REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

(1) REPORTABLE: NO
(2) OF INTEREST TO ~~OTHER~~ JUDGES: NO
(3) REVISED:

15/5/2024 [redacted]

DATE SIGNATURE

CASE NO: 046596/2022

In the matter between:

MWRK ACCOUNTANTS AND CONSULTANTS (PTY) LTD	Applicant
and	
HLB INTERNATIONAL (SOUTH) AFRICA (PTY) LTD	First Respondent
PAR EXELLENCE FINANCE AND LEASING (PTY) LTD	Second Respondent
HLB CMA SOUTH AFRICA INC	Third Respondent
SILVER MEADOWS PROPERTIES 142 (PTY (LTD	Fourth Respondent
REGISTRAR OF DEEDS, JOHANNESBURG	Fifth Respondent

JUDGMENT

(The matter was heard in open court but judgment was reserved and later handed down by uploading the judgment onto the electronic file of the matter on CaseLines and the date of uploading the judgment onto CaseLines is deemed to be the date of the judgment)

Before: **HOLLAND-MUTER J:**

[1] It is not strange for an agreement entered into by prospective business parties to work together for the benefit of the parties sometimes ends in bitter litigation between the once co-operative mergers. The present case is a typical matter where the parties, with good intentions, entered into a shareholder agreement to the benefit of all involved, only to end up in litigation between the parties.

HISTORY:

[2] During 2016, the Third Respondent and Mr Reynolds ("Reynolds"), husband of the sole director of the Applicant, entered into negotiations regarding the sale, or merger, of Mr Reynolds' professional audit business to the Third Respondent. The Applicant and the Second Respondent agreed to purchase immovable property to be registered in the name of the First Respondent. The property was purchased with *pro rata* contributions from the Applicant and the Second Respondent. The purpose of the purchase of the premises was that employees of the Third Respondent and Mr Reynolds would work from the property in the newly created business between the parties. The Second Respondent was represented by Mr Maritz ("Maritz"), the sole director of the First Respondent and father Nadine van Wyk, the sole director of the Second

Respondent. Maritz also acted on behalf of the Third Respondent during all the negotiations with Reynolds.

[3] The First Respondent was a dormant company to be utilised as the property holding company and after the shareholders agreement was concluded, purchased the immovable property in Ekurhuleni. The Applicant and the Second Respondent concluded a shareholders' agreement on 6 March 2017 and they agreed to become the joint shareholders in the First Respondent.

[4] The property was purchased with the intention to lease the property to the Third Respondent and a subsequent lease agreement was entered into between the First and Third Respondents on 31 May 2017 ("the lease agreement"). The purpose of the lease agreement was to provide office accommodation to MWRK Accountants and Auditing Inc ("MWRK AA"), an auditing entity supervised by Mr Reynolds - referred to as "Reynolds", (the husband of the sole director of the applicant), after the merger of MWRK AA with the Third Respondent on 17 March 2017.

[5] Reynolds conducted his auditing business in a portion of the said premises leased to the Third Respondent, the premises owned by the First Respondent in terms of the said lease agreement. Reynolds sought to withdraw from the Third respondent with effect from 31 March 2018. The notice of intention to withdraw created acrimony between the parties in the auditing business performed at the premises of the Third Respondent resulting in the Applicant seeking to terminate the shareholders' relationship between the Applicant and the Second Respondent.

[6] When Reynolds and MWRK AA decided to withdraw from the merger, the Applicant approached the court under case number 7251/2018 for equitable relief to receive its *pro rata* contribution made to purchase the building. The Applicant applied for the winding-up of the First Respondent, alternatively for

an order in terms of section 163 (2) of the New Companies Act, 71 of 2008 ("the Act"), that the Second Respondent, holder of 51% shareholding in the First Respondent, purchase the Applicant's shareholding in the First Respondent ("the first application"). Section 163 is the relief for oppressive or prejudicial conduct or for abuse of separate juristic personality of a company to assist minority shareholders against the oppressive conduct by the majority shareholder(s).

[7] The matter was heard on 24 May 2019 and judgment granted on 15 November 2019. The relief granted by the **S W Davis AJ** was not for the provisional winding-up of the First Respondent and the court clothed the relief in terms of section 163(1)&(2) of the Act, holding that there was ***oppressive and unfair conduct*** towards the minority shareholder (i e Applicant) by the Second Respondent. It should be noted that this finding was never overturned at all in the following litigation.

[8] The court ordered that the property in question be sold through mandates granted to estate agents, or, if no sale was successfully concluded within three (3) months from the order, by way of public action. The net proceeds of the sale were to be distributed between the Applicant and the First Respondent according to their respective shareholding. This was to serve as the devise to set free the contributions made by the Applicant and the First Respondent. (This court order is referred to as the First Court Order).

