

SOUTH AFRICA / JUDGMENT

Van Rooyen and Another v Simms and Others (2022/9719) [2024] ZAGPJHC 1307 (27 December 2024) [2024] ZAGPJHC 1307

COURT

South Gauteng High Court, Johannesburg

BEFORE

Windell

CASE / FILE NUMBER

2022/9719

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IN

**THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
JOHANNESBURG****Case****Number: 2022/9719****(1) REPORTABLE: YES/NO****(2) OF INTEREST TO OTHER****JUDGES: YES/NO****(3) REVISED.****DATE: 27 DECEMBER 2024****SIGNATURE:**

In the matter between:

VAN
ROOYEN, JEAN PIERRE
FIRST
APPLICANT
VAN
ROOYEN, CARLEEN
SECOND
APPLICANT
and
SIMMS,
MURRAY ANDREW
FIRST
RESPONDENT
SIMMS,

JANICE
SECOND
RESPONDENT
C
& I COUNTRY ESTATE CC
(REGISTRATION
NUMBER: 1989/026197/23)
THIRD
RESPONDENT

JUDGMENT

WINDELL, J:

Introduction

- [1] This is an application for a mandatory interim interdict. The applicants, among other things, are seeking specific performance of an oral agreement and reinstatement of possession of the business and premises known as "the Wedding Venue", pending the outcome of an action. It is common cause that at the time of the hearing of the application an action had been instituted.
- [2] The applicants initially approached the urgent court for interim relief in March 2022. The respondents opposed the application and filed an answering affidavit. On 15 March 2022, the urgent court (Dlamini J) granted an order after agreement was reached between the parties.
- [3] The interim order is comprehensive. In essence the order restored the applicants' undisturbed possession and control of certain facilities of the Wedding Venue and ordered the parties to co-operate with each other in good faith for the benefit of the Wedding Venue. But, instead of restoring possession pending the outcome of the action, the parties agreed that possession would be restored pending the outcome of the application (in which the applicants seek interim relief pending the outcome of the action). The order was granted in the following terms:
1. The application is postponed sine die, with the costs of the application to be argued at the hearing of the opposed application.
 2. Pending the outcome of the application to be heard on the opposed motion court roll, and without prejudice to the parties' rights as set in the affidavits filed of record:
 - 2.1 The First Applicant is restored undisturbed possession and control of the bed and breakfast situated at the Bridge Wedding Venue consisting of 10 bedrooms as well as Cottage 1 and 2 on the premises situated at Portion 43/146 of the farm Rietvallei, Abraham van Wyk Road, Muldersdrift, Krugersdorp situated at corner of Drift Boulevard and Abraham van Wyk Road, Muldersdrift, Krugersdorp.

2.2 The First Respondent shall within 24 hours restore the banking details in respect of the Bed and Breakfast to that of the First Applicant on all social media platforms and websites as well as the email address and cellphone number in order to direct traffic to the Applicant.

2.3 The First Respondent shall allow the First Applicant undisturbed possession of the bar facilities at the wedding venue and to conduct business at each wedding.

2.4 The First Applicant and the First Respondent shall engage with each other in and approve in writing each quotation that is pending and conducted from this date forward pending the finalisation of the application, in respect of the bed and breakfast as well as the bar facilities in good faith.

2.5 The Applicants and Respondents shall both keep proper records of business at the Bridge Wedding Venue and cooperate with each other to the benefit of the Bridge Wedding Venue.

2.6 The function file documents in possession of the Applicants and Respondents shall be returned to The Bridge Wedding Venue office and maintained at the office where they shall be accessible to both the Applicants and Respondents. All parties shall co-operate in good faith with each other pertaining to the function filed documents.

2.7 All parties shall co-operate with each other in good faith on a basis that is conducive to the continuation of a successful business relationship in the best interest of the various businesses of The Bridge.

2.8 All parties shall have unrestricted access to all electronic media platforms including websites pertaining to all the businesses of The Bridge. All parties shall cooperate with each other regarding the administration of all media platforms, and websites including the Bridge website.

