

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2022/033875

- | | |
|-----|---------------------------------|
| (1) | REPORTABLE: NO |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED. |

DATE _____

SIGNATURE _____

In the matter between:

MARINDAFONTEIN (PTY) LTD

Applicant

and

GLEN STOPFORTH

First Respondent

KEVIN REECE

Second Respondent

Delivered: 16 August 2023 – This judgment was handed down electronically by circulation to the parties' representatives by email, being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 10:00 on 16 August 2023.

Summary:

Eviction Application – *Rei vindicatio* requirements – Applicant must show he/she is the owner of the property; and that the respondent is in possession of that property - Second respondent failed to discharge onus resting on him to prove lawful occupation of the property – Second respondent's version of events was uncorroborated and the evidence submitted in support of his case was insufficient –

No real, genuine or *bona fide* disputes of fact were raised – Jurisdictional requirements of *rei vindicatio* were met – Eviction granted.

JUDGMENT

PG LOUW, AJ

Introduction

- [1] The applicant (Marindafontein) seeks the eviction of the second respondent (Mr Rees) from a certain hangar, Hangar H 19/3 (the hangar), situated on the Petit Airfield.

The facts

- [2] Marindafontein is the owner of the immovable property on which the Petit Airfield is located.
- [3] Mr Rees is in occupation of the hangar. The first respondent (Mr Stopforth) is no longer in occupation of the hangar. No relief is sought against Mr Stopforth.
- [4] The deponent to Marindafontein's founding affidavit (Mr Coetzee) is the sole director of Marindafontein.¹
- [5] According to Mr Coetzee, he is also the sole director of Kitplanes For Africa (Pty) Ltd (Kitplanes) which owns 997 of the 1000 issued shares in Marindafontein. He purchased the shares in June 2022 from Hugo Visser (Mr Visser).
- [6] Mr Rees is one of nineteen plaintiffs who have instituted an action out of this court under case number 22/27374 against Marindafontein, Mr Visser,

¹ This is evident from a company search attached to the founding affidavit as Annexure "SC1".

Elizabeth Maryna Visser (Mrs Visser) (jointly referred to as “the Vissers”) and Mr Coetzee (the action proceedings). In the action proceedings, the plaintiffs essentially claim that the sale of shares agreement between the Vissers and Mr Coetzee be set aside and declared void *ab initio*, together with ancillary relief.

Issues to be determined

- [7] Mr Rees initially contended that there has been a misjoinder in respect of Mr Stopforth because the application was not served on Mr Stopforth. Mr Stopforth has subsequently been served with the application and Mr Rees no longer persists with the misjoinder issue.
- [8] It was also initially disputed that the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (the Act) does not find application in this matter. Mr Rees no longer persists with this denial either.
- [9] Mr Rees contends that Mr Coetzee has not been lawfully appointed as the sole director of Marindafontein on the grounds set out in the particulars of claim in the action. These grounds are summarised in Mr Rees’ answering affidavit as follows:

“10. In summary, the purported share sale agreement in terms of which Mr Coetzee claims to have secured the right to be appointed as a director of [Marindafontein] falls to be set aside and declared void *ab initio*. This is because such purported sale was fraudulently concluded between the shareholders of [Marindafontein], being Hugo Visser and Elizabeth Maryna Visser ... and Mr Coetzee or his nominee company, [Kitplanes]. The purported sale also falls to be set aside in that it was concluded in contravention of the express provisions of [certain sections] of the Companies Act 71 of 2008.

11. In simple terms Mr Coetzee has hijacked and taken control over [Marindafontein] unlawfully. He now seeks to impose his unilateral terms over the occupants and owners of the airfield hangars situated on [Petit Airfield]. These are the plaintiffs in the [action]."

- [10] The second main issue I need to decide is whether Mr Rees has a right of occupation of the hangar.
- [11] Marindafontein seeks the eviction of Mr Rees from the hangar and a cost order against Mr Rees. Mr Rees seeks the dismissal of the application with costs. Neither party wishes for the matter to be referred to oral evidence or to trial.

