

SOUTH AFRICA / JUDGMENT

Utopia Properties (Pty) Ltd v Boyce (54224/2014) [2015] ZAGPPHC 956 (18 September 2015) [2015] ZAGPPHC 956

COURT

North Gauteng High Court, Pretoria

BEFORE

M F Legodi

CASE / FILE NUMBER

54224/2014

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REPUBLIC
OF SOUTH AFRICA
OFFICE
OF THE CHIEF JUSTICE
(GAUTENG
DIVISION, PRETORIA)

DATE:	18/9/15
	CASE
	NO: 54224/2014
	IN
	THE MATTER BETWEEN
	UTOPIA
	PROPERTIES (PTY)
	LTD
	Plaintiff/Applicant
	and
	DARIN
	WAVELL
	BOYCE
	Defendant/Respondent

JUDGMENT

LEGODI J

HEARD ON: 08 SEPTEMBER 2015

JUDGMENT

HANDED DOWN :18 SEPTEMBER 2014

[1] This is an exception noted by the plaintiff in the main action against the defendant's plea and counterclaim. The plaintiff

had sued the defendant for return of a motor vehicle Ferrari registered in the plaintiff's names. In the alternative the plaintiff

is claiming R650 000 being the reasonable value of the Ferrari. The defendant pleaded to this claim raising a donation as a defence.

[2] The defendant and on Jun Zhu entered into a cohabitation agreement on 25 June 2013 with the effective date being 1 December 2012 for indefinite period of time until the cohabitation relationship is terminated by either of the parties. On the 22 February 2014 Jun Zhu terminated the relationship.

[3] In paragraph 5 of the agreement is recorded:

'5. UTOPIA PROPERTIES (PTY) LIMITED, REGISTRATION NUMBER: 20131029017107 (hereinafter referred to as "the Company"

5. 1 Subject to the proviso contained in clause 5.2 below, upon the termination of the relationship, Darin shall be entitled to 20% (TWENTY PERCENT) of the net profit value, if any, of the Company, said value being calculated on the date of termination of the relationship and to be determined by the Company's Auditors. The value so determined shall be payable to Darin within 30(THIRTY) days after the aforesaid nett profit value of the Company has been determined by the aforementioned Auditors.

5.2 It is recorded that the 1984 Porsche Carrera, the 2007 Lotus 7 replica motor vehicle are registered in the name of the Company, and that said vehicles are the gifts of Darin, to be retained by him upon the termination of the

relationship. It is further recorded that the Landrover Series 3 vehide, which is also to be registered in the name of the Company, is also a gift to Darin and is to be retained by him at the termination of the relationship. Said gifts do not form part of the 20% (TWENTY PERCENT) referred to in clause 5. 1 above. Jun will ensure that all the necessary documentation is in place to give effect to the foregoing.

5.3 In the event of Darin:-

5.3.1 committing any infidelity of any nature whatsoever during the relationship with Jun, which infidelity, either directly or indirectly, results in the termination of the relationship between Darin and Jun; and/or

5.3.2 being unfaithful, untruthful and deceitful towards Jun in respect of their relationship and/or business affairs, said untruthfulness, deceit and unfaithfulness, either directly or indirectly, resulting in the termination of the relationship; and/or

5.3.3 formally immigration to any country outside the Republic of South Africa; then, in such event, the 20% (TWENTY PERCENT) referred to in clause 5.1 above shall not be payable to Darin."

[4] The 20% nett profit value and the motor vehicle referred to in clauses 5.1 and 5.2 form part of the defendant's counterclaim. The exception is taken on the basis that the defendant in paragraph 3 of his plea pleads that he removed the Ferrari vehicle with the knowledge and consent of the plaintiff yet 'the plaintiff is a juristic person and can only act through authorised functioning and that the plea lacks averments which are necessary to sustain a defence in that it is not stated when and where the plaintiff

consented to such removal and when, where and how it had knowledge of such removal'.

[5] Just to have context, in paragraph 3 of the plea, is pleaded:

"The defendant admits that he removed the said vehicle from 19 Westbroke Drive, Sandown, Sandton during this period but denies that the vehicle was removed without the knowledge or consent of the plaintiff. .."

Paragraph 3 of the plea should be seen in the context of paragraph 4 of the particulars of claim in which is pleaded:

"On or around 22 February 2014 and at 19 Westbroke Drive, Sandown, Sandton, the defendant removed the Ferrari without the consent or knowledge of the plaintiff'.

[6] The essence of the pleaded paragraph 3 of the plea is a denial of what is stated in paragraph 4 of the particulars of claim. The denial should also be seen in the context of paragraph 2.2 of the plea in which is pleaded:

"The Defendant pleads that the said car was donated to him by the Plaintiff (as represented by Jun Zhu) during the end of 2013. The Defendant was taken to the garage that sold the vehicle and was given the choice by the plaintiff (as represented by Jun Zhu) to pick any of the motor vehicles on display, after which the Defendant chose this said vehicle. The Defendant accepted the gift and has been in possession of this said motor vehicle ever since".

[7] Therefore the 'when, where and how' questions should be seen in context. Most importantly, the plaintiff wants the defendant to plead what the plaintiff failed to plead in paragraph 4 of its particulars of claim. In any event, information complained of could appropriately be dealt with by way of request for further particulars. I am therefore unable to find that paragraph 3 of the plea does not make necessary averments to sustain a defence.

[8] The other grounds of exception relate to the counterclaim. In particular that Jun Zhu is not a party to the action proceedings and at the same time, the plaintiff is not a party to the cohabitation agreement. The relevant part of the cohabitation agreement has been quoted in paragraph 3 of this judgment.

[9] True, inasmuch as the defendant's counterclaim is based on the cohabitation agreement, in particular what is quoted above, and a relationship between Jun Zhu and the plaintiff not having been explained, necessary averments to sustain a cause of action against the plaintiff are lacking.

[9] Consequently I make the following order:

9.1 The plaintiff's exception noted against the defendant's plea is hereby dismissed;

9.2 The exception against the defendant's counterclaim based on a cohabitation agreement between the defendant and one Jun Zhu is hereby upheld and the defendant is directed to amend his particulars of the counterclaim within 15 days from date hereof if he still wishes to continue with the counterclaim.

9.3 Each party to pay his or her own costs.

M F LEGODI

JUDGE OF THE HIGH COURT

FOR THE APPLICANT: ADV S MARTIN

INSTRUCTED BY: HEATHER PRETORIUS INC.

C/O KLAGSBRUN EDELSTEIN BOSMAN DE VRIES INC.

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Prepared on 9 October 2026 · Esheria