondent can hardly be regarded as a person of straw, who must be provided with an alternative accommodation by the fourth respondent, before eviction order can be granted.
- [13] In my view, the dictates of fairness and justice cannot be stretched to an extent where the rightful owner of property is literally deprived of the enjoyment of his property by an unlawful occupier. There is no obligation on the part of the applicant, as a private individual, to provide alternative accommodation to the respondents. The respondents were served with eviction application as far back as in May 2014, which was more than enough period for them to seek alternative accommodation. In the circumstances, it would be unjust and unfair to delay the eviction much longer than 30 days from the grant of the order I intend to grant.
- [14] In the result it is hereby ordered that:
1. That the first, second and third respondents be and are ordered to vacate the property known as 31 [T.....] Street, [R.....], [Erf 4.....] IRegistration Division I.Q, Gauteng, hereafter "the property" within 30 days from date of this order;

2. That should the first, second and third respondents fail to comply with the order referred to in order 1 above, the Sheriff of this Court be and is authorised and or mandated to take all necessary steps to execute this order and to evict the first, second and third respondents from the property and, if necessary, to obtain the assistance of the South African Police Services to assist him /her in this regard;
3. That the first, second and third respondents be and are ordered to pay the costs of this application jointly and severally, the one paying the other to be absolved.

N.M MAVUNDLA

JUDGE OF THE HIGH COURT

DATE OF JUDGMENT: 09 JULY 2015 APPLICANT'S ADV: ADV T. L. JACOBS INSTRUCTED BY
QUENTIN SINCLAIR FORSTER C/O SJ ROUX INCORPORATED

RESPONDENT'S ADV: ADV P LOURENS INSTRUCTED BY DU RAND ATTORNEYS

[1]

[1984] ZASCA 51; 1984 (3) SA 623 (A) at 634E to 635D.

[2] 1949 (3) SA 1155 (T) at 1168 et the authorities therein cited.

[3] Paginated page 76.

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