The version of Marindafontein

- [12] Mr Coetzee says that pursuant to him acquiring the shares, Mr Visser handed all the financial and legal documents of Marindafontein to him. These documents included lease agreements in terms of which the hangars on the Petit Airfield are rented by various owners of airplanes housed at the airfield. In scrutinising the lease agreements, he realised that Mr Rees did not have a lease agreement for the hangar. At that stage he was under the impression that Mr Stopforth was the sole occupant of the hangar.
- [13] Mr Coetzee also states that approximately a month before the founding affidavit was deposed to on 14 October 2022, he "encountered" Mr Rees who told him that he had "bought" the hangar from Mr Stopforth but that he knew that the so-called "sale" was of no force and effect and that he was unlawfully occupying the hangar.
- [14] Petit Airfield is zoned as agricultural land. Therefore, it cannot be sub-divided and Mr Stopforth could not have acquired ownership of the land that the hangar is situated upon. Mr Stopforth could also not have acquired ownership

of the structure of the hangar, which is a permanent structure, as it has acceded to the land.

- [15] Mr Rees does not have Marindafontein's consent to occupy the hangar and consequently his occupation of the hangar is unlawful.

The version of Mr Rees

- [16] The Vissers became owners of the majority share in Marindafontein during 2009. The Vissers were directors of Marindafontein until June 2022. During this period, the Vissers "devised a scheme" on behalf of Marindafontein which consisted of the following:

"30.1 Selling, alternatively procuring the sale of structures or buildings known as hangars on the property which had been built to house aircraft and related equipment ['the hangars'] to the occupiers or users ('the hangar sales');

30.2 Leasing, alternatively conferring rights of use to purchasers of the aforesaid hangars of the portion of land on which the hangar/s had been built ('the hangar leases').

31. Each of the plaintiffs [in the action], as well as Mr Coetzee and [Mr Rees] concluded hangar sales and hangar leases with [Marindafontein] represented by the Vissers."

- [17] Although some of the hangar leases are in the form of written documents, the Vissers were not diligent in administering and recording the terms of the hangar leases with the plaintiffs in the action. Mr Rees states that "there is no written document reflecting the terms on which I occupy" the hangar.²

² Answering affidavit at para 35.

[18] According to Mr Rees, he, together with Mr Coetze and the plaintiffs in the action, were promised a share in Marindafontein by the Vissers. Mr Stopforth purchased the hangar from Marindafontein during what he refers to as “the Visser period”.

[19] As to how exactly Mr Rees acquired his rights, he states the following:

“47. Approximately three years ago Mr Stopforth who knew I was looking to purchase a hangar at the airfield called me. He told me he has [sic] selling his hangar and was looking for a buyer. I was interested and in due course I purchased my hangar from Mr Stopforth and paid him for it. When I say that I purchased my hangar from Mr Stopforth I need to emphasise that in so doing Mr Stopforth ceded and made over all of his right and title in the hangar sale and hangar lease agreement he had concluded with [Marindafontein] during the Visser period when [Marindafontein] was represented by the Vissers. In other words in consequence of my purchase of my hangar I stepped into the shoes of Mr Stopforth in so far as his relationship with [Marindafontein] is concerned. The Vissers are well aware of Mr Stopforth having sold his hangar to me.”

[20] Mr Rees says that he received an invoice from Marindafontein every month and he made payment to Marindafontein in respect of the hangar lease until June 2022.³ A number of invoices are attached to the answering affidavit in support of this allegation.⁴

[21] He says that he also periodically received confirmations of ground rental and utilities from Marindafontein and attached an example dated 25 August 2021 to the answering affidavit.⁵

[22] Regarding the “encounter” he had with Mr Coetze after Mr Coetze had purchased the Vissers’ shares, Mr Rees states that:

³ Answering affidavit at para 49.

⁴ Annexures “KR4” to “KR12”.

⁵ Annexure “KR13”.

“59. During this meeting he made all sorts of statements about how he had now taken over the whole airfield and wanted to make various improvements including improving security and the aesthetics of the whole place. We discussed changing the arrangement I had in place whereby I paid my monthly hangar lease payment through Mr Stopforth to [Marindafontein]. Mr Coetze agreed that I should pay [Marindafontein] directly. I duly did so. …”.

