

SOUTH AFRICA / JUDGMENT

Moonlight Investments (Pty) Ltd v Bapoo (10033/2022) [2023] ZAGPJHC 774 (22 June 2023) [2023] ZAGPJHC 774

COURT

South Gauteng High Court, Johannesburg

BEFORE

Pearse AJ

CASE / FILE NUMBER

10033/2022

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

Case No: 10033/2022

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

NOT REVISED

In the matter between

MOONLIGHT INVESTMENTS (PTY) LTD Applicant And KESHAV BAPOO Respondent

JUDGMENT

PEARSE AJ:

AN OVERVIEW

1. This application – a fight within the context of an extended family feud – has as its centrepiece an inner-city property on which there is a building that generates rentals and other amounts from residential tenants. There appears no longer to be doubt that the property is owned by the applicant. But there is fierce contestation around which members of the family own and control the applicant and are entitled to benefit from and manage the property. Whereas one side of the fight points to the corporate records of the applicant, the

other side says that the records are compromised and unreliable.

2. The respondent asserts an entitlement to collect rentals and/or other amounts in respect of the property and otherwise to conduct the business and property affairs of the applicant on the basis that such conduct was and is authorised by his mother, who is said to be the majority shareholder and sole director of the applicant. Those who speak for the applicant in this application –

the father and a stepmother of the respondent – disagree. But their authority to do so is itself in issue on the papers.

3. In the circumstances, the final relief sought by the applicant – an interdict and a statement and debatement of account – cannot be granted on motion and so this application must fail.
4. The order granted in paragraph 82 below seeks however to safeguard the monies generated by the property, pending the outcome of a related action, and to invite a regulatory investigation of the corporate affairs and records of the applicant and an associated company.

THE APPARENT FACTS AND FACTUAL DISPUTES

5. In this section of the judgment I set out a chronological account of what I understand to be apparent facts and factual disputes that emerge from the parties' affidavits and their annexures. Given the allegations and counter-allegations of unlawfulness and impropriety of the parties and their associates and of illegality and inaccuracy of several of the documents, however, the account serves not to record any findings of this court but merely to highlight material factual disputes between the parties that are incapable of resolution in motion proceedings.
6. In the circumstances, nothing set out in this section is intended to bind either the parties or any other court.

Pernisch 1

7. On 10 October 2000 Ishendra Bapoo acquired the entire membership interest in Pernisch Investments CC (the corporation). The corporation was or became the owner of the immovable property described as Erf [...], Bellevue Township and situated at [...], Bellevue, Johannesburg (the property).
8. On 01 June 2001 the corporation was converted into a company named Pernisch Investments (Pty) Ltd (Pernisch 1). It is the applicant in this application.
9. It appears from a minute annexed to the answering affidavit that on the same day the board of Pernisch 1 resolved to appoint Usha and Ishendra Bapoo (who were married at the time) as its directors and to allot shares to them and Marchelle Matthews in ratio 199:100:1.

10. The 300th share appears to have been transferred by Marchelle Matthews to Usha Bapoo on 07 June 2001.
11. According to Ishendra Bapoo:
 - 11.1. neither Usha Bapoo nor Marchelle Matthews took up or paid for such shares, which became void ab initio, hence their share certificates were cancelled and a new share certificate was issued to Ishendra Bapoo, who took up and paid for the shares; although
 - 11.2. Usha Bapoo remained a director of Pernisch 1 until her resignation on 31 May 2005.
12. Annexed to the answering affidavit is a resolution of the board of Pernisch 1 dated 08 July 2001 – ostensibly signed by Ishendra and Usha Bapoo – removing the latter as director of the company.
13. According to Keshav Bapoo, who is the son of Ishendra and Usha Bapoo and the respondent in this application:
 - 13.1. Ishendra Bapoo purported fraudulently to transfer Usha Bapoo’s “300” shares in Pernisch 1 to Shunmoogun Pursad, “a family member”;
 - 13.2. Usha Bapoo’s signature was forged on a subsequent letter dated 31 May 2005 that purports to confirm her resignation as director of Pernisch 1; and
 - 13.3. the records of the Companies and Intellectual Properties Commission (the CIPC) are disputed insofar as they reflect cancellation of her shares in Pernisch 1 and/or removal of her as director of Pernisch 1.
14. A document annexed to the answering affidavit purports to be a resolution of the board of Pernisch 1 dated 01 March 2007 signed by Ishendra Bapoo and Navarani Naidu (his second wife) approving transfer by Shunmoogun Pursad to Navarani Naidu of 300 shares in Pernisch 1. According to Keshav Bapoo, this and certain related documents were falsified, including by means of a further forged signature of Usha Bapoo.
15. Pernisch 1 was deregistered as a company by the CIPC, due to its failure to submit annual returns, on 16 July 2010. Keshav Bapoo alleges that, despite such deregistration, Ishendra Bapoo continued to manage the operations of the property, in the name of Pernisch 1, as if it were still in existence.

