

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA



CASE NO.: 2022-018324

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
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In the application by:

MONEY GLOBAL (PTY) LTD
t/a AVIATION SALES
INTERNATIONAL

Applicant

For the urgent reconsideration of, alternatively anticipation of the rule *nisi* in the matter of:

ZAHEER CASSIM N.O.

First Applicant

THEA CHRISTINA LOURENS N.O.

Second Applicant

and

COETZEE WPN N.O.

First Respondent

ANDRIES FRANCOIS VAN HEERDEN N.O.

Second Respondent

JOHAN HENDRIK VAN HEERDEN N.O.

Third Respondent

ANDRIES FRANCOIS VAN HEERDEN

Fourth Respondent

KISTAPPAH MOONSAMY GOVENDER N.O.	Fifth Respondent
PREMILLA GOVENDER N.O.	Sixth Respondent
THASEEGAVASAN GOVENDER N.O.	Seventh Respondent
THASEEGAVAN GOVENDER	Eighth Respondent
SELVAN KASAVAL PILLAY	Ninth Respondent
THE MASTER OF THE HIGH COURT, PRETORIA	Tenth Respondent
and	
THE SHERIFF OF THE HIGH COURT, GERMISTON SOUTH	Eleventh Respondent

JUDGMENT

van der Westhuizen, J

- [1] Money Global (Pty) Ltd t/a Aviation Sales International, as applicant in this matter, applied for a reconsideration of an order granted by way of urgency on 31 August 2022 by this court in favour of the appointed joint liquidators of Ipower Services (Pty) Ltd (in liquidation) (Ipower). That application was brought *ex parte*.
- [2] The relief granted by that court included *inter alia* orders: interdicting the first to third respondents (in that *ex parte* application) from disposing of a 1969 Bell 204 Helicopter (Huey Helicopter) with tail number: ZU-RXX and serial number 1104 (the Huey); directing the Sherriff to attach the Huey Helicopter; the said Huey to be returned to the joint liquidators; that it be declared to be an asset of Ipower; and an anti-dissipation order. The said order included the setting aside of a “*collusive disposition of the Huey Helicopter*”. It further included an

order that all/any books, registers of title, flight registers and any other documents in relation to ownership be returned to the applicants.

- [3] It is to be noted that the order was silent on where the Huey was to be attached. There was no indication in the order that it be attached wherever it was found. Presumably, the said Huey was to be attached where it was stationed at the time of the order.
- [4] Money Global applied for the reconsideration of that order in respect of the orders granted in particular in terms of prayers 2.1, 2.2, 2.3 and 2.4, i.e. those relating to the interdicting and disposing of the said Huey; the setting aside of the alleged “collusive disposition; the return of the said Huey Helicopter and the declaration of an asset of Ipower; and the attachment of the said Huey.
- [5] In its application for reconsideration, Money Global sought leave to intervene (it not being a party in the *ex parte* application) on the premises that it had a direct, material and substantial interest that was directly affected by the order that was granted. The direct, material and substantial interest related to the ownership of the Huey.
- [6] The joint liquidators opposed the application for reconsideration. Apart from responding to the allegations contained in the founding affidavit of the reconsideration application, a number of points were taken. Those related to the issue of urgency and alleged lack of *locus standi* on the part of Money Global to seek a reconsideration.
- [7] Rule 6(12)(c) of the Uniform Rules of Court provides that a person against whom an order was granted in such person’s absence in an urgent application may by notice set down the matter for reconsideration of the order. Furthermore, Rule 6(8) provides that any person against whom an order is granted *ex parte* may anticipate the return day upon delivery of not less than 24 hours’ notice. From the aforementioned two rules it is clear that such set down, or anticipation

of the return day, are inherently urgent. There is accordingly no merit in the first point *in limine*. It is ruled that the matter is urgent.

