

SOUTH AFRICA / JUDGMENT

Slabbert and Another v Moodie and Others (9688/2023) [2024] ZAGPPHC 230 (4 March 2024) [2024] ZAGPPHC 230

COURT

North Gauteng High Court, Pretoria

BEFORE

Reinard Michau

CASE / FILE NUMBER

9688/2023

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE Number: 9688/2023

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED: YES/NO

4/3/2024

In the matter between: -

ETTIENNE SLABBERT

1ST APPLICANT

SCHALK WILLEM NEL

2ND APPLICANT

AND

JAMES MOODIE

1ST RESPONDENT

JOHANNES FREDERICK JOOSTE

2ND RESPONDENT

THE REGISTRAR OF DEEDS

3RD RESPONDENT

JUDGMENT

This Judgment was handed down electronically by circulation to the parties' and or parties representatives by email and by being uploaded to CaseLines. The date and time for the hand down is deemed on 4 March 2024.

1. In this application the applicants seek an order dissolving their partnership, known as Joslanelmo, with the respondents and an order that the court appoints a liquidator to realise the partnership assets, to liquidate the liabilities of the partnership and to account to the partners in equal shares, half of which are to go to the applicants and the other half to the respondents. Costs are also sought.
2. There is no written partnership agreement and, as such, no recorded agreement on what is to happen upon dissolution of the partnership.
3. During November 1989 the partners purchased in their respective names a property, Erf 1316, Carletonville, Extension 2, Registration Division, I.Q., Transvaal. The deed of transfer is attached as annex "FA3" to the founding papers and the property is known as Protea 1 at [...] P[...] Street, Carletonville.
4. What the purpose of the partnership was is of no relevance for the purposes of this dispute and this judgment. It is however common cause that the partnership was dissolved on 8 April 2021, making the relief to the dissolve the partnership moot. This property appears to be the only partnership asset. Despite a lapse of almost 3 years, the partnership asset has not been realised and the proceeds, if any, not distributed.
5. The applicants, on 8 April 2021, addressed a letter to the respondents giving notice of the dissolution of the partnership, suggested a round table meeting to discuss, inter alia, how to dissolve the partnership assets and, if necessary, to appoint a liquidator.
6. Although there appears to have been other correspondence, the respondents, on 28 September 2022, addressed a letter to the applicants advising that they are not in favour of liquidating the asset by way of a public auction and made some suggestions as to how the property was to be sold.
7. There is various other correspondence as well but, ultimately, almost three years down the line there is still no agreement as to how the property is to be sold.

8. The respondents filed an answering affidavit asking for the application to be dismissed, *inter alia*, on the basis that the relief sought was not competent in law. That was the only defence. For the rest, all the answering affidavit says, in substance, is that selling it by way of public auction would cause economic harm.
9. The application is brought on the basis of the *actio pro socio*.
10. There is in my view no merit in the suggestion that the relief is incompetent. In this regard see, generally, the discussion in the *Law of South Africa*, vol. 19, 2nd ed, replacement volume 2016, para 300, p 262 and, generally, the case *Robson v Theron* 1978 (1) SA 841 (A). The respondents did not persist with the argument during the oral address.
11. Much later and on 24 July 2023 the respondents provided an offer of settlement in terms of Rule 34 in which they undertook to sign all the necessary documents including, but not limited, to mandate and authorise estate agents from Carletonville to market and sell the property for an amount of R2 500 000.00. There is no indication in the offer of how long this property is to remain on the market and what is to happen if the price of R2 500 000.00 is not achieved. When asking for additional heads of argument on this point, certain other suggestions were made by the respondents in respect of the price, the time it is to be on the market and what is to happen if it is not sold within a certain period. I have little faith that this will succeed. In my view it is important to bring an end to this dispute.
12. Painful as it may be, economically, to all the parties concerned, it is best, in my view, for a liquidator to realise the partnership asset, or assets if there are others, and each of the parties to go their separate ways. As such, I will make an order to that effect.
13. It is no longer necessary to dissolve the partnership because it is common cause that it is dissolved.
14. All that remains is the appointment of the liquidator.
15. This too was some debate. The applicants, in the notice of motion, simply wanted the court to appoint a liquidator without any suggestions as to how this is to happen and who it is to be. The court called for additional heads of argument on this. The respondents did not deal with this request from the court and the applicants gave the name of a liquidator. The court has no knowledge of the credentials of the suggested person and cannot, in good conscience, appoint that person, despite the assurances from the applicants' counsel.
16. After some debate, both counsel agreed that should I find for the applicants, the chairperson of the Pretoria Society of Advocates should decide the identity of the liquidator.
17. This matter should not have been in court in the first place. The fees that must have been spent on this matter thus far do not justify the value of the dispute. In order to try and prevent further expenses, the court urges the parties to agree on a liquidator and to relieve the chairperson of the Pretoria Society of Advocates from performing this unnecessary and menial task.

18. While I do this with some reluctance, costs will follow the event. The respondents raised no real defence in this matter when they asked for the dismissal of the application and an opposed hearing should have been avoided. In fact, there should have been no litigation at all.

Order

The court makes the following order:

- [1] A liquidator is to be appointed with authority to realise the partnership assets, to liquidate the liabilities of the partnership, to prepare a final account and to pay the net assets of the partnership to the respective partners in equal shares.
- [2] Should the parties be unable to agree on the identity of the liquidator within three weeks of the date of this order, they are to approach the chairperson of the Pretoria Society of Advocates who is to appoint a liquidator on a basis and utilising a process that he deems appropriate.
- [3] The first and second respondents are ordered to pay the applicants' costs, jointly and severally, the one paying, the other to be absolved.

REINARD MICHAU

ACTING JUDGE OF THE HIGH COURT

Date of hearing: 27 FEBRUARY 2024

Date of judgment: 4 MARCH 2024

Appearance

On behalf of the Applicants

F J Labuschagne

Instructed by

Le Grange Attorneys

On behalf of the Respondent

C.P.J. Strydom

Johan van de Vyver Attorneys

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