- [23] Copies of proof of payments made by Mr Rees directly to Marindafontein are attached to the answering affidavit.⁶
- [24] During the Visser period, Mr Rees also, with the consent of Marindafontein according to him, made various improvements to the hangar, including flooring, installation of a bathroom/toilet and installation of a kitchenette. Certain structural improvements were also paid for by Mr Rees. According to Mr Rees, Mr Coetze seeks to deprive Mr Rees of the money spent in improving the hangar and that the eviction application is “part of his strategy to unlawfully enrich himself”.⁷

Authority of Mr Coetze

- [25] Mr Hollander who appeared for Marindafontein, submitted that Mr Coetze is the sole director of Marindafontein as appears from the company search referred to above. Mr Rees’ challenge to the authority of Mr Coetze is premised on the allegations made and the relief sought in the action. But, the relief sought by Mr Rees (and the other plaintiffs) in the action has no bearing on Mr Coetze’s appointment as the director of Marindafontein. No relief is sought in the action to have Mr Coetze removed as a director of Marindafontein or to the effect that his appointment as a director is declared unlawful. In other words, even if the relief sought by Mr Rees and the other plaintiffs in the action was to be granted, Mr Coetze would remain, as has

⁶ “KR15” to “KR18”.

⁷ Answering affidavit at paras 77-78.

been the position since June 2022, prior to the institution of the application, the sole director of Marindafontein. I agree with Mr Hollander in this regard.

- [26] Mr Bishop, who appeared for Mr Rees, submitted in this regard, with reference to *Namasthethu Electrical v City of Cape Town*⁸ that fraud unravels all. As a general proposition this is, of course, correct. In other words, so the contention goes, if the sale of shares agreement is declared void *ab initio* on the basis of fraud, then Mr Coetzee's appointment as a director and hence representative of Marindafontein will have arisen due to a fraud.
- [27] Even if this is so, the point of the matter is that no proceedings are pending in terms of which Mr Rees seeks the setting aside of Mr Coetzee's appointment as director or the stay of the eviction application pending the outcome of the action. In other words, as things stand, even if the relief sought by Mr Rees and the other plaintiffs in the action is granted, and even though fraud unravels all, Mr Coetzee's appointment as the sole director of Marindafontein prevails, unless and until set aside.
- [28] Additionally, Mr Coetzee is also the sole director of Kitplanes, which is the majority shareholder in Marindafontein.
- [29] In the circumstances, the challenge to Mr Coetzee's authority is without merit.
- [30] Even if I am wrong in this regard, in my view, the remedy for Mr Rees' challenge to the authority of Mr Coetzee lies in Rule 7 of the Uniform Rules.⁹ Mr Rees did not avail himself of the procedure so provided.
- [31] In *Ganes and Another v Telecom Namibia Ltd* Streicher JA stated the position as follows:¹⁰

⁸ [2020] ZASCA 74; 2020 JDR 1279 (SCA).

⁹ *Ganes and Another v Telecom Namibia Ltd* [2003] ZASCA 123; 2004 (3) SA 615 (SCA) at para 19.

¹⁰ *Id.*

“In the founding affidavit filed on behalf of the respondent Hanke said that he was duly authorised to depose to the affidavit. In his answering affidavit the first appellant stated that he had no knowledge as to whether Hanke was duly authorised to depose to the founding affidavit on behalf of the respondent, that he did not admit that Hanke was so authorised and that he put the respondent to the proof thereof. In my view, it is irrelevant whether Hanke had been authorised to depose to the founding affidavit. The deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose to the affidavit. It is the institution of the proceedings and the prosecution thereof which must be authorised” [Emphasis added.]

- [32] In *Unlawful Occupiers, School Site v City of Johannesburg*¹¹ the Supreme Court of Appeal referred to its decision in *Ganes* and held that in the event of a respondent challenging the authority of a person acting on behalf of the application, the remedy lies in Rule 7(1). Brand JA said:-

“... now that the new Rule 7(1) remedy is available, a party who wishes to raise the issue of authority should not adopt the procedure followed by the appellants in this matter, ie by way of argument based on no more than a textual analysis of the words used by a deponent in an attempt to prove his or her own authority. This method invariably resulted in a costly and wasteful investigation, which normally leads to the conclusion that the application was indeed authorised. After all, there is rarely any motivation for deliberately launching an unauthorised application.”

- [33] In *Eskom v Soweto City Council* Flemming DJP said the following:¹²

“I find the regularity of arguments about the authority of a deponent unnecessary and wasteful. A Rule of Court or a formal practice direction must be honoured despite any arbitrariness. It functions even when it lacks convincing logic or utility in its creation or in its survival. The present issue may be decided in accordance with principle without interference from constraining directives because there is now, ordinarily, no prescribed formula for proving authority either as a routine prerequisite for issuing an application or otherwise. See *Administrator, Transvaal*

¹¹ [2005] ZASCA 7; 2005 (4) SA 199 (SCA) at para 16.