- [8] It was submitted on behalf of the joint liquidators that Money Global lacks the required *locus standi* to seek a reconsideration. Money Global was not a party to the *ex parte* urgent application and was thus required to launch a substantial application for leave to intervene. Only when granted leave to intervene, Money Global could seek a possible reconsideration, or anticipate the return day. There exists no reason why Money Global could not combine an application for leave to intervene and an application for reconsideration/anticipation of the return day. The relevant issues are closely interrelated. In any event, Money Global sought leave to intervene and the relevant facts and allegations supporting such request are clearly dealt with in the founding affidavit in the reconsideration application.
- [9] It was submitted on behalf of the joint liquidators that Money Global had no direct, material and substantial interest in those proceedings in that no proper sale/purchase agreement existed between Money Global (the purchaser) and the S and M Trust (the seller) in respect of the Huey. It was submitted that it was not proven that all the trustees of the S and M Trust resolved to sell the Huey. As will appear later in this judgment, a proper case was made for leave to intervene. Consequently, there is no merit in the second point *in limine*. Accordingly, Money Global is granted leave to intervene as a further respondent.
- [10] Money Global further sought ratification of the joinder of the Sheriff of the High Court, Germiston South. The Sheriff was not a party to the *ex parte* application and the ratification of the joinder was required in respect of the relief sought in the reconsideration application for the uplifting of the attachment of the Huey and the relevant documentation relating to the Huey. It follows that ratification of the joinder of the Sheriff stands to be granted.

- [11] The provisions of either Rule 6(8) or 6(12)(c) do not stipulate the requirement of filing further affidavits. However, the courts have accepted that the parties may file affidavits in support of their contentions.¹ Both Money Global and the joint liquidators filed affidavits in the reconsideration application.
- [12] On a close consideration of the founding affidavit in the *ex parte* application, no case was made in respect of the ownership of the Huey resolving in Ipower, and consequently in the joint liquidators. No purchase of the Huey on the part of Ipower was alleged, nor proven. Furthermore, and in particular, no intention on the part of Ipower to purchase the Huey for itself was alleged, nor proven. No contract of sale/purchase of the Huey on the part of Ipower was alleged, nor proven. Accordingly, no basis was proven for the declaration that the Huey was an asset of Ipower and that it was to be returned to the joint liquidators.
- [13] The joint liquidators alleged that the Huey was purchased with money from the bank account of Ipower, which monies emanated as a direct result of a fraud perpetrated upon Ep Inland (Pty) Ltd, the liquidating creditor of Ipower. The said monies were paid to MML (Pty) Ltd, the owner of the Huey at that stage, and the ownership of the Huey was transferred to S and M Trust. The latter concluded a purchase and sale agreement with the former. There is no allegation, nor any claim, that Ipower concluded a purchase and sale agreement with MML (Pty) Ltd. The fraudulently obtained monies from Ep Inland (Pty) Ltd were merely utilised to pay the purchase price, presumably to MML (Pty) Ltd. Ipower was a mere conduit for the transfer of the monies (originating from Ep Inland (Pty) Ltd) to MML (Pty) Ltd in respect of the purchase price of the Huey. Consequently, no ownership of the Huey resolved in Ipower, nor could there be any claim thereto on the part of Ipower, the latter

¹ See in general *Industrial Development Corporation of South Africa v Sooliman* 2013(5) SA 603 (GSJ)

being a mere conduit for payment. At best for Ipower, it may have a claim for recourse for the refund of the said payment of the purchase price.

[14] It was further submitted on behalf of the joint liquidators that the subsequent sale by S and M Trust to Money Global was impeachable. The underlying *causa* was identified in that in terms of the law of contract, and the law of Trusts, the sale by S and M Trust to Money Global was not made on a resolution by all the trustees acting in unison. It was further submitted that accordingly no contract of sale had taken place, it would be voidable. Only one trustee allegedly acted on behalf of the S and M Trust and that he was apparently on a frolic of his own in that regard. The aforementioned submissions were clearly premised upon an inference drawn by the joint liquidators, or on an assumption on their part in that regard. An inference, or for that matter an assumption to that effect, on its own does not impugn upon the validity or otherwise of the contract of sale. Until a finding of impeachment of the said contract by a competent court, it exists.

[15] The *ex parte* order provided, in prayer 2.2 thereof, that the alleged “collusive disposition of the Huey” be set aside. At the time of the launching of the *ex parte* application, and at the date of the granting of the order, the joint liquidators were blissfully unaware of the on-sale of the Huey to Money Global. Only after the ordered attachment of the Huey took place, the joint liquidators became aware of the transfer of ownership in the Huey to Money Global and which occurred prior to the granting of the *ex parte* order. Thus, the alleged “collusive disposition” of the Huey could possibly only relate to the sale of the Huey by MML (Pty) Ltd to S and M Trust. Should that agreement between MML (Pty) Ltd and the S and M Trust be set aside, the ownership in the Huey will revert back to MML (Pty) Ltd and not to Ipower. The latter never became the owner thereof for the reasons recorded above. It never became an asset of Ipower. Accordingly, there could be no “collusive disposition” of the Huey.