Pernisch 2

16. Annexed to the answering affidavit is a purported resolution of the board of Pernisch 1 dated 02 June 2013 and signed by Ishendra Bapoo and Navarani Naidu recording that, on account of the deregistration of Pernisch 1, a new company with the same name and directors Ishendra Bapoo and Navarani Naidu would be registered with the CIPC and ‘automatically’ take transfer of all assets of Pernisch 1. I return to this resolution in paragraphs 51 and 52 below.

17. Annexed to the replying affidavit is an exchange of emails on 11 and 12 June 2013 revealing that a new company was incorporated and named for the reason that the property was registered in that name.
18. The new company, (also) named Pernisch Investments (Pty) Ltd (Pernisch 2), was incorporated on 24 June 2013. According to Ishendra Bapoo, he laboured under the misapprehension that the property “would be the property of the new corporation purely because the new corporation bore exactly the same name as the deregistered corporation.” Keshav Bapoo alleges that the use of the same name was “clearly to perpetuate the fraudulent dealings.”
19. A minute of a meeting of the board of Pernisch 2 on 24 June 2013 records that all the issued shares in the company would be held by Navarani Naidu. It is alleged by Keshav Bapoo that:
 - 19.1. Ishendra Bapoo made Navarani Naidu “the shareholder of the company to divest himself of all assets, because he was afraid that his previous employer, from whom he stole millions and for which he was imprisoned, may attach his assets”; and
 - 19.2. Ishendra Bapoo and Navarani Naidu were appointed as directors of Pernisch 2.

The powers of attorney

20. Ishendra Bapoo was convicted on 50 counts of theft from a former employer on 11 November 2013.
21. On 27 January 2014, when his imprisonment was imminent, Ishendra Bapoo resigned as director of Pernisch 2 and appointed Keshav Bapoo in his stead.
22. It appears from a Pernisch 2 board minute dated 07 February 2014 that a further 1,000 shares in the company were issued to Keshav Bapoo at about that time.
23. On the same day Navarani Naidu and Keshav Bapoo were granted a joint power of attorney to manage the business affairs of Ishendra Bapoo for the duration of his imprisonment.
24. At some point thereafter Naidu, whom Ishendra Bapoo had divorced, resigned as director of Pernisch 2.
25. Ishendra Bapoo terminated the joint power of attorney on 31 December 2016.
26. On the following day Ishendra Bapoo granted to Usha Bapoo a power of attorney to manage his business affairs for the remainder of his imprisonment.
27. On 11 January 2017 Usha Bapoo informed Ishendra Bapoo telephonically that she was no longer willing to assist him with the management of his business affairs.

