

SOUTH AFRICA / JUDGMENT

Moore v Van Goidsenhoven and Another (30515/2021) [2022] ZAGPPHC 534 (18 July 2022)

[2022] ZAGPPHC 534

COURT

North Gauteng High Court, Pretoria

BEFORE

N Davis

CASE / FILE NUMBER

30515/2021

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Source record**HIGH****COURT OF SOUTH AFRICA****GAUTENG****DIVISION, PRETORIA)****CASE****NO: 30515/2021**

REPORTABLE:

NO.
OF
INTEREST TO OTHER JUDGES: NO
REVISED.
18
JULY 2022
In

the matter between:

TREVOR
ALLEN MOORE
Applicant
and
ARLENE
VAN GOIDSENHOVEN
First Respondent
THE
CURRENT OCCUPIERS OF 26
BELLINGHAM
CRESCENT Second
Respondent

Summary: Interim interdict – to provide details of rental agreements in respect of a property registered in the name of respondent – main action pending for transfer of property – additional claim that rental income be paid into trust – material disputes of fact – application refused.
ORDER
The application is refused, with costs.

JUDGMENT

This matter has been heard by way of open court and is otherwise disposed of in terms of the Directives of the Judge President of this Division. The judgment and order are accordingly published and distributed electronically.

DAVIS, J

[1]

Introduction

The applicant, Mr Moore (Trevor) and the first respondent, Ms Goidsenhoven (Arlene), had previously been in a romantic relationship with each other. The relationship was of such a nature that one of the previous attorneys described it at the time that the property which forms the subject matter of the current dispute between the parties was acquired, as a “common law marriage”. There is an action pending between the parties pertaining to actual ownership of an immovable property and in this application Trevor is seeking an order compelling Arlene to provide all particulars pertaining to rental agreements she had entered into with tenants of the property over the last 12 months and also that all the rental income be paid into an attorneys trust account.

[2] The nature of the dispute concerning the property:

2.1 Trevor pleaded in the main action that “... during approximately January 2013 to September 2013 ... the plaintiff and the first defendant ... entered into a verbal agreement ... that the plaintiff would purchase the Meyersdal and the Alrode South properties and pay the purchase prices with regard to these purchases to the respective sellers. The Meyersdal and the Alrode South properties would be registered in the name of the first defendant as the nominee alternatively agent of the plaintiff to hold same on behalf of the plaintiff ... the plaintiff would remain the owner of the properties and ... the properties would be transferred by the first defendant to the plaintiff or his nominee upon the plaintiff’s demand”.

2.2 In the main action Trevor is the plaintiff and Arlene is the first defendant.

2.3 Despite claiming in the particulars of claim that he would always be the owner, Trevor alleged in his founding affidavit in the present application that “at the time when the said property was purchased, I started a new business known as Bafana Diesel Depot. In an attempt to protect the investment, I decided to have the said property registered into the name of the respondent”. The allegation containing this “protection” footwork by claiming ownership only when it suits him or when such ownership would be safe from creditors, pertains to the Meyersdal property, being the one in question.

2.4 For purposes of avoiding the reach of section 1 of the Alienation of Land Act 68 of 1957, requiring sales of land or cessions thereof to be in writing, Trevor’s advocate, Adv. S J van Rensburg SC, relied on *Dadabhay v Dadabhay and Another* 1981 (3) SA 1039 (A). In that matter it was considered that an agreement to hold property as a nominee of another together with a subsequent transfer of the property could validly be concluded orally.

2.5 Arlene’s version is that, at the time of the purchase of the property, Trevor was indebted to her for monies lent and advanced by her to him in the period leading up to July 2013. In order to settle this indebtedness, Trevor agreed to sell another one of his properties (the “Bosworth property”) and from the proceeds pay Arlene by purchasing a property for her and

by having it registered in her name. For the balance of the debt, Trevor would pay monies over to Arlene into her bank account to enable her to refurbish and renovate the new property. There is also a further factual dispute as to when the Bafana Diesel Depot was started, with a version by Trevor’s daughter, confirming Arlene’s version, namely that this post-dated the acquisition of the property by some years.

2.6 In the particulars of claim in the main action, Trevor pleaded that the relationship between him and Arlene had ended in 2017 and that it was an implied term of the oral agreement on which he relies that, upon termination of the relationship, transfer of the property to him would take place. He further pleaded that, in the alternative, he has subsequently demanded such transfer, alternatively that he demanded it by way of the summons and the particulars of claim. The relief that Trevor seeks is the transfer of both the property in question and the property in Alrode South. As an alternative, he claims that, should Arlene retain both properties, that he has an enrichment claim against her to the value of R9, 5 million.

[3] The current dispute and the evaluation thereof:

3.1 In Trevor’s current application, labelled by him the “interdict application”, he seeks the following relief in addition to costs.