[16] The purchase/sale agreement relating to the Huey between S and M Trust and Money Global was concluded on 22 August 2022. The Huey was delivered to Money Global on 29 August 2022, prior to the granting of the *ex parte* order on 30 August 2022. By the latter date, the sale was perfected and ownership in the Huey transferred from S and M Trust to Money Global. On 22 August 2022, Nicholson Helicopter inspected the Huey and Money Global accepted the Huey on that date.

[17] From the foregoing it follows that:

- (a) Ipower never obtained ownership in the Huey;
- (b) The Huey never became an asset of Ipower;
- (c) No “collusive disposition” of the Huey from the assets of Ipower had or could have taken place. None were proven;
- (d) The monies utilised to purchase the Huey from MML (Pty) Ltd came from the fraud perpetrated upon Ep Inland (Pty) Ltd and merely flowed through Ipower as a conduit;
- (e) No right to the ownership in the Huey was proven by Ipower, nor could such right have evolved upon Ipower in the particular circumstances.

[18] It further follows from the foregoing that:

- (a) the provisions of sections 31 and 32 of the Insolvency Act, 24 of 1936, find no application in the present instance;
- (b) no bases existed upon which prayers 2.1, 2.2, 2.3, and 2.4 of the *ex parte* order should and could have been granted;

- (c) prayers 2.1, 2.2, 2.3 and 2.4 stand to be set aside and deleted from the *ex parte* order of 31 August 2022.

[19] Consequently, the application for reconsideration stands to be upheld.

I grant the following order:

1. The matter is urgent;
2. Money Global (Pty) Limited t/a Aviation Sales International is granted leave to intervene as a further respondent in the *ex parte* application under case number 2022-018324;
3. The joinder of the Sheriff of the High Court, Germiston South as the eleventh respondent in the application is authorised and ratified;
4. Prayers 2.1, 2.2, 2.3, and 2.4 of the *ex parte* order granted by this Court on 31 August 2022 in the *ex parte* application that was before it, are set aside and deleted therefrom;
5. The eleventh respondent, the Sheriff of the High Court, Germiston South, is directed to forthwith uplift his attachment pursuant to the *ex parte* order of 31 August 2022 of the 1969 Bell 204 HP Helicopter (the Huey Helicopter) bearing the manufacturer's serial number 11 04 and registration ZU-RXX (the Huey);
6. The eleventh respondent, the Sheriff of the High Court, Germiston South, is directed to forthwith uplift his attachment pursuant to the *ex parte* order of 31 August 2022 of all the logbooks and documentation of and relating to the Huey being:
 - (a) 1 x Engine Logbook;

- (b) 1 x Airframe Logbook;
 - (c) 1 x Flight Folio;
 - (d) 1 x Red File with accepted maintenance schedules;
 - (e) 1 x Black File containing all logcards and records;
 - (f) 1 x Ref File – Sw204GP Flight Manual;
 - (g) 1 x Orange File containing a Certificate of Registration, an Authority to Fly Certificate (expired), a Certificate to Release to Service, and inspection reminder and radio station license;
7. The Sheriff of the High Court, Germiston South, is directed to return to Money Global (Pty) Limited t/a Aviation Sales International the Huey and the documents listed in prayer 6 above;
8. The attorneys of record of Money Global (Pty) Limited t/a Aviation Sales International, Messers. ULRICH ROUX AND ASSOCIATES of Ground Floor, 15 Chaplin Road, Illovo, Sandton, are directed to retain in trust the purchase price of R4 million paid by Money Global (Pty) Limited t/a Aviation Sales International for the Huey for the benefit of the party held by a competent court, or by written agreement amongst the applicants and the trustees of the S and M Trust, those being the first, second and third respondents, to be entitled thereto;
9. The first and second applicants in the *ex parte* application are to pay the costs of this application for reconsideration, jointly and severally, the one paying the other to be absolved, on the scale

as between attorney and client, such costs to include the costs consequent on the employ of two counsel.

C J VAN DER WESTHUIZEN
JUDGE OF THE HIGH COURT

Heard On: 28 September 2022

On behalf of Applicant for reconsideration: I Miltz SC
S Meyer

Instructed by: Ulrich Roux and Associates

On behalf of the Applicants in the *Ex Parte* Application: AB Rossouw SC

Instructed by: Afzal Lahree Attorneys

Judgment handed down on: 30 September 2022