The alleged agreements

28. On the same day Ishendra Bapoo entered into an oral agreement with Keshav Bapoo in terms of which the latter was mandated to collect rentals and other amounts from tenants of the property, settle the expenses of the property and pay any remaining monies to the former.
29. An unsigned memorandum of agreement (the MOA) between Ishendra and Keshav Bapoo, date-stamped 14 January 2017, is annexed to the founding affidavit. Here, the versions diverge once more:
- 29.1. According to Ishendra Bapoo, the MOA was intended to formalise the oral agreement referred to in paragraph 28 above. Although the MOA was not signed, Ishendra Bapoo contends that Keshav Bapoo honoured most of its material provisions.
- 29.2. According to Keshav Bapoo, he received from Ishendra Bapoo not the MOA but a draft sale of shares agreement that he declined to sign because it “attempted to sell my own shares to me”. At a meeting at the prison cells, however, it was orally agreed that Keshav Bapoo would purchase 50% of the shares in Pernisch 2 (that had been issued to Navarani Naidu) for R1 million. On the understanding that Pernisch 2 was the owner of the property and that such shares had been taken over by Ishendra Bapoo in terms of a divorce order, Keshav Bapoo paid him R20,000 per month between early 2017 and October 2020. Since 2017 Keshav Bapoo has been “running the company ... as director and only shareholder” on the understanding that Pernisch 2 is the owner of the property.
30. It appears from a document annexed to the founding affidavit that on 19 January 2017 Keshav Bapoo issued to tenants of the property a notice advising them to pay all further rentals and other amounts into a bank account in his name.
31. On 06 September 2020 Ishendra Bapoo applied to the CIPC for Pernisch 1’s reinstatement as a company.
32. The CIPC reinstated Pernisch 1 as a company on 30 November 2020.

The property-related disputes

33. Just before that development, however, Keshav Bapoo had failed on 18 November 2020 to pay to Ishendra Bapoo the monthly balance of the monies derived from the property. Again, there is dispute on the papers:
- 33.1. Ishendra Bapoo alleges that, when he called to enquire why payment had not been made, Keshav Bapoo answered that “all is fair in love and war”, seemingly a reference to ongoing litigation between Ishendra and Usha Bapoo; whereas
- 33.2. Keshav Bapoo counters that he informed Ishendra Bapoo in writing in October 2020 that he would not make any further payments unless and until he received share certificates evidencing the sale of shares referred to in paragraph 29.2 above.

34. On 01 December 2020 Ishendra Bapoo terminated all agreements, mandates and powers of attorney granted to Keshav Bapoo and asserted that Pernisch 1 was the true and lawful owner of the property.
35. It is alleged and sought to be explained that since 01 December 2020 Keshav Bapoo has continued to collect rentals and other amounts from tenants of the property without accounting to Pernisch 1 for such monies.
36. On 04 December 2020 Pernisch 1 wrote to Keshav Bapoo informing the latter of the former's reinstatement as a company and demanding that Keshav Bapoo cease and desist from collecting rentals and/or other amounts in respect of the property and/or otherwise interfering with the business and property affairs of Pernisch 1.

The urgent and other proceedings

37. In the fortnight that followed Pernisch 1 applied for an urgent interdict against Keshav Bapoo and Pernisch 2 but the matter was struck off the roll due to lack of urgency.
38. Subsequent endeavours to settle the matter by means of alternative dispute resolution were unsuccessful.
39. On 08 February 2021 Pernisch 1 changed its name to Moonlight Investments (Pty) Ltd (Moonlight). Keshav Bapoo says that Ishendra Bapoo brought about this change despite being disqualified to act as director of Moonlight and

without the knowledge or consent of Usha Bapoo.

40. It appears from a CIPC certificate annexed to the founding affidavit that, at that date, both Ishendra Bapoo and Chandnika Chotoki (his future third wife) were directors of Moonlight. Keshav Bapoo maintains that the CIPC was not informed that Ishendra Bapoo was disqualified as director and is not the only shareholder of Moonlight.
41. According to Keshav Bapoo, moreover, Ishendra Bapoo purported to:
 - 41.1. transfer 300 shares in Moonlight to Shunmoogun Pursad on 08 July 2021; and
 - 41.2. remove Keshav Bapoo as:
 - 41.2.1. a director of Pernisch 2 at a shareholders' meeting held in his absence during July 2021; and
 - 41.2.2. a shareholder of Pernisch 2 at an unspecified time.
42. On 11 July 2021 Moonlight wrote to Keshav Bapoo's attorneys asserting that the property "is the sole and exclusive property of Moonlight" and offering him employment as building manager on the basis that net amounts collected since 01 November 2020 and to be collected in future be deposited into the bank account of Moonlight. The offer is described by the letter's signatory, Chandnika Chotoki, as extending "the proverbial olive branch" on account of "the familial relationship between our directors and the director of your client [Keshav

Bapoo]”.