2.9 All parties shall cooperate in order to have a reconciliation statement drafted regarding the business affairs of the Bridge from 1 August 2021 until current.

2.10 All parties shall refrain from uttering humiliating or defamatory matter to one another or to 3rd parties.

2.11 All parties shall refrain from threatening with or conduct physical harm.

2.12 The Second Applicant shall return to her previous position with the Respondents, and her salary shall be paid in the amount of R 10,000 on a monthly basis, effective from 15 March 2022 (pro rata for March).

2.12.1 Should it be found in favour of the Applicants in the application and/ or the main action the amounts so paid shall be offset against the final amount.

[4] Soon after the order was granted, in April 2022, the parties agreed to suspend all litigation pending settlement negotiations. However, less than a month later, on 3 August 2022, the applicants filed their replying affidavit and recorded that all settlement negotiations had broken down. They also filed a supplementary affidavit on 12 December 2022, for which they are requesting permission from the court. The purpose of this supplementary founding

affidavit is to place before the court facts and events that have occurred from the time that the founding affidavit was filed. The supplementary affidavit is allowed, as the facts contained in it are relevant to the adjudication of this matter.

- [5] The respondents allegedly violated the Dlamini order almost immediately after it was granted, and they acknowledged that they were still in violation of the order during the hearing. No contempt application was brought by the applicants. Instead, they set the application down in the opposed motion court for August 2024, two years after the Dlamini order was granted. They seek an interim order, pending the outcome of the action.

Is an interim order competent under the current circumstances?

- [6] An interlocutory interdict is one which is granted pendente lite.[1] That means there must be legal proceedings pending between the parties.[2] The applicants confirmed during the hearing that they are seeking interim relief pending the outcome of the action, that was instituted on 19 April 2024.
- [7] In the action the applicants claim damages in the amount of R6 241 209.87 for alleged breaches of the oral agreement. It is alleged that the parties concluded the oral agreement on or about 27 July 2021 in terms of which it was agreed, inter alia, that the applicants would rent from the respondents the immovable property, Farm Rietvallei 180, including the Wedding Venue. In addition, the applicants would reside in Cottage 1 and use Cottage 2 at their discretion. The lease would endure for a period of 5 years commencing on 1 August 2021, after which period the applicants would be granted an option to purchase Farm Rietvallei 180 together with the movables and equipment, as a going concern, for a purchase consideration of approximately R8 000 000.
- [8] It is alleged that the rental would be R60 000 per month 'payable as from a later date when the Plaintiffs' financial position had improved sufficiently to enable them to make payment thereof after payment of their personal debts. The build-up of the accumulated arrear rentals would gradually be set-off against portions of future customer deposits as the Plaintiffs' financial position improves and as agreed between the plaintiffs and the defendants'.
- [9] The applicants further allege that the involvement of the respondents would be phased out over a period of time as the applicants 'are gradually taking complete control of the weddings, functions and business activities of The Bridge as a running business, including the administration, accounting, documentation and paperwork' and that the respondents 'would co-operate with the Plaintiffs insofar as is necessary for the Plaintiffs to trade profitably in order to enable the Plaintiffs to generate sufficient income for the wedding venue so as to allow the Plaintiffs to make payment of their personal debts and the rentals as agreed and to enable to Plaintiffs to make payment of the instalments on a loan for the purchase price of Farm Rietvallei 180.'

[10] The respondents pleaded to the claim and also instituted a counterclaim. They admitted the conclusion of an oral agreement, but amongst other things denied that the immovable property was let to the applicants. They averred that only a 'Lease of Business Agreement' was concluded. They also denied that the payment of the rentals was waived and stated that the applicants were

in breach of the agreement in that they failed to make payments and mismanaged the wedding as well as bed and in breakfast business. In the counterclaim, the respondents allege that the oral agreement was cancelled in January 2022 after which they took back control of the business. They allege that the applicants breached the oral agreement and were indebted to the respondents in the amount of R5 550 425.46, alternatively, R1 702 688.00.

[11] The applicants dispute the cancellation and submit that the respondents wanted to change the terms of the agreement and attempted to unlawfully repudiate the agreement, which repudiation was not accepted by the applicants. The affidavits in support and opposition of the application reiterated the facts and defences that were relied upon.