[9] The Applicant and the First Respondent differed whether the property was to offered for sale subject to the lease agreement it had with the Third Respondent or not. The lease agreement was for a nine year period with the option to extend if for a further nine years. (***The monetary term regarding the lease was that the Third Respondent would only pay the municipal charges and that no formal lease payment would be due during the term of the lease...).***

[10]The lease of the property by the First Respondent to the Third Respondent was for an initial nine years but could possibly last 18 years from 1 June 2017 if the lease was renewed after the initial lease period. The Third Respondent would pay an amount equal to the operational costs of the property i e the monthly levies and related costs payable towards the local council. If this is accepted as construed by the Third Respondent, the Applicant would receive **no** return on its investment because as interpreted by the Third Respondent, the First Respondent would not make any profit from hits investment during the lease period.

[11] The value of the investment by the Applicant can be gleaned from the offer to purchase by Reynolds for an amount of R 3 265 000-00. The right of first refusal was incorporated into a shareholders agreement between the Applicant and Second Respondent in favour of the Second Respondent. The agreement provided for the highest of the market value of the property or purchase price of the shares at that stage to be the value of the property. The valuation of the property done on the 2nd of December 2022 reflects the market value of the property to be R 3 500 000-00. The initial purchase price of the property was R 2 300 000-00 with a further amount of R 887 409-22 spent on improvements since the purchase thereof. Reynolds made his offer before the auction took place and Maritz declined this offer on 16 March 2020, a day before the auction took place.

[12] The parties could not agree on the mandate towards estate agents to sell the property subject to the lease agreement or not. The Applicant contended that the property should be marketed without the lease agreement whist the First and Second Respondent contended it to be marketed subject to the lease there upon.

[13] There was no marketing of the property as envisaged in the first court order because of the dispute between the parties concerning the inclusion or

exclusion of the lease agreement. This resulted in that no competitive offers to purchase could be obtained.

[14] Maritz, the only director of the First Respondent and Chairperson of the Board of Third Respondent, proceeded to instruct an auctioneer to sell the property subject to the lease agreement. This instruction was given on 25 February 2020 and an auction was scheduled for 17 March 2020. Reference was made supra to the offer by Reynolds before the auction took place without any forewarning thereof to Reynolds.

[15] The property, the only asset of the First Respondent was to be sold at the auction to the Fourth Respondent for a meagre R 300 000-00, less than 10% of the amount offered by the Applicant.

[16] The conduct of Maritz left the Applicant no alternative but to approach the court to clarify the initial order moving for the relief of the initial order be supplemented indicating that the sale of the property was intended to be a sale not subject to the lease agreement. The court in the clarification application granted the sought relief and ordered that the sale of the property, either by mandate or auction, to be free of any lease agreement relating to the property. (The second order by **S W Davis AJ**).

[17] The relevant portion from the second order is that: *"At first blush, it appears that there is merit in the applicant's complaint that the sale of 17 March 2020 was not a bona fide transaction to a third party, but rather an entity associated with Maritz... As averred by the applicant, the sale simply does not make commercial sense..."*. See CaseLines 002-181-182. The sole purpose by the Applicant was to withdraw its investment in the property of the First Respondent, and this can only be achieved if the property was sold at a market related price.

[18] The court granted the First Respondent leave to appeal to the Supreme Court of Appeal (SCA) but the SCA dismissed the appeal on 12 April 2022. The SCA held that the **first order** had *"a patent error or omission in expressing the order, which resulted in the first order, which resulted in the order not giving effect to the High Court's intention. The* ***second order*** *correctly rectified the patent omission so as to give effect to its true intention, which did not alter the intended sense and substance of the order". See CaseLines 002-194 to 214.* The result of the dismissal was that the clarification order (**second order**) was still the effective order to comply with.

[19] Maritz, in the name of the First Respondent, applied for leave to appeal to the Constitutional Court but leave to appeal was refused on 6 October 2022.

[20] The Applicant, after realising that Maritz was to proceed with the auction, informed the auctioneer and the First Respondent to cancel the auction scheduled for 17 March 2020, failure to cancel would be met by an application to clarify the first court order. Both recipients were not deterred by the written warning and the auction continued resulting in the property being sold to the Fourth Respondent subject to the lease agreement.