“1. (That) the respondents (that is Arlene and the “current” occupiers of the Property) ... provide full details relating to the rental agreement in relation to (the property), together with copies of any and all rental agreements and proof of payments for the last 12 months.

2. (That) the rental income relating to (the property) ... be paid into the trust account of DLBM Inc ... Pending the finalization of the action instituted under case number 32079/2018”.

3.2 It is trite that, in order to obtain an interim interdict, an applicant has to satisfy the following requirements: the existence of a prima facie right, a well-grounded apprehension of irreparable harm if the interim relief is not granted and only the ultimate relief is granted, that the balance of convenience favours the granting of the relief and that the applicant has no other satisfactory remedy. I shall deal with each of these requirements hereunder.

3.3 The relief that Trevor seeks in this application is not foreshadowed in the pending action. Therein, as pointed out above, he seeks transfer of the properties or, as an alternative, payment of what he contends the values thereof are. Nothing is pleaded, even on his version, in respect of the “fruits” of the properties while Arlene held the properties of which he claims ownership prior to his demands of transfer. Nothing has been pleaded in respect of the duties, obligations or costs in respect of the maintenance, upkeep or even renovation or improvement of the properties. The lastmentioned is not even pleaded as part of the alternative enrichment claim. Insofar as Trevor seeks to now prevent Arlene from retaining the proceeds of the letting of the one property, the ultimate entitlement to such proceeds does not form part of the main action and neither does a duty to account for such proceeds. Even if an owner of a property may generally be entitled to the use of such property (or the “fruits” thereof) no such prima facie right has been established (or pleaded) prior to the determination of ownership.

3.4 The apprehension of irreparable harm has also been overstated. Firstly, the allegation of non-payment of levies and taxes has been met by the production of an account from the local authority which indicate a current and not arrears account. Any other fear of sale or bonding of the property has already been met by a previous order of this court by Kollapen J on 11 April 2018, already interdicting Arlene from selling or encumbering the property. I therefore find that the argument presented on behalf of Arlene with reliance on *LF Boshoff Investments (Pty) Ltd v Cape Town Municipality* 1969 (2) SA 256 (C) at 267, is correct to the effect that, objectively speaking, no reasonable person, faced with these facts, would apprehend the probability of irreparable harm.

3.5 Whilst on the topic of the previous order interdicting the sale or encumbering of the property, it was argued on behalf of Trevor, that this already confirms the existence of a prima facie right. I am of a different view. The previous order merely kept the subject matter of litigation (*res litigiosa*) intact. It simply maintained the status quo in respect of the property pending the finalization of the action. This is in accordance with the primary nature of interim interdicts. See, Joubert (red), *The Law of South Africa (LAWSA)*, Vol 5 (3ed) paragraph 13.

3.6 Considering the balance of convenience, Arlene has stated that she uses the rental generated from the property to meet the expenses related to it and to meet general maintenance requirements. The ultimately determined owner of the property would be prejudiced if the rental income is not utilised in this fashion and I find no balance of convenience favouring the placing of these funds unutilised in an attorney's trust account. Insofar as a portion of the balance of the rental income may in the interim be retained or used by Arlene, Trevor has not sufficiently made out a case that, should he be successful, he would not be able to recover that portion. Neither a balance of convenience nor any irreparable harm had been established in this regard.

3.7 Regarding the issue of an alternative remedy, should Trevor make out a case for an entitlement to the rental income in the main action, he has all the procedural remedies available to him to claim discovery or further particulars in respect thereof in the trial action. An interdict prematurely calling for a final interdict in the form of accounting and furnishing of copies and the like is inappropriate in my view. As Arlene's counsel succinctly put it in Heads of Argument filed on her behalf

"there would be no difficulty in proving the quantum of a claim, should a claim related to the rental ... be proved in due course."

3.8 In conclusion I find that Trevor has not satisfied the requirements for an interim interdict or for the relief sought by him.

[4] Costs

Ordinarily, costs should follow the event. I find no cogent reason to depart from that principle in this case, particularly in view of the that Trevor's case has been insufficiently pleaded in the main action pertaining to the issue of rental income and, even if it had, the principal relief claimed by him, namely the furnishing of documents or particulars, could procedurally have been obtained in the main action.

[5] Order

The application is refused, with costs.

N DAVIS

Judge of the High Court

Gauteng Division, Pretoria

Date of Hearing: 28 April 2022

Judgment delivered: 18 July 2022

APPEARANCES:

For Appellant:

Adv S J van Rensburg SC

Attorney for Appellant:

DLBM Attorneys Inc, Pretoria

For Respondents: Mr

J S Liebenberg

Attorneys for Respondents: Allan

Levin & Associates, Johannesburg
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