¹² 1992 (2) SA 703 (W) at 705C-H.

v Mponyane and Others 1990 (4) SA 407 (W); *Brown v Oosthuizen en 'n Ander* 1980 (2) SA 155 (O) at 162. The care displayed in the past about proof of authority was rational. It was inspired by the fear that a person may deny that he was party to litigation carried on in his name. His signature to the process, or when that does not eventuate, formal proof of authority would avoid undue risk to the opposite party, to the administration of justice and sometimes even to his own attorney. (Compare *Viljoen v Federated Trust Ltd* 1971 (1) SA 750 (O) at 752D-F and the authorities there quoted.) The developed view, adopted in Court Rule 7(1), is that the risk is adequately managed on a different level. If the attorney is authorised to bring the application on behalf of the applicant, the application necessarily is that of the applicant. There is no need that any other person, whether he be a witness or someone who becomes involved especially in the context of authority, should additionally be authorised. It is therefore sufficient to know whether or not the attorney acts with authority. As to when and how the attorney's authority should be proved, the Rule-maker made a policy decision. Perhaps because the risk is minimal that an attorney will act for a person without authority to do so, proof is dispensed with except only if the other party challenges the authority. See Rule 7(1). Courts should honour that approach. Properly applied, that should lead to the elimination of the many pages of resolutions, delegations and substitutions still attached to applications by some litigants, especially certain financial institutions." [Emphasis added.]

- [34] For these reasons, Mr Rees' challenge to Mr Coetzee's authority is misconceived.

Mr Rees' occupation of the hangar

- [35] Before I consider Mr Rees' version as to why he is entitled to occupy the hangar, it needs to be said that Marindafontein's cause of action is premised on the *rei vindicatio*.
- [36] In this regard it is trite that the jurisdictional facts which an applicant seeking to obtain vindictory relief has to show are: (i) that the applicant is the owner of the property (movable or immovable); and (ii) that the respondent is in possession of that property.

- [37] In respect of the *rei vindicatio*, Jansen JA stated the following in *Chetty v Naidoo*:¹³

"It is inherent in the nature of ownership that possession of the *res* should normally be with the owner, and it follows that no other person may withhold it from the owner unless he is vested with some right enforceable against the owner (e.g., a right of retention or a contractual right). The owner, in instituting a *rei vindicatio*, need, therefore, do no more than allege and prove that he is the owner and that the defendant is holding the *res* – the *onus* being on the defendant to allege and establish any right to continue to hold against the owner But if he goes beyond alleging merely his ownership and the defendant being in possession ..., other considerations come into play. If he concedes in his particulars of claim that the defendant has an existing right to hold (e.g., by conceding a lease or a hire-purchase agreement, without also alleging that it has been terminated ...) his statement of claim obviously discloses no cause of action. If he does not concede an existing right to hold, but, nevertheless, says that a right to hold now would have existed but for a termination which has taken place, then *ex facie* the statement of claim he must at least prove the termination, which might, in the case of a contract, also entail proof of the terms of the contract." [Emphasis added.]

- [38] The right to ownership has been described as the most comprehensive right a person can have in respect of a *res*.¹⁴

- [39] In *BLC Plant Company (Pty) Ltd v Maluti-A-Phofung Local Municipality*,¹⁵ Mathebula J referred to *Gien* and stated further that:

"This right is enshrined in section 25(1) of the Constitution of the Republic of South Africa Act 108 of 1996. In matters of this nature for an owner to succeed in his action, he must prove on a balance of probabilities the following viz:- ownership, the property is still in existence and clearly identifiable and lastly that the defendant has possession or detention of it. This right is carefully protected by the courts." [Emphasis added.]

¹³ 1974 (3) SA 13 (A) at 20B-G.

¹⁴ *Gien v Gien* 1979 (2) SA 1113 (T) at 1120C.

¹⁵ [2018] ZAFSHC at para 4.