[21] The Applicant was at first unaware of the identity of the purchaser, but after receiving a copy of the Rules of Auction and Sales Conditions from the auctioneer, the Applicant forewarned the Fourth Respondent of the dispute and pending clarification application, and requested the Fourth Respondent not to proceed to take transfer of the property. The Fourth Respondent was forewarned that should transfer of the property take place, an application to declare the sale unlawful and to rescind the sale would follow. This forewarning was ignored and the Fourth Respondent's responded that no interference with the transfer would be tolerated.

[22] It should be noted that only the First Respondent opposed the clarification order. The application would not affect the First Respondent as the property would be sold and the proceeds divided between the shareholders. The Second Respondent elected to abide with the clarification order although it would be affected by such order. The reasonable inference to make why the First Respondent opposed the clarification application is that Maritz as sole director of the First Respondent, tried his utmost to derail the relief granted. This action by Maritz according to the Applicant was in contravention of Maritz's fiduciary duty as sole director of the First Respondent.

THE PRESENT APPLICATION (AND RELEVANT CASE LAW):

[23] The Applicant contends that in view of the consideration of R 300 000-00 realised at the auction, it constituted a continuation of the oppressive and prejudicial conduct by the First Respondent. The conduct of Matitz in particular, is to prevent the Applicant to realise its investment in the property.

[24] The Applicant further contends that the clarification order granted by the court *a quo,* as confirmed by implication by the SCA and Con Court (by refusing any appeal by the First Respondent), is still the prevailing interpretation and that the property had to be put up for sale without the lease agreement coupled thereto. The crux of the second order (the clarification order), was to terminate the lease agreement between the First and Third Respondents.

[25] The reasonable inference is therefore that the sale of the property subject to the lease agreement is contrary the clarification order and amounts to oppressive and unfair prejudice towards the Applicant. The conduct is squarely within the ambit of the provisions *of Section 163 of the New Company Act, 71 of 2008.*

[26] The predecessor of the New Act is the *Company Act 61 of 1973,* with reference to the applicable section 252, does not contain any minimum period within which such application must be brought. The current provision in section 163(1) provides for:

26.1 Any act or omission of the company, or a related person, has had a result that is oppressive or unfairly prejudicial to, or that unfairly disregards the interests of, the applicant;

26.2 The business of the company, or a related person, is being or has been carried on or conducted in a manner that is oppressive or unfairly prejudicial to, or that unfairly disregards the interests of, the applicant; or

26.3 The powers of a director, or prescribed officer of the company, or a person related to the company, are being or have been exercised in a manner that is oppressive or unfairly prejudicial to, or that disregards the interests of, the applicant.

[27] Section 163 (2) clothes the court with vast powers, after considering the facts placed before it, and when holding that the conduct complained about amounts to oppressive or unfairly prejudice, to grant the necessary relief to undo the oppressive or unfairly prejudicial conduct complained about.

[28] The court has to apply an objective test to determine whether the conduct complained about justifies the relief sought. The test is whether the reasonable bystander observing the consequence of the conduct, would regard it having unfairly prejudiced the petitioner's interests. **De Sousa v Technology Corporate Management 2016(6) SA 528 GJ**, par [44] to [45]. Fairness is an elastic concept and will depend upon the context in which is being used to determine unfairness. **De Sousa supra par [36].**

[29] The question to answer is what amounts to oppressive and/or unfair prejudice. The test, as set out supra, is objective and all relevant facts/aspects should be considered before a court will hold the conduct complained about to be oppressive and/or unfairly prejudicial. It was held in **Grancy Property Ltd v Manala [2013] 3 Al SA 111 SCA at par [22] – [23]** that *Conduct that is burdensome, harsh and wrongful or unjust or tyrannical would generally be regarded as oppressive and that would at least include a lack of probity or good faith and fair dealing in affairs of a company to the prejudice of some portion of its members. It remains a predominantly objective test, but a lack of bona fides may subjectively indicate oppressive conduct.*

[30] A shareholder/member of a company has the expectation that the company/majority will act reasonably towards the shareholder. It does not mean that all actions of a company have to be in the interest of all shareholders/members. The requirement that the prejudice and/or oppressive conduct suffered by a minority shareholder/member should not be construed too narrow or to technically was confirmed in **McMillan NO v Polt 2011 (1) 511 WCC par [31] & [33].**

[31] An objective determination is required when considering the relevant aspects before a court rule conduct oppressive or unfairly prejudicial. It may be depending on the factual situation, that although the conduct of the company may seem to be oppressive towards a single shareholder, the conduct objectively accounted for, does not fall within the ambit of section 163. That will remain a factual question in each instance.

