

SOUTH AFRICA / JUDGMENT

Screuder v Riekert (CIV APP FB 06/2020) [2021] ZANWHC 11 (4 March 2021)

[2021] ZANWHC 11**COURT**

North West High Court, Mafikeng

BEFORE

A. H. Petersen, R. D. Hendricks, F. M. M. Snyman

CASE / FILE NUMBER

CIV APP FB 06/2020

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Reportable:	YES / NO Circulate
to Judges:	YES / NO Circulate
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to Regional Magistrates:	YES / NO IN THE HIGH COURT OF SOUTH AFRICA NORTH WEST DIVISION, MAHIKENG CASE NO: CIV APP FB 06/2020 In

the matter between: SCREUDER,
CHRISTIAAN PETRUS
Appellant
and
RIEKERT,
JOHAN
1st
Respondent
REGISTRAR
OF
DEEDS
2nd Respondent

CORAM: HENDRICKS DJP, et PETERSEN AJ et SNYMAN AJ
DATE
OF HEARING
: 05
FEBRUARY 2021
DATE
OF JUDGMENT
: 04
MARCH 2021
FOR
THE APPELLANT
: ADV.
M. A. KRUGER
FOR
THE RESPONDENT
: MR.
N. J. ESTERHUYSE

Delivered: This judgment was handed down electronically by
circulation
to
the parties' representatives via e-mail. The date and time of
the handing down of judgment is deemed to be 10h00am on 04
March
2021.
ORDER
(i)
The appeal is upheld with costs, including the costs of the
application for leave to appeal in the court a quo
and including the costs of the application for leave to appeal in the
Supreme Court of Appeal.
(ii)
The order of the court a quo is set aside and substituted for

the following order:

“1.

The first respondent is ordered to pay to the applicant the amount of R600 000,00 together with interest thereon a tempore morae at the prescribed rate of interest of 10% per annum within ten (10) days from date of this order.

2.

The first respondent pays the costs of this application.”

JUDGMENT

PETERSEN AJ

Introduction

[1] This is an appeal, against a decision of the court a quo (Morwane AJ), with leave of the Supreme Court of Appeal. The very narrow issue in this appeal turns on whether the conduct of the first respondent in failing to transfer immovable property (“the farm”) purchased by the appellant and the first respondent to a company 4J Boerdery (Pty) Ltd (“4J Boerdery”), amounts to a repudiation of an oral agreement (“the agreement”)

between the appellant and the first respondent. The court a quo held that the conduct of the first respondent does not constitute a repudiation of the agreement on the basis of a genuine dispute of fact and dismissed the appellant’s application.

[2] In the notice of motion in the court a quo, the appellant sought an order that:

“1 The first respondent is ordered to pay to the applicant the amount of R600 000.00 together with interest thereon a tempore morae at the prescribed rate of interest

of 10% per annum within ten (10) days from date of this order.

2 The first respondent is interdicted and restrained from disposing of or encumbering the property known as farm 289 Vergenoegd, Registration Division JP, Province of North-West, held under Title Deed T105660/2016 until such time as the amount of R600 000.00 together with interest thereon has been paid in full.

3 The second respondent is directed to record the interdict provided for in paragraph 2 above, in its records.

4 The first respondent pays the costs of this application.

5 Further and/or alternative relief.”

Background

facts

[3] It is common cause that during September 2016, the appellant and first respondent entered into an oral agreement to purchase the farm. There is, however, a factual dispute regarding the conditions of the agreement. Notwithstanding the factual dispute, the very narrow issue in this matter is predicated on a salient condition of the agreement that the farm would be transferred into the name of 4J Boerdery. A further salient condition of the agreement was that a certain Petrus Johannes du Preez (“du Preez”), a business associate of the first respondent, would not be involved in the property transaction. In fact, it was expressly agreed as one of the conditions of the agreement that du Preez should resign as a director and shareholder of 4J Boerdery before the farm could be registered in the name of 4J Boerdery.

[4] On 21 September 2016, the first respondent concluded a written agreement for the purchase of the farm at a purchase price of R1 850 000.00 (one million eight hundred and fifty thousand rand). The appellant, pursuant to the agreement and upon the purchase of the farm, made a number of payments to the bank account of the first respondent under the name Riekert Boerdery, totalling R600 000.00 (six hundred thousand rand). The first respondent contrary to the agreement that the farm would be registered in the name of 4J Boerdery, registered the farm in his own name on 07 December 2016. The first respondent’s

evidence is that this was done in agreement with the appellant, who disputes same.

[5] The appellant established that 4J Boerdery was registered as a company on 8 March 2016, with the first respondent and du Preez appointed as its directors. The first respondent’s evidence is that du Preez was only removed as a director during October 2017, which contributed to the delay in registering the farm in the name of 4J Boerdery. The company report for 4J Boerdery, however, reflects

that du Preez resigned as a director on 22 July 2017, with the appellant subsequently being appointed as a director on 4 October

2017.

[6] The first respondent in his evidence proffers a further reason for the delay in registering the farm in the name of 4J Boerdery. According to the first respondent he acted on legal advice, that he obtains a valuation for the property, as part of the process of registering the farm in the name of 4J Boerdery. This he attended to in December 2017 and the valuation was received in January 2018.

