IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

Case number: 2022-17784 Date of hearing: 8 September 2022

Date delivered: 20 September 2022

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO OTHERS JUDGES: ~~YES~~/NO

(3) REVISED

20/09/2022 SIGNATURE

In the application between:

| | |
|---|---|
| SUNRISE TECHNOLOGIES (PTY) LTD | Applicant |
| and | |
| FRIEDSHELF 422 (PTY) LTD | First Respondent |
| LANGLAAGTE TRUCK AND CAR HIRE CC | Second Respondent |
| SHERIFF, SANDTON | Third Respondent |
| SHERIFF, HALFWAY HOUSE | Fourth Respondent |

JUDGMENT

SWANEPOEL AJ:

[1] Applicant seeks an urgent interdict restraining first and second respondents ("Friedshelf' and Langlaagte" respectively) from alienating, encumbering, dismantling or removing six advertising signs that applicant has operated across Johannesburg, pending applicant's application to set aside the sales in execution of the signs by the third and fourth respondents. Applicant also seeks an interdict that Friedshelf and Langlaagte should not interfere with its contractual relationships with its customers. No relief is sought against third and fourth respondents.

[2] The facts are largely not in dispute. Applicant has operated the signs on City of Johannesburg property for some time. On 23 January 2018 Strucstar Investment (Pty) Ltd ("Strucstar") launched an application against applicant, seeking to have a sign removed from a site adjoining Strucstar's premises. The application was successful, and resulted in a cost order being granted against applicant. The bill of costs was subsequently taxed in the sum of R 168 093.15.

[3] Applicant's current attorneys dealt with the matter at the taxation. On 3 August 2017 applicant's attorneys advised Strucstar's attorneys that applicant had chosen their office address as its domicile address. The applicant's attorneys reaffirmed the domicile address in a letter some three weeks later.

[4] During August and September 2021 negotiations were held between the attorneys regarding the payment of the taxed costs.

Strucstar rejected applicant's payment proposal, and advised that it intended to continue with execution of the taxed costs. Strucstar issued five writs of execution on 2 November 2021. Strucstar subsequently instructed the third respondent to attach five signs within the Sandton

area. Applicant also issued a writ addressed to the fourth respondent on 13 October 2021. Applicant instructed fourth respondent to attach one sign situated in the Halfway House area. Both Sheriffs attached the signs as requested, eventually selling the signs to respondents at an execution sale.

[5] Subsequent to the sale both Friedshelf and Langlaagte attempted to take over applicant's customer contracts. They formed the view that, together with the signs, they had purchased the rights to advertise on the sites, and the right to take over the applicant's customers. A brief perusal of the notice of sale would have revealed that they were mistaken and that they had simply purchased the signs themselves. As a result of respondent's attempts to take over the contracts, applicant also seeks an order that Friedshelf and Langlaagte be interdicted from interfering with applicant's contractual relationships with its customers. I will deal with this aspect of the matter later in this judgment.

[6] The relevant part of the rule applicable to the attachment of movable property is rule 45 (3) of the Uniform Rules:

> "Whenever by any process of the court the sheriff is commanded to levy and raise any sum of money upon the goods of any person, he shall forthwith himself for by his assistant proceed to the dwelling house or place of employment or business of such person (unless the judgment creditor shall give different instructions regarding the situation of the assets to be attached, and there-
>
> (a) demand satisfaction of the writ and, failing satisfaction,
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> (b) demand that so much movable and disposable property be pointed out as he may deem sufficient to satisfy the said writ, and failing such pointing out,
>
> (c) search for such propeny.

> Any such propeny shall be immediately inventoried and, unless the execution creditor shall otherwise have directed, and subject to the provisions of sub-rule (5), shall be taken into the custody of the Sheriff: Provided…..”

[7] Applicant says that the sales in execution were conducted pursuant to a flawed execution process, and that it intends to apply for the setting aside of the sales in execution. It is therefore important to consider the steps taken by the Sheriffs leading up to the sales in execution.

