

SOUTH AFRICA / JUDGMENT

**Van Tonder and Another v Lawjon Eiendomme
Orkney CC and Another (26221/13) [2014]
ZAGPPHC 705 (12 September 2014)
[2014] ZAGPPHC 705**

COURT

North Gauteng High Court, Pretoria

BEFORE

R M Keightley

CASE / FILE NUMBER

26221/13

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE GAUTENG HIGH COURT, PRETORIA

(REPUBLIC OF SOUTH AFRICA)

Case No.: 26221/13

Date: 12 September 2014

In the matter between:

ANINE VAN TONDER.....First
Applicant

AGOSTINO DE VILLIERS.....Second
Applicant

and

LAWJON EIENDOMME ORKNEY CC

REG: 1988/026668/23.....First
Respondent

NICOLAAS JOHANNES CHRISTOFFEL LE ROUX.....Second Respondent

KE1GHTLEY AJ

[1] This is an application for the provisional winding-up of the first respondent, Lawjohn Eiendomme Orkney CC (“the close corporation”).

- [2] The applicants are two of the members of the close corporation, and the second respondent is the third member. The applicants are all medical doctors and over the years have practiced from certain premises owned by the close corporation. This immovable property is the only asset of the close corporation, and its sole purpose is to hold the property from which the medical practice operates. Historically, any partner who bought into the medical practice was also required to buy a membership interest in the close corporation. It is on this basis that the applicants and second respondent acquired their present interests in the close corporation.
- [3] More recently, the relationship between the applicants and the second respondent (“the doctors”) broke down. The medical partnership was effectively dissolved, although all three of the doctors continued to practice from the premises owned by the close corporation for their own accounts. The first applicant subsequently joined a new practice in a different town.
- [4] Unfortunately, a substantial degree of acrimony between the doctors has persisted, particularly between the applicants, on the one side, and the second respondent on the other. The papers are replete with allegations and counter-allegations between the parties of both a professional and personal nature. The second respondent has sought a striking out of various averments in the founding papers on the basis that they are vexatious. In view of the decision I have reached in the matter, it is not necessary for me to reach a determination on the strike out application: in my view, the averments complained of are not relevant to the material issues raised, and I need make no reference to them for purposes of my judgment.
- [5] It is common cause between the parties that there is a deadlock in the management of the close corporation. This is one of the main grounds relied on by the applicants for the winding up of the close corporation. The applicants contend that irreparable injury to the close corporation is resulting from the deadlock, alternatively that the deadlock is preventing the business of the close corporation from being conducted to the advantage of the members. In the circumstances, the applicants aver that a basis for winding up is established in terms of section 81 of the Companies Act 71 of 2008.
- [6] The second respondent does not dispute that there is a deadlock between the members. He contends, however, that it would not be just and equitable for this court to order the winding up of the close corporation. The second respondent points out that although the winding-up process would be uncomplicated, it would be a costly process and this would be detrimental to the interests of all members.
- [7] The second respondent accordingly opposes the granting of a winding-up order. In response to the application, he has instituted a counter-application for an order under section 49 of the Close Corporations Act 69 of

1984. The remedy he seeks by way of the counter-application is an order directing that the second respondent purchase the applicants'

members' interests in the close corporation for R150 000 each, less a portion of the outstanding bond over the property.

[8] Section 49 of the Close Corporations Act deals with unfairly prejudicial conduct. In relevant part, it provides that:

"(1) Any member of a corporation who alleges that any particular act or omission of the corporation or of one or more other members is unfairly prejudicial, unjust or inequitable to him or her, or to some members including him or her, or that the affairs of the corporation are being conducted in a manner unfairly prejudicial,

unjust or inequitable to him or her, or to some members including him or her, may make an application to a Court for an order under this section.

(2) If on any such application it appears to the Court that the particular act or omission is unfairly prejudicial, unjust or inequitable as contemplated in subsection (1), or that the corporation's affairs are being conducted as so contemplated, and if the Court considers it just and equitable, the Court may with a view to settling the dispute make such order as it thinks fit, whether for regulating the future conduct of the affairs of the corporation or for the purchase of the interest of any member of the corporation by other members thereof or by the corporation." (emphasis added)

[9] The continuing degree of acrimony between the applicants and the second respondent is demonstrated by the fact that in response to the latter's counter-application, the applicants sought to advance a case for an order directing that they should be entitled to purchase the second respondent's members interest for R200 000.

[10] The conduct of both camps in this dispute seems to me to be geared more towards preventing the other camp from obtaining control over the close corporation (and hence the immovable property it owns) than genuinely to seek a resolution of the untenable situation currently persisting between them.

[11] Even if I were minded to consider making an order under section 49 of the Close Corporations Act (and assuming, without deciding, for present purposes, that the jurisdictional requirements for such an order have been established), I am faced with the insurmountable problem that there is a material dispute between the parties regarding the true value of the property, and hence the value of each member's interest in the close corporation. In my view, in a case like the present, it would be most inappropriate for the court to attempt to divide the spoils by determining which party should be awarded the sole interest in the close corporation, and at what price. It seems to me that when the relevant issues are so highly contested, it would

be impossible for me to reach a conclusion that could truly be considered to be just and equitable for purposes of a proper application of section 49, and it would be most unwise for me to attempt to do so.

[12] The only issue that is not in dispute, and which the conduct of the litigation by both parties has underscored, is the fact that there is an unbreakable deadlock between the members as to the management of the close corporation. In fact, at the request of the parties, judgment in the matter was delayed in order to provide them with further time to attempt to resolve the impasse between them. This was to no avail. It seems to me to be self-evident that this deadlock is prejudicial to the interests of the close corporation and that it is preventing the business of the close corporation from being conducted to the advantage of the members. In these circumstances, the only appropriate order to break the deadlock is to wind up the close corporation. While this may carry a cost for each of the members, it will ultimately prove to be in their interests as well as the interests of the close corporation. Accordingly, I am satisfied that a winding-up order is just and equitable.

[13] As far as costs are concerned, I am of the view that it would be appropriate to order that they be dealt with as costs in the winding-up.

[14] I make the following order:

[14.1] The First Respondent is placed under a provisional winding-up order in the hands of the Master of this Court;

[14.2] A rule nisi is issued calling upon the respondents and all other interested parties to furnish reasons, if any, to the above Honourable Court on 29 October 2014 at 10H00 or so soon thereafter as the matter may be heard as to why a final winding-up order should not be granted;

[14.3] A copy of this order must be served on the respondents and published by one publication in each of the Times newspaper and the Government Gazette;

[14.4] The costs of this application are to be costs in the administration of the First Respondent in liquidation.

R M KEIGHTLEY

ACTING JUDGE OF THE HIGH

COURT OF SOUTH AFRICA, G

AUTENG DIVISION, PRETORIA

DATE OF HEARING: 8 MAY 2014

DATE OF JUDGMENT: 12 SEPTEMBER 2014

APPLICANTS' COUNSEL: MR LE GRANGE

INSTRUCTED BY: DOUW STEENKAMP ATTORNEY

RESPONDENTS' COUNSEL: MR VAN DER MERWE

INSTRUCTED BY: SAVAGE JOOSTE & ADAMS

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPPHC/2014/705.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/van-tonder-and-another-v-lawjon-unknown-topic-agpphc-2014>

Prepared on 10 October 2026 · Esheria