43. There does not appear to have been a response by or on behalf of Keshav Bapoo.
44. Moonlight withdrew the application referred to in paragraphs 37 and 38 above on 20 July 2021.
45. On 21 July 2021 Moonlight appointed a third-party property agent (the agent) to manage the affairs of the property. Keshav Bapoo disputes the appointment on the basis that Ishendra Bapoo was disqualified to act as director of Moonlight.
46. According to Ishendra Bapoo, the agent informed Moonlight on 06 August 2021 that Keshav Bapoo was interfering with and frustrating the work of the agent.
47. On 13 September 2021 Usha Bapoo initiated an action against Ishendra Bapoo, Moonlight, Chandnika Chotoki and the CIPC (the action) seeking an order:
 - 47.1. declaring herself to be the only director of Moonlight, that Ishendra Bapoo and Chandnika Chotoki are not directors of Moonlight and that Usha Bapoo holds 200 of the 300 shares in Moonlight; and
 - 47.2. directing the defendants to take steps to give effect to such declarations.
48. My understanding is that pleadings have closed and the action will proceed to trial.
49. I pause to note that, as submitted by counsel for Moonlight at the hearing of this application, at least certain of the disputes traversed in this section of the judgment are likely to feature in and require determination in the action. There is even the prospect of a counterclaim, with the joinder of Keshav Bapoo, for relief of the nature sought in this application, including any statement and debatement of account of all monies received and expended in respect of the property in the period 01 December 2020 to the date of this judgment.
50. I proceed with the chronological account: It appears that Ishendra Bapoo married Chandnika Chotoki, the biological sister of Usha Bapoo, in October 2021.
51. On 15 October 2021 Moonlight initiated an application against Pernisch 2 seeking an order declaring itself to be the owner of the property and the resolution referred to in paragraph 16 above to be void ab initio. Keshav Bapoo claims that, despite being a 50% shareholder of Pernisch 2, he was not cited as a party in or otherwise informed of the application.
52. By order dated 17 February 2022 the court (per Lenyai AJ) declared Moonlight to be the lawful owner of the property and that resolution to be of no force or effect.

THESE PROCEEDINGS

The affidavits

53. It is alleged that the sole director of Moonlight (Chandnika Chotoki Bapoo) resolved on 08 March 2022 to institute this application and to authorise Ishendra Bapoo to represent Moonlight in the litigation. (A CIPC certificate annexed to the replying affidavit and dated 31 May 2022 reflects that, at that date, Chandnika Chotoki Bapoo was the only director of Moonlight.)
54. This application was launched on 11 March 2022. In the notice of motion Moonlight seeks an order interdicting Keshav Bapoo from interfering with or frustrating the operations of Moonlight and the agent in managing the property and ordering him to state and debate an account of all monies received and expended in respect of the property in the period 01 December 2020 to the date of this judgment. The founding affidavit was deposed to by Ishendra Bapoo, who discloses that he is disqualified to act as director of Moonlight on account of a criminal conviction for theft. The essential averments in the affidavit are that:
- 54.1. Ishendra Bapoo is the only shareholder of Moonlight;
- 54.2. Chandnika Chotoki Bapoo is the sole director of Moonlight;
- 54.3. Moonlight is the registered and lawful owner of the property; and
- 54.4. since 01 December 2020 Keshav Bapoo has collected rentals and other amounts from tenants of the property without accounting to Moonlight for such monies.
55. The application was served on Keshav Bapoo on 12 May 2022.
56. Keshav Bapoo delivered notice of intention to oppose this application on 18 May 2022 and his answering papers in the application (comprising a 'replying' affidavit in his name, a supporting affidavit in the name of Usha Bapoo and a bundle of annexures) on 11 July 2022. According to the answering papers:
- 56.1. Ishendra Bapoo is not the only shareholder of Moonlight. Usha Bapoo retains the 200 shares referred to in paragraphs 9 and 10 above and is the majority shareholder of Moonlight;
- 56.2. Chandnika Chotoki Bapoo is not the sole director of Moonlight. She is not a lawfully or validly appointed director of Moonlight;
- 56.3. until the order referred to in paragraphs 51 and 52 above, Keshav Bapoo understood Pernisch 2 to be the registered and lawful owner of the property; and
- 56.4. Keshav Bapoo will account for all rentals and other amounts collected from tenants of the property as soon as the ownership of Moonlight is pronounced in the action referred to in paragraphs 47 and 48 above.
57. On 25 July 2022 Moonlight's attorneys wrote to Keshav Bapoo's attorneys requesting reasons for the delay in delivering answering papers.

