

IN THE HIGH COURT OF SOUTH AFRICA



GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2024-058507

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
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DATE	
SIGNATURE	

In the matter between:

HIGHTRADE-INVEST 9 (PTY) LTD

Applicant

and

**SCHOONEES, BELLING AND
GEORGIEV ATTORNEYS AND OTHERS**

Respondents

Coram: Maenetje AJ

This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploading on Caselines. The date and time for hand-down is deemed to be 10h00 on 5 June 2024.

JUDGMENT

Maenetje AJ:

Introduction

- [1] The applicant seeks a final interdict stopping the first and second respondents from continuing with the transfer of erf 105 and erf 107 New Centre (**the property**) and that they provide all documentation for the transfer of the property to the applicant's attorneys immediately upon the grant of the order. The applicant seeks further final relief associated with this interdict, including that the third respondent be interdicted from allowing the transfer of the property if the lodgement for the transfer is by the first respondent, the second respondent or any attorney nominated by them. The property belongs to the applicant, described in the founding affidavit as a private company.
- [2] On 6 December 2023 the applicant concluded a sale agreement with Ocean Arch Investments (Pty) Ltd (**the purchaser**) to sell the property to the purchaser. Clause 15 of the sale agreement names the first respondent, a firm of attorneys, as the appointed conveyancers. The second respondent is named in the same clause as the contact person. The sale agreement is still in place and has not been terminated. Clause 15 has also not been amended.
- [3] The deponent to the applicant's founding affidavit is Mr Donovan Roscoe (**Mr Roscoe**). Mr Roscoe is now the sole director of the applicant. The other director of the applicant was Mr Henry Bannister (**Mr Bannister**). He passed away on 10 February 2024, leaving Mr Roscoe as the sole director of the applicant. Mr Bannister is survived by Ms Bannister. Ms

Bannister is the heir to Mr Bannister's estate. She is also a shareholder in the applicant. Ms Bannister is in the process of being appointed the executor of the deceased estate of her late husband.

- [4] Mr Roscoe caused the applicant to terminate the mandate of the first respondent as attorneys appointed to transfer the property pursuant to the sale agreement. The termination of the first respondent's mandate was by letter dated 16 April 2024, transmitted electronically to the first respondent on 17 April 2024. The new attorneys appointed are KG Tserkezis Inc (**KGT**).
- [5] The second respondent responded to the termination letter on behalf of the first respondent on 22 April 2024. He said the family of the deceased director, Mr Bannister, had not instructed the new firm, KGT, to take over the transfer of the property. Further letters were exchanged. One by Mr Roscoe sent to the respondents on 23 April 2024, and another by him to the respondents on 2 May 2024. The letter of 2 May 2024 was a letter of demand. The second respondent sent a response in which he requested to meet with the applicant's attorneys. Mr Roscoe says he received this response on 13 May 2024. Mr Roscoe sent a further letter of demand dated 16 May 2024. He demanded that files in the matter be handed over before any meeting could be held. The respondents declined the demand on 17 May 2024. Mr Roscoe says that he discovered on 17 May 2024 that the respondents had not been paying the required rates and taxes for the property since December 2023.

- [6] In their answering affidavit, the respondents deny that they are responsible for the payment of rates and taxes on behalf of the applicant. They say that Buzz Rates Consulting is responsible for this. Further that Buzz Rates Consulting has experienced delays in obtaining clearance figures.
- [7] The applicant alleges that the purchaser is unhappy with the delays in transferring the property and has expressed an intention to cancel the sale agreement. There is no confirmatory affidavit by the purchaser. The purchaser is also not a party to the application. The respondents dispute that the purchaser has threatened to cancel the sale agreement and that the evidence that the applicant presents in this regard is hearsay and inadmissible. Furthermore, they state that on 31 May 2024 they received a letter from the purchaser's bond registration attorneys calling for the transfer documents and guarantee requirements. They attach a copy of this letter to their answering affidavit.

Urgency

- [8] The respondents dispute that the matter is urgent.
- [9] The applicant alleges in the founding affidavit that the matter is urgent because the delay in the transfer is resulting in high legal fees. Further that the delay causes the applicant to have a bad standing with the fourth respondent because the account for the property is now in arrears; the purchaser of the property has expressed an intention to

cancel the sale if the transfer is not completed as soon as possible; and it will take long for the matter to be heard in the normal course.

[10] The respondents say that these claims do not justify urgency. They say that the transfer of the property is entirely in the hands of the applicant. It can pay clearance fees to ensure the transfer as soon as possible. This is correct. They say there is also no evidence that the purchaser will cancel the sale agreement. As mentioned above, this claim by the applicant is contradicted by the letter from the purchaser's bond registration attorneys. They also say that the purported urgency is self-created since the first respondent's mandate was terminated in the letter of 16 April 2024, the termination was disputed in the respondents' letter of 22 April 2024, but the applicant took its time to approach this Court for relief.

[11] I have concluded that the matter is not urgent. There is no evidence that the transfer of the property is imminent since clearance fees are still outstanding. There is also no direct and admissible evidence that the purchaser will cancel the sale if the transfer is handled by the first respondent as per the sale agreement. I have referred to clause 15 of the sale agreement in this regard, which the purchaser accepted and signed off. In the light of these facts, there is nothing in the founding affidavit that illustrates why the applicant cannot obtain substantial redress in due course.

[12] In the circumstances, the application falls to be struck from the roll with costs.

Non-joinder

[13] The respondents have raised the non-joinder of the purchaser and Ms Bannister. If the final orders sought are granted, the first respondent will be replaced as transferring attorneys. This is contrary to clause 15 of the purchase agreement. The order would adversely affect the right and interests of the purchaser in enforcing the terms of clause 15 of the purchase agreement. At the very least the purchaser is a necessary party and ought to have been joined.

Order

[14] The application is struck from the roll with costs for lack of urgency.

**NH MAENETJE
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Date of hearing : 4 June 2024

Date of judgment : 5 June 2024

For the applicant: S Subroyen

Instructed by KG Tserkezis Inc

For the 1st and 2nd respondents: M Gwala

Instructed by Schoonees Belling & Georgiev