[12] There is thus a clear dispute between the parties as to the terms of the oral agreement, whether the agreement was lawfully cancelled and who was in breach of the agreement. Despite these disagreements, the applicants do not seek specific performance of the oral agreement in the action.

[13] The court is not convinced that the relief sought by the applicants is competent. Usually, the purpose of an interim interdict is the preservation or restoration of the status quo pending the final determination of the rights of the parties. In other words, the effect of the interdict is to freeze the position as between the parties until the court decides where the right lies, at which point the interim interdict ceases to operate (emphasis added).[3] In *Winkelbauer & Winkelbauer t/a Eric's Pizzeria v Minister of Economic Affairs & Technology*, [4] the court held that '[t]he purpose of interim relief pendente lite is to obviate an injustice to a party who prima facie has been wronged, but who needs time to obtain redress through the due process of law'.

[14] An interim order is not final in effect or dispositive of the rights of the parties. The parties are asked to return later to court to fully ventilate their rights, at which point the court can make a final order (which would be dispositive of the rights of the parties). This echoes the requirements set out in *LF Boshoff Investments (Pty) Ltd v Cape Town Municipality*, [5] in which it was held 'that the right which is the subject matter of the main action and which he seeks to protect by means of interim relief is clear, or if not clear, is prima facie established, though open to some doubt (emphasis added).

- [15] A court has a discretion in the granting of an interim interdict to be exercised judicially, of which one of the factors is the applicant's prospects of success in the main action.[6] Therefore, it would not be competent to grant an interdict pendite lite in these circumstances, as there is no point at which a court will determine the ultimate right to the Wedding Venue. Consequently, the application for an interim interdict must fail.
- [16] In any event, the applicants have already obtained interim relief in which possession of the Wedding Venue was restored to them. They failed to execute upon that order. In reality, the applicants are currently seeking a final interdict. There is however a clear factual dispute between the parties regarding the terms and breaches of the oral agreement, and the applicants have not demonstrated a clear right.
- [17] The costs of the application should follow the result. As far as the reserved costs of the urgent application is concerned, I am of the view that in the circumstances and having regard to the order that was agreed upon in the urgent court, the respondents should be ordered to pay the reserved costs of that application.
- [18] In the result the following order is made:
1. The application is dismissed with costs on scale B.
 2. The costs of the urgent application to be paid by the respondents, jointly and severally, the one paying the other to be absolved.

L. WINDELL

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

(Submitted electronically, therefore unsigned)

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 27 December 2024.

APPEARANCES

Counsel for the applicants:

Advocate A Scott

Attorney for the applicants:

Swart Redelinghuys Nel Gauteng Inc.

Counsel for the respondents:

Advocate E Coleman

Attorney for the respondents:

SG Attorneys

Date of hearing: 22 August 2024

Date of judgment: 27 December 2024

- [1] Merriam and Webster Dictionary define pendite lite as “during the suit: while litigation continues”.
- [2] Erasmus Superior Courts Practice D6-3; Botha v Maree 1964
- (1) SA 168 (O); Winkelbauer and Winkelbauer t/a Eric’s Pizzeria v Minister of Economic Affairs and Technology 1995
- (2) SA 570 (T) at 574A–B; Pikoli v President of the Republic of South Africa 2010
- (1) SA 400 (GNP) at 403H.
- [3] Jordan v Penmill Investments CC 1991
- (2) SA 430 (E) at 436F; Pikoli v President of the Republic of South Africa, supra at 403H; Noah v Union National South British Insurance Co Ltd, 1979
- (1) SA 330 (T) at p332 at H.
- [4] 1995 (2) SA 570 (T).
- [5] 1969 (2) SA 256 (C) at 267A-F.
- [6] Eriksen Motors (Welkom) Ltd v Protea Motors, Warrenton 1973 (3) SA 685 (A) at 691F–G; Breedenkamp v Standard Bank of South Africa Ltd 2009 (5) SA 304 (GSJ) at 314H.

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