## THE SANDTON SALES

[8] On 17 November 2021 the Sandton Sheriff attached the five signs and served the writ of execution and the notice of attachment by attaching them to the main gate at the entrance to the site on which the signs are erected. Obviously, there was no person at those sites from whom to demand payment of the judgment debt. On 17 November 2021 the writ and notice of attachment was served at applicant's place of business. It is common cause that applicant's place of business had changed, and again no one could be found at the premises from whom payment could be demanded.

[9] On 23 February 2022 the writ of execution and the notice of attachment were served at applicant's registered address. It is also common cause that applicant had neglected to change its registered address, and that it did not have a presence there. It is not clear whether all five of the notices of attachment were served at that address. The Sheriff could not demand satisfaction of the writ due to applicant's absence at the registered address.

[10] On 8 April 2022 the Palm Ridge Sheriff served a writ of execution and a notice of attachment at 1 Halford Road, Highlands North, Johannesburg. This was believed to be the home of one of the applicant's directors. He was not home, and the writ was served on his wife, Mrs. T "Shibongu" (sic). Importantly, the return of service did not record that payment of the judgment debt had been demanded from Mrs. Shabangu. Even if payment had been demanded from her, she did not represent the applicant, and it would not have been proper demand.

[11] Subsequently notices of the sale were served on applicant's erstwhile place of business and its registered address. However, those are not of any moment. If the process up to that point had been flawed in that payment had never been demanded from applicant, nothing that happened thereafter could cure the defective execution process. In its papers applicant took a number of other issues with the execution process leading up to the sale. In argument Mr. Kairinos, acting for applicant, did not pursue the other arguments raised in the papers, save for the point referred to above, that demand had not been made to applicant for satisfaction of the writ.

## THE HALFWAY HOUSE SHERIFF

[12] On 2 November 2021 applicant issued a writ of execution addressed to the Halfway House Sheriff. Pursuant to the writ, on 25 November 2021 the Sheriff attached a sign in Woodmead. The writ was again attached to the entrance to the site where the sign had been erected. There was again no person at the site from whom satisfaction of the writ could be demanded.

[13] On 23 February 2021 the Sheriff served a copy of the writ and notice of attachment at the applicant's registered address. Once again, in the absence of anyone representing the applicant at that address, the Sheriff could not demand satisfaction of the writ. The Woodmead writ was also served at Mrs Shabangu's home, without demand being made to applicant to satisfy tne writ.

## WAS SERVICE OF THE WRIT OF EXECUTION EFFECTED IN

## COMPLIANCE WITH RULE 45?

[14] It is not disputed that neither Sheriff demanded satisfaction of the writs of execution. I was referred to Reichenberg v Deputy Sheriff, Johannesburg: In re Reichenberg v Joel Melamed & Hurwitz and Others[1] in which MacArthur J said:

> "The first proviso to Rule 45(3) is irrelevant to these proceedings. It is clear from this Rule, and applying it to the present facts, that, when the deputy sheriff is commanded to levy or raise any sum of money upon the goods of any person such as a judgment debtor, he must proceed to the dwelling-house or place of employment or business of such person and demand satisfaction of the writ and, failing satisfaction, demand that sufficient movable and disposable property be pointed out as he deems sufficient to satisfy the writ. If no such propeny is pointed out, the deputy sheriff must conduct a search for such property.
>
> In the second proviso to Rule 45(3) it appears that, if satisfaction of the writ was not demanded from thejudgment debtorpersonally, the deputy sheriff shall give written notice of the attachment to the judgment debtor, with a copy of the inventory made by him.

From the above the deputy sheriff must in the first instance demand satisfaction of the writ; the writ is issued in respect of a claim for a sum of money due to the execution creditor. If that

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[1] 1992 (2) SA 381 (W)

demand is not satisfied, then the deputy sheriff is empowered to attach movable and disposable property to satisfy the writ.

The demand for satisfaction of the writ need not necessarily be made upon the judgment debtor personally. (See the second proviso to Rule 45(3).) In other words, it can be made to some other person. <u>But I emphasise the point that a demand must be made in terms of this Rule</u>." (my emphasis)

[15] In Van der Walt v Kolektor (Edms) Bpk en andere[2] the Court held that the failure by the Sheriff to give proper notice to the judgment debtor was fatal to the attachment. The Court said that the Sheriff could have made enquiries with the judgment debtor's attorneys as to his whereabouts. He did not do so, and consequently the attachment was fatally flawed.