58. In response on the following day Moonlight was informed that Keshav Bapoo's attorneys had not realised that the answering papers were out of time. The letter added that the answering papers were only four days late and requested condonation for their late delivery.
59. Moonlight delivered its replying affidavit in this application on 17 October 2022. The affidavit takes issue with the late delivery and alleged prolixity of the answering affidavit as well as the alleged prematurity/irregularity of the supporting affidavit of Usha Bapoo. It also submits that the answering affidavit contains irrelevant, hearsay, scandalous and/or vexatious material that should be struck out by this court. And it reiterates the contentions paraphrased in paragraph 54 above.

The submissions

60. The attorneys for Moonlight delivered heads of argument and a list of authorities on 07 November 2022. The submissions in support of this application include that it is not in dispute on the papers that the property-related mandate conferred by Ishendra Bapoo on 11 January 2017 was terminated by him on 01 December 2020 yet Keshav Bapoo:

"has since stubbornly and without just cause refused to desist from interfering with, obstructing and frustrating the Applicant in the day-to-day running of its business affairs of the said immovable property of the Applicant, and has unlawfully continued to collect rental and other income lawfully due to the Applicant into his own personal bank account, and for his own benefit."

61. On 15 November 2022 Keshav Bapoo gave notice of application for condonation for the late delivery of his answering papers.
62. On 22 November 2022 Moonlight delivered notice of intention to oppose the condonation application together with an answering affidavit in that application.
63. Keshav Bapoo delivered 're-commissioned' answering and supporting affidavits in the main application on 26 January 2023.
64. On 06 or 07 February 2023 Moonlight's attorneys wrote to Keshav Bapoo's attorneys advising that their client intended applying for the striking-out of the re-commissioned affidavits. The letter contended that Keshav Bapoo's attempt "to rectify the validity of the aforesaid supporting affidavit of U Bapoo some three months after the fact is mala fide and causes extreme prejudice to our client." Keshav Bapoo was requested to withdraw the re-commissioned affidavits.
65. A chronology of events was delivered on behalf of Moonlight on 10 February 2023.
66. On behalf of Keshav Bapoo, heads of argument (prepared by attorney AL du Preez) were delivered on 22 March 2023 and supplementary heads of argument (prepared by advocate JW Steyn) were delivered on 24 April 2023.

66.1. The primary submissions:

66.1.1. dispute the lawfulness and validity of Chandnika Chotoki Bapoo's appointment as director of Moonlight such that "[t]he decision to institute legal proceedings is thus not authorised";

66.1.2. add that "[t]he applicant was well aware of the fact that its directorship and shareholding are in dispute before instituting these proceedings."

66.1.3. conclude that "[t]he application stands to be dismissed" on either basis; and

66.1.4. ask that costs on a punitive scale be paid by Ishendra Bapoo and Chandnika Chotoki Bapoo in their personal capacities.

66.2. The supplementary submissions argue that, by simple comparison of signatures before this court, the version that Usha Bapoo's signature was forged on the purported letter of resignation as director of Moonlight is to be preferred. At the very least, there are material factual disputes regarding the shareholder(s) and director(s) of Moonlight.