- [40] The two jurisdictional facts for vindictory relief are common cause in this matter: (i) Marindafontein is the owner of the immovable property upon which the hangar is situated; and (ii) Mr Rees is in possession of the hangar.
- [41] Mr Rees relies on the following versions for his entitlement to remain in occupation of the hangar.
- [42] Firstly, he relies on the conclusion of a hangar sale and hangar lease with Marindafontein represented by the Vissers.¹⁶ There is no written hangar sale or hangar lease agreement concluded between Mr Rees and Marindafontein. I return to this aspect below.
- [43] Secondly, Mr Rees relies on a purchase agreement in respect of the hangar concluded with Mr Stopforth. He says Mr Stopforth ceded all of his right and title in the hangar sale and hangar lease agreement to Mr Rees.¹⁷ I pause to mention that evidence of the purchase price and payment thereof do not appear in the answering affidavit.
- [44] A third version is relied on in the heads of argument filed on behalf of Mr Rees. It is contended that if the court is disinclined to accept Mr Rees' version that he entered into an oral hangar lease agreement with Marindafontein when represented by the Vissers, it is clear that a tacit contract was established between Marindafontein and Mr Rees. Reliance is placed on *McDonald v Young*¹⁸ for the submission that the conduct of Marindafontein over the past three consecutive years (until Mr Coetzee became involved) justifies the inference that there was consensus between them on the essential terms of the hangar lease.¹⁹

¹⁶ Answering affidavit at para 31.

¹⁷ Answering affidavit at para 47.

¹⁸ [2011] ZASCA 31; 2012 (3) SA 1 (SCA) para 25.

¹⁹ Second respondent's heads of argument at para 82.5.

- [45] Lacking from all three versions are allegations pertaining to when exactly and where these agreements were concluded. The terms of these agreements are not pleaded sufficiently either.
- [46] Mr Rees incorporated the contents of the particulars of claim in the action into his answering affidavit and confirmed that the contents thereof are true and correct.²⁰ In the particulars of claim reliance is placed on an agreement of sale of movable property and an agreement of lease.²¹ These agreements are unsigned. The allegations set out in the particulars of claim include *inter alia*:
- [46.1] That the plaintiffs in the action “at varying times during the Visser period concluded hangar sales and land leases with the Vissers”.²²
- [46.2] The plaintiffs paid and continue to pay varying amounts of money at the instance of the Vissers, alternatively Marindafontein.²³
- [46.3] The plaintiffs in the action concluded written hangar sales and land leases with the Vissers, alternatively Marindafontein, alternatively the Vissers’ appointed nominee/s.²⁴
- [47] The incorporation of the allegations contained in the particulars of claim into the answering affidavit cannot assist Mr Rees in this application. It is permissible for a litigant to plead in the alternative, but it is not permissible to give evidence in the alternative.²⁵
- [48] I agree with Mr Hollander’s submission that the version of Mr Rees is not consistent. In fact, the version of Mr Rees vacillates.

²⁰ Answering affidavit at para 9.

²¹ Annexures “P3” and “P4” to the particulars of claim which is annexure “KR1” to the answering affidavit.

²² Particulars of claim at para 41.

²³ Particulars of claim at para 42.

²⁴ Particulars of claim at para 46.2.

²⁵ *McDonald v Young* [2011] ZASCA 31; 2012 (3) SA 1 (SCA) at para 23.

- [49] Something needs to be said about the invoices relied upon by Mr Rees in support of his version that he made payment of rental to Marindafontein. None of these invoices²⁶ were issued to Mr Rees. They are all invoices issued to Mr Stopforth.
- [50] The letter from Marindafontein in relation to monthly levies and ground rental for the period August 2021 to July 2022, dated 25 August 2021,²⁷ is not addressed to Mr Rees and its contents cannot assist him either. Copies of proof of payments relied upon by Mr Rees²⁸ although indicating payments to Marindafontein, bear reference to a hanger "H19/2". The hangar in question is known as "H19/3".
- [51] The version of Mr Rees is not corroborated by Mr Stopforth. During argument, the reason advanced for the absence of a confirmatory affidavit by Mr Stopforth was that, as stated in Marindafontein's replying affidavit, Mr Stopforth is apparently ill. This does, however, not amount to an explanation put forward by Mr Rees for the absence of a confirmatory affidavit by Mr Stopforth.
- [52] Mr Visser, on the other hand, has indeed filed a confirmatory affidavit in corroboration of Marindafontein's version.²⁹
- [53] Mr Bishop submitted that the probabilities favour Mr Rees. He made the submission on the basis that it would be improbable for Mr Rees to be paying Marindafontein for a period of three years if there was no lawful basis upon which he occupied the hangar. The money spent by Mr Rees on improvements to the hangar also negates against the absence of a lawful basis to occupy the hangar. The difficulty with these submissions, to my mind, is that as I have already pointed out, the payments alleged to have been made by Mr Rees seemingly relate to a different hangar, and not the hangar in

²⁶ Annexures "KR4" to "KR12" to the answering affidavit.