[16] Very much the same facts present themselves in this case. The applicant's attorneys had specifically advised Strucstar that service of processes could be effected at their offices. Strucstar's attorneys could have made enquiries as to applicant's whereabouts, but they failed to do so. The Sheriff could also have been instructed to demand payment at applicant's attorney's offices. In my view, therefore, in the absence of proper demand that the writ be satisfied, the attachment was likely not effected as required by rule 45 (3).

[2] 1989 (4) SA 690 (T)

[17] 1 say that it is likely that the attachment was invalid because I do not have to make a positive finding to that effect. In order to succeed with the application for an interdict the applicant has to show only that it has a prima facie right, though open to some doubt. Applicant has done so, in my view. The further requirements for an interdict are also met. Applicant has a reasonable apprehension of irreparable harm should Friedshelf and Langlaagte continue to remove the signs, in that it would be unable to meet its contractual obligations to advertisers, and it may well loose customers who would not be prepared to do business with it in future.

Also, the balance of convenience lies, in my view, with the applicant.

Once the signs are removed, it is unlikely that they can be easily replaced. On the other hand, if the signs are to remain where they are, and applicant is not successful in the application to set aside the sales. the only effect on Friedshelf and Langlaagte would be to temporarily delay the execution process.

[18] 1 turn now to the unlawful competition interdict. There is no doubt that once Friedshelf and Langlaagte had purchased the signs, they attempted to convince applicant's customers to stop paying applicant for the advertisements, and to rather pay them instead. They also attempted to convince at least one customer (High Street Auctions) to enter into a new contract with them.

[19] In its answering affidavit first respondent says[1]:

1 Para 14

"The applicant has acknowledged that First Respondent intends to take over the rental in respect of the advertising signs which the First Respondent lawfully acquired at the sale in execution. That is precisely the intention of the First Respondent."

[20] As I have said, there is no basis to say that Friedshelf purchased the rights arising from the advertising agreements, or the rights to advertise on the site. Therefore, the attempt to interfere with applicant's contractual relationships with its customers and usurp the sites is unlawful.4

[21] Mr Marais argued on behalf of Friedshelf that there was no threat of harm to applicant, and that an interdict was therefore not necessary. Applicant does not have to show that actual harm will ensue unless the order is granted. It must show, objectively, a reasonable apprehension of harm occurring. [5] In my view applicant has shown that it has such a reasonable apprehension. Applicant must succeed in respect of the competition interdict.

[22] As far as costs are concerned, Langlaagte has not opposed the application. Applicant has only sought costs from the parties opposing the application.

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[4] Atlas Organic Fertilizers (Pty) Ltd v Pikkewyn Ghwano (Pty) ltd 1981 (2) SA 173 (T)

[5] Free State Gold Areas Ltd v Merriespruit (Orange Free State) GM Co Ltd 1961 (2) SA 505 (W)

[23] I make the following order:

23.1 Pending the final determination of applicant's application to set aside the sales in execution under case number 2018/2988, including any possible appeals, first and second respondents are interdicted and restrained from alienating, encumbering, dismantling or removing any of applicants signs listed in Annexure "A" to the founding affidavit.

23.2 Applicant shall institute the envisaged proceedings to set aside the sales in execution within 15 days of this order, failing which paragraph 23.1 of this order shall lapse.

23.3 First and second respondents are interdicted and restrained from unlawfully contacting or soliciting applicant's customers, and from unlawfully interfering with applicant's contractual relationships with its customers.

23.4 First respondent shall pay the costs of the application.

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SWANEPOEL AJ

ACTING JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION OF THE HIGH COURT,

JOHANNESBURG

NT: Adv. G Kairinos SC

Jurgens Bekker Attorneys

Adv. H B Marais SC
Fyfer Inc.

7 September 2022

20 September 2022