67. Supplementary heads of argument and a list of further authorities (prepared by its attorneys) were delivered on behalf of Moonlight on 09 May 2023. These submissions tackle the argument that Moonlight lacks standing to seek relief against Keshav Bapoo since there are material factual disputes regarding its shareholder(s) and director(s). It is submitted that:

67.1. for purposes of standing, this court may rely on the records of the CIPC as regards the only shareholder (Ishendra Bapoo) and sole director (Chandnika Chotoki Bapoo) of Moonlight; and

67.2. "[i]n the present case, both the Applicant and Respondent are in agreement that the Respondent, having no legal right to, is unlawfully exercising control of the Applicant's property and depriving the Applicant of its lawful income."

68. In response to a directive issued by this court, the parties' legal representatives delivered a joint practice note on 16 May 2023. As appears therefrom, it is common cause that the issues for determination in this application are:

68.1. whether Moonlight has locus standi to pursue this application and Ishendra Bapoo is authorised to represent Moonlight in doing so;

68.2. whether there is a genuine and material dispute of fact on the papers that precludes the matter from being determined on motion;

68.3. whether it is in the interests of justice for the court to grant a final interdict that prevents Keshav Bapoo from interfering with the business and property affairs of Moonlight; and

68.4. whether Keshav Bapoo should be compelled to account to Moonlight for any and all monies collected in respect of the property.

MY ANALYSIS

69. At the hearing of this application, Ms Erasmus confirmed that Moonlight does not persist in either opposing the condonation application or prosecuting the strike-out application.
70. Insofar as may be necessary, I condone the late delivery of the answering papers and the initial irregularity in Usha Bapoo's supporting affidavit.
71. It is elementary that motion proceedings are geared towards determining legal disputes based on common cause or uncontested facts. They are unsuited to assessing probabilities or otherwise resolving disputes of fact.
72. As paragraphs 33 to 52 above make plain, the parties have been and remain embroiled in acrimonious litigation characterised by the same or similar disputes of fact that underlie this application. The disputes – certainly those regarding the shareholder(s) and director(s) of Moonlight – were and are not merely foreseeable but in fact known to the parties and, given the action referred to in paragraphs 47 and 48 above, Moonlight could not reasonably have regarded motion proceedings as appropriate for seeking final relief against Keshav Bapoo. Subject to what is recorded in paragraphs 77 and 78 below, the application must thus fail.
73. There is also a material dispute whether Keshav Bapoo enjoys any entitlement to collect rentals and/or other amounts in respect of the property and/or otherwise to conduct the business and property affairs of Moonlight.
74. At the hearing, I understood it to be accepted on behalf of both parties that the property-related mandate conferred by Ishendra Bapoo on 11 January 2017 was terminated by him on 01 December 2020.
75. It was submitted by Ms Erasmus that, by virtue of the sale of shares referred to in paragraph 29.2 above, Keshav Bapoo had continued to collect such amounts and conduct such affairs on the erroneous understanding that he was the proprietor of Pernisch 2 and it was the owner of the property. The error in that understanding is confirmed by the order referred to in paragraphs 51 and 52 above.
76. Ms Erasmus did not address the further version put up in the answering papers and submissions to the effect that Keshav Bapoo's conduct was and is authorised by his mother, Usha Bapoo, who is said to be the majority shareholder and sole director of Moonlight. As alleged in paragraph 6.1 of the answering affidavit and confirmed in the supporting affidavit, "Usha Bapoo as majority shareholder and director of the Applicant wishes me to remain conducting the affairs of Emerald Court [the property] until the finalization of case 2021/43984 [the action], because of the fraudulent conduct of the deponent [Ishendra Bapoo]." It was not submitted that this version may be rejected as plainly false or inherently unsustainable. Nor do I consider that to be the case, though the version is open to doubt. It is more appropriate that the version be tested in the action.

77. Towards the end of his oral submissions, in response to concerns expressed by this court in regard to the present and future management of the property's affairs, Mr Steyn indicated that Keshav Bapoo tendered, pending the final determination of the action, to deposit all rentals and/or other amounts collected in respect of the property into a trust account under the control of his attorneys of record, to discharge expenses incurred in respect of the property out of such account, to retain the balance in the

account and to account monthly to Moonlight in that regard.