[32] The court has wide powers in terms of section 163 once it appears that the impugned conduct is unlawful and/or oppressive. The court may make an order that it considers just and equitable in the prevailing circumstances. The court may make an order it deems fit to bring an end to the matter(s) complained about. Section 163 clothes the court with a very wide discretion in this regard. **Freedom Stationary v Hassam 2019 (4) SCA par [27].**

[33] A court order in terms of section 163 does not only impact on the company, its shareholders or members, but may also impact on third parties who entered into agreements with the company, the agreement(s) complained about by a minority member/shareholder, resulting in the court setting aside such oppressive and/or unfair prejudicial conduct or agreement. Section 163 therefore applies to abusive agreements and adds a new dimension to contracts which upon conclusion, be held to be oppressive or unfairly prejudicial. **Strategic Partners Group (Pty) Ltd v The Liquidators of the Illma Group (Pty) Ltd (in liquidation), Case No 34026/18 [2021] ZAGP JHC (13 September 2021)** at **[120].**

[34] The court should always in application procedures be aware of possible real factual disputes. When encountered, after considering all the pleadings (affidavits and annexures), a court may refer the matter to evidence or trial. This should only be where real factual disputes arise not capable of being heard on paper. **Plascon-Evans Paints v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 AD at 634 H-635 C.** Having considered all the affidavits and annexures, I am satisfied that there is no real factual dispute to be referred to evidence or trial.

[35] I am also award that should refrain from annexing numbers of annexures without proper indication thereof with reference to the affidavits or to expect the trial court to struggle through a myriad of documents and fine print not to the point. I am satisfied that the litigants did not make themselves guilty in this instance.

THE DOCTRINE OF NOTICE:

[36] It is a basic principle of our law that a real right generally prevails over a personal right, even when the personal right is prior to the real right, when

they come into competition with each other. **Meridan Bay Restaurant v Mitchell NO 2011 (3) SA 1 (SCA) at par [12].**

[37] The SCA held at par [14] that: *"Under the doctrine of Notice, someone who acquires an asset with notice of a personal right to which its predecessor in title has granted to another, may be held bound to give effect thereto. Thus a purchaser who knows that the merx has been sold to another, may, in spite of having obtained transfer or delivery, be forced to hand it over to the prior purchaser..."*.

[38] In **Associated South African Bakeries (Pty) Ltd v Oryx & Vereinigte Backereien (Pty) Ltd 1982 (3) SA 893 A** the holder of a personal right cannot enforce that right against a third party who steps into the shoes of the seller ***unless*** the third party was aware of the pre-emptive right when taking possession of the merx. The court held that to trigger the doctrine of notice the third party should have had actual notice of the personal right in question or at least the knowledge that amounts to *dolus eventualis.* In lay man's terms it means that the third party should have seen the warning lights but elected to continue with the transaction. If this requirement is met, the holder of the initial personal right is afforded what may be seen as a limited real right against the third party.

[39] In **Grant v Stonestreet 1986 (4) SA 1 A at par [20] E-F** it was held that if a person shuts his eyes and declines to see what is perfectly obvious, he must be held to have actual knowledge.

[40] The clarification order is clear that the property should be marketed without the lease agreement. This was confirmed by the SCA. The sale of the property on 17 March 2020 subject to the lease agreement was therefore contrary the clarification order dated 15 November 2019 as confirmed by the SCA.

[41] The Applicant, when it became aware of the auction, and when the identity of the Fourth Respondent became known, forewarned the Fourth Respondent not to proceed with the registration process (transfer of the property). The Fourth Respondent refused to adhere thereto and continued to take transfer of the property on 17 July 2020. The reasonable inference is that the Fourth Respondent had actual knowledge of the Applicant's personal right and that this right would prevail over the real right the Fourth Respondent obtained at transfer of the property.

OPPOSITION TO THE APPLICATION:

[42] The Third respondent proceeded to defend the merits of the application. The Second Respondent elected to abide with any court order obtained but for costs against it whilst the Fourth Respondent indicated to abide with the court order sought and only opposed any cost order. The First Respondent did not oppose the application in any way.

[43] The First Respondent was a dormant company which was used as the vehicle to purchase the immovable property to be leased to the Third Respondent. Maritz was the sole director of the First Respondent but in all fairness the driving force behind the whole saga to purchase the property. He is also the deponent to the answering affidavit on behalf of the Third Respondent.

[44] The Second Respondent's answering affidavit was deposed by Nadine Van Dyk, the director thereof and the daughter of Maritz. She is clear that the Second Respondent only opposes the cost order sought against it by the Applicant. According to her the Second Respondent will benefit from the relief sought by the Applicant in that as 51% shareholder in the property, if a higher purchase price for the property is obtained, it would benefit then Second Respondent.