²⁷ Annexure "KR13" to the answering affidavit.

²⁸ Annexures "KR15" to "KR18" to the answering affidavit.

²⁹ CaseLines at 034-2 onwards.

question. In so far as the improvements are concerned, no proof or corroboration at all have been proffered by Mr Rees in this regard, save for photos depicting what the hangar and its contents look like. There is no evidence before the court of the improvements made or that Mr Rees in fact paid for it. These submissions accordingly take the matter no further in light of the absence of evidence in support thereof, with respect.

- [54] In the circumstances, I find that Mr Rees has not discharged the onus resting on him in terms of *Chetty* to prove a lawful basis for occupying the hangar. My finding is guided by judgments of the Supreme Court of Appeal referred to below.
- [55] In *Wightman t/a JW Construction v Headfour (Pty) Ltd*,³⁰ the Supreme Court of Appeal set out what would constitute a *bona fide* dispute of fact.

"A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied." [Emphasis added.]

- [56] As mentioned above:

³⁰ [2008] ZASCA 6; 2008 (3) SA 371 (SCA) at para 13.

- [56.1] Mr Rees provided no proof of payment of the purchase price to Mr Stopforth.
- [56.2] No evidence of payment for the improvements has been presented.
- [56.3] Mr Stopforth has not confirmed Mr Rees' version in which Mr Stopforth is a key witness.
- [56.4] The evidence in support of a lease agreement between Mr Rees and Marindafontein are unsatisfactory, for the reasons mentioned above.
- [57] In regard to disputes of fact in motion proceedings, the court in *South African Veterinary Council v Szymanski*³¹ stated as follows:
- “[23] It is an elementary rule of motion proceedings that an applicant cannot succeed in the face of a genuine dispute of fact that is material to the relief sought. Conflicting averments under oath cannot be tested on affidavit but only by oral evidence. Nearly 80 years ago Innes CJ explained that
- ‘(t)he reason is clear; it is undesirable in such cases to endeavour to settle the dispute of fact upon affidavit. It is more satisfactory that evidence should be led and that the Court should have an opportunity of seeing and hearing the witnesses before coming to a conclusion.’
- [24] Innes CJ added a significant qualification:
- ‘(W)here the facts are not really in dispute ... there can be no objection, but on the contrary a manifest advantage in dealing with the matter by the speedier and less expensive method of motion.’

³¹ [2003] ZASCA 11; 2003 (4) SA 42 (SCA) at paras 23-24.

This qualification, endorsed in the subsequent classic expositions on the subject, led to a gradual but not inconsiderable relaxation of the criteria for determining whether despite a factual dispute relief can be granted in affidavit proceedings. Most notably, Corbett CJ in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* amplified the ambit of uncreditworthy denials that would not impede the grant of relief. He extended them beyond those not raising a real, genuine or *bona fide* dispute of fact, to allegations or denials that are 'so far-fetched or clearly untenable that the Court is justified in rejecting them merely on the papers'."

- [58] Mr Rees' case in opposing the vindictory relief sought by Marindafontein, in my view, falls short of these trite principles in motion proceedings.

Conclusion

- [59] In the circumstances, the jurisdictional requirements of *rei vindicatio* have been met by Marindafontein. For the reasons stated, I find that Mr Rees has not discharged the onus of proving a lawful entitlement to occupy the hangar.

Order

- [60] In the premises, the following order is made:
1. The second respondent, and all persons claiming the right of occupation of Hangar H19/3, situated at the Petit Airfield, Rudi Street, Benoni (the premises) are evicted from the premises.
 2. The second respondent and all such aforementioned persons shall vacate the premises within fourteen days of the granting of this order.

3. In the event that the second respondent and such aforementioned persons do not vacate the premises, the Sheriff of this Court is authorised and directed to evict the second respondent and such aforementioned persons.

4. The second respondent is directed to pay the costs of the application.

**PG LOUW
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG**

Counsel for Applicant:
Instructed by:

Adv L Hollander
Alice Swanepoel Attorneys

Counsel for Second Respondent:
Instructed by:

Adv A Bishop
Dewey McLean Levy Inc

Date of hearing:

18 May 2023

Date of judgment:

16 August 2023