78. I intend to make the tender an order of court but otherwise to dismiss the application.

79. At the conclusion of the hearing, I informed the parties' legal representatives that I was minded to refer this judgment to the CIPC with a request that it investigate the corporate affairs and records of Moonlight and Pernisch 2. Both Ms Erasmus and Mr Steyn indicated that their clients were supportive of that suggestion.

80. While finalising this judgment on 20 June 2023, mindful that there might be practicalities – including as regards the use of an attorney's trust account – that were not explored during the hearing, I invited the parties' legal representatives to file brief supplementary submissions on a contemplated draft order in terms very similar to those set out in paragraph 82 below. I am grateful to both sides for the submissions uploaded on 21 June 2023. In substance:

80.1. Moonlight contends for interim relief – an interdict, a statement and debatement of account and the appointment of an independent property management agent – pending the outcome of the action. Save as aforesaid, Moonlight is satisfied with the content of paragraph 82.2 below, submits that paragraph 82.3 below should make no order as to costs and urges that paragraph 82.4 below should contain a direction rather than an invitation to investigate.

80.2. Keshav Bapoo criticises Moonlight for seeking to “re-argue the matter” and contends that “to appoint an management agent will only serve to deny the applicant of its income (it will probably take most if not all of its income as a management fee)”. He submits that “the proposed draft order of the Court is justified and will serve as protection of the interests of all involved whilst also providing the necessary protection to all involved” and records that he is “in agreement therewith”, save that the costs of the application should be borne by Ishendra Bapoo rather than Moonlight.

81. In my view, it would be unfair – at or after the 11th hour – to permit Moonlight to convert its substantive case into one for interim relief. Keshav Bapoo was not called on to meet that case. What would be involved in appointing and mandating an independent property management agent is also not explored in the affidavits and so I do not know whether it would be commercially or practically feasible. An interim arrangement that is closer to the status quo but safeguards the monies generated by the property seems all that is achievable on the papers. I do not propose to fetter the CIPC's discretion to discharge its statutory duties as it deems fit. Finally, I do not consider that a sufficient case is made out in the

papers to saddle a non-party with the costs of the applicant; nor am I satisfied, on reflection, that Keshav Bapoo is deserving of full indemnification in respect of his costs of the proceedings.

82. In the circumstances, I grant the following order:

82.1. The respondent is directed, pending the final determination of the action initiated and conducted in this division under case number 43984/2021 (including any appeal) or as otherwise directed by a court, to:

82.1.1. deposit all rentals and/or other amounts collected in respect of the immovable property described as Erf [...], Bellevue Township and situated at [...], Bellevue, Johannesburg (the property) into a trust account under the control of his attorneys of record;

82.1.2. discharge any expenses genuinely and reasonably incurred in respect of the property out of such account;

82.1.3. retain the balance in the account; and

82.1.4. account to the applicant in that regard, supported by all relevant vouchers, within 20 court days of the end of each month.

82.2. Save as provided for in paragraph 82.1 above, the application initiated and conducted in this division under case number 10033/2022 is dismissed.

82.3. The applicant is ordered to pay 50% of the respondent's costs of the application.

82.4. The registrar of this court is directed to refer a copy of this judgment to the office of the Companies and Intellectual Properties Commission (the CIPC) under cover of a request that the CIPC considers whether to exercise its statutory powers and functions to investigate the corporate affairs and records, including shareholdings and directorships, of:

82.4.1. Moonlight Investments (Pty) Ltd (formerly Pernisch Investments (Pty) Ltd (2001/012087/07); and

82.4.2. Pernisch Investments (Pty) Ltd (2013/104629/07), and, if so, to take such further and lawful steps as it considers appropriate.

PEARSE AJ

This judgment is handed down electronically by uploading it to the file of this matter on CaseLines. It will also be emailed to the parties or their legal representatives. The date of delivery of this judgment is deemed to be 22 June 2023.

Attorney for Applicant: R Erasmus Instructed By: Riekie Erasmus Attorneys Advocate for Respondent: JW Steyn Instructed By: Andre du Preez Attorneys Date of Hearing: 29 May 2023 Date of Request for Submissions on Order: 20 June 2023 Date of Submissions on Order: 21 June 2023 Date of Judgment: 22 June 2023

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