- [7] In the historical context of the events following the purchase of the farm, the first respondent, rather than transferring the farm into the name of 4J Boerdery as per the agreement, during or about December 2017, whilst attending to a valuation of the property on his version, as part of the process of transferring the farm, provided the appellant with a copy of a will signed on 28 November 2017, in which 32.43% of the immovable property was bequeathed to appellant.
- [8] On the appellants version, he was initially issued with a share certificate reflecting a 50% shareholding in 4J Boerdery during January 2018, contrary to the agreement. After pointing out this anomaly the appellant was subsequently issued a share certificate for a 35% shareholding, still contrary to the agreement that he would receive a 32,4% shareholding in 4J Boerdery.
- [9] The status quo at present and as it existed at the hearing of the application in the court a quo is that the immovable property has not been transferred into the name of 4J Boerdery, despite repeated intimations from the first respondent that he is intending to do so.

Submissions on the narrow issue in this appeal

- [10] Adv Kruger for the appellant submits that the failure by the first respondent, without lawful grounds, to transfer the property into the name of 4J Boerdery, fairly and objectively interpreted, amounts to conduct which exhibits a deliberate and unequivocal intention no longer to be bound by the agreement. He further submits that the first respondent's stated intention to transfer the property into the name of 4J Boerdery is irrelevant and that the appellant is correct in his perception that the first respondent has no intention to perform in terms of the agreement.
- [11] Mr Esterhuyse for the first respondent submits that it is common cause that the only contractual obligation of the first respondent in terms of the agreement between the parties was to take the necessary steps to register the farm in the name of 4J Boerdery. This he submits could only happen once the appellant had been registered as director and shareholder of the 4J Boerdery.

The legal position

- [12] There is a plethora of case law on repudiation. I deal with two of the cases which succinctly capture the legal position in our law. In *Nash v Golden Dumps (Pty) Ltd* 1985
- (3) SA 1 (A) at 22D–H Corbett JA explained that repudiation occurs -

“(w)here one party to a contract, without lawful grounds, indicates to the other party in words or by conduct a deliberate and unequivocal

intention no longer to be bound by the contract.”

- [13] In *Datacolor International (Pty) Ltd v Intamarket (Pty) Ltd*

[2000] ZASCA 82; 2001

- (2) SA 284 (SCA) ([2001] 1 All SA 581) at paragraph 16, Nienaber JA explained the meaning to be attributed to determining whether there was an unequivocal intention not to fulfil contractual obligations, stating that the –

“emphasis is not on the repudiating party’s state of mind, on what he subjectively intended, but on what someone in the position of the innocent party would think he intended to do; repudiation is accordingly not a matter of intention, it is a matter of perception. The perception is that of a reasonable person placed in the position of the aggrieved party.”

Application of the law to the facts

- [14] The legal position is clear, in the assessment of whether or not there was an unequivocal intention not to fulfil his obligations on the part of the first respondent, the emphasis is not on the first respondent’s state of mind, but rather how the appellant perceived the first respondent’s conduct.
- [15] The allegation by the first respondent that the resignation of du Preez as director and shareholder of 4J Boerdery only in October 2017 is gainsaid by the company report which proves that this had occurred on 22 July 2017. The registration of the appellant as a director and shareholder of 4J Boerdery was only finalised in October 2017, some three (3) months later, without any cogent explanation. The fact that the farm was to be transferred into the name of 4J Boerdery remains indisputable.
- [16] On a careful consideration of the evidence it is clear that the first respondent’s conduct from the time the farm was purchased to date is such that he acted contrary to the agreement in respect of the registration of the farm. The first respondent was, inter alia, aware of the fact that du Preez remained a director of 4J Boerdery; he had the property registered in his own name and not that

of 4J Boerdery; and he unilaterally took a decision to bequeath shareholding in 4J Boerdery to the appellant; to date he has not

transferred the farm into the name of 4J Boerdery. On the company report and the first respondent’s own version, he could have attended to the transfer of the farm at the earliest in July 2017 when du Preez was removed as a director of 4J Boerdery and at the latest in January 2018 when he received a valuation for the farm.

- [17] The appellant discovered many of these facts several months after the purchase of the farm. The defence put up by the first respondent for all these anomalies which are contrary to the agreement are not reasonable. In fact, any reasonable person in the position of the appellant gaining knowledge of these facts would rightfully have had reason to believe that the first respondent had no intention of being bound by the terms of the agreement.

Conclusion

[18] The conduct of the first respondent on a careful preponderance of all the objective facts demonstrates a deliberate and unequivocal intention to no longer be bound by the agreement. I am therefore of the view that the appeal should succeed. The relief sought by the appellant before this Court is limited to prayers 1 and 2 of the notion of motion before the court a quo and the order will be made accordingly.

Costs

[19] Costs ordinarily follow the result. The appellant has been successful in the prosecution of the appeal and there exists no reason to order otherwise. The costs shall include the costs of the applications for leave to appeal in the court a quo and in the SCA.

Order

[20] In the result, the following order is made:

(i) The appeal is upheld with costs, including the costs of the application for leave to appeal in the court a quo and including the costs of the application for leave to appeal in the Supreme Court of Appeal.

(ii) The order of the court a quo is set aside and substituted for the following order:

“1. The first respondent is ordered to pay to the applicant the amount of R600 000, 00 together with interest thereon a tempore morae at the prescribed rate of interest of 10% per annum within ten (10) days from date of this order.

2. The first respondent is ordered to pay the costs of this application.”

A. H. PETERSEN

ACTING JUDGE OF THE HIGH COURT,

I agree

R. D. HENDRICKS

DEPUTY JUDGE PRESIDENT OF THE HIGH COURT,

F. M. M. SNYMAN

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Prepared on 23 October 2026 · Esheria