[45] The Second Respondent's opposition towards the cost order sought by the Applicant is in my view reasonable and there is no reason why the Second Respondent be visited by any cost order. The argument that the Second Respondent should have taken steps to prevent the First Respondent to continue with the proposed sale of the property in any way contrary the court order is without merit. The appropriate cost order will follow infra.

[46] The Fourth Respondent indicated that it abides with the relief sought by the Applicant but opposes any cost order against it. It is common cause that the Fourth Respondent's involvement in the proceedings was limited. It's cause was to ensure that the Fourth Respondent would be guaranteed not to suffer any damages if the requested relief was granted and to prevent any reputational damage resulting from what it labels the *"unfounded alleged nefarious conduct by the Fourth Respondent"*, should the allegations by the Applicant not be refuted.

[47] The Fourth Respondent's claim that the Applicant did not request that provision is made to ***guarantee*** that the Fourth Respondent would be repaid the purchase price of the property left the Fourth Respondent to the mercy of the First Respondent's financial position, is without any sting. It is with respect to the Fourth Respondent's own doing that the Applicant embarked on the litigation road.

[48] The Fourth Respondent was forewarned of the position but elected to take transfer knowing the possible risk it entailed. Although the Applicant is ***dominus litis*** it cannot be expected from the Applicant to ***guarantee*** that the Fourth Respondent will not be out of pocket at all. I fail to understand why the Applicant has to ***guarantee*** that the Fourth Respondent will not be out of pocket in these circumstances because the Fourth Respondent continued to take transfer knowing that the transfer could be reversed in future.

[49] The relief sought by the Applicant is inter alia that the First Respondent to make payment of the purchase price the Fourth Respondent and the costs involved with the re-transfer of the property to the First Respondent. I could not find any provision in section 163 that the Applicant should guarantee the compensation regarding the transaction. In my view this argument on behalf of the Fourth Respondent is still born.

[50] The Applicant was forced to issue the application against the Fourth Respondent in view of the Fourth Respondent's refusal to heed to the forewarning. The Fourth Respondent has only itself to blame for incurring costs to oppose the application. I see no reason why the Applicant should *provide* for damages the Fourth Respondent would/could suffer if the relief is granted.

[51] The Supreme Court of Appeal held that there was no mala fides on the side of the Fourth Respondent, but the Fourth Respondent can only blame itself for incurring costs to oppose the application. The costs incurred by the Fourth respondent when transfer occurred was incurred knowing of the lurking danger should transfer proceed. The costs or re-transfer is taken into account in prayer 2.3 as set out in the Notice of Motion.

[52] The Supreme Court of Appeal (SCA) held that there was no ***mala fides*** in the conduct of Maritz when the property was auctioned with the lease agreement coupled to the property. Maritz obtained advice from senior counsel before he continued to instruct the auctioneer but he ought to have realised after the clarification order was obtained that the property should be marketed without the lease agreement coupled to the property.

[53] The SCA did not amend the existing clarification order in which the conduct by the First and Third Respondents (Maritz's conduct) amounted to opposing and prejudicial unfair conduct falling within the scope of section 163. It manifested in Maritz's refusal of the offer made by Reynolds before the

auction, the offer at least tenfold what was realised at the auction. It is abundantly clear that the Second Respondent as co-shareholder in the property, as well as the Applicant and the First Respondent would have benefitted from such offer.

[54] After considering all the evidence and hearing all arguments on behalf of the parties, I am of the view that the application should succeed.

OTHER ISSUES:

[55]This application only deals with the oppressive conduct and the undoing thereof. Other issues and disputes arising from the shareholders agreement and related aspects between the parties can be addressed in subsequent litigation.

COSTS:

[56] Costs are within the discretion of the presiding officer. The ordinary rule is that costs follow success. The court may depart from the normal rule. The court will consider all aspects which may have a bearing on the matter and that may be taken into account to deviate from the ordinary rule. **Herbstein & Van Winsen , The Civil Practice of the High Courts of South Africa, Vol 2 p 957.**

[57] The question arises as to what is success? Although the successful party is the one in whose favour judgment is given, that party may not be deemed to be the successful party. The court will attempt to determine which of the parties has been substantially successful. **Swanepoel v Van Heerden 1928 AD 15 AT 24 Herbstein &Van Winsen supra 958.**

[58] The court may also deprive the successful party of costs if warranted. **Herbstein & Van Winsen supra p 961.** Before depriving the successful party of its costs or a portion of its costs, the court will consider all relevant aspects of the matter to deprive a party of costs or a portion of its costs. In this instance, although the order to follow will be substantially in favour of the Applicant, there is reason to deprive the Applicant of a portion of its costs.

[59] The Second Respondent elected not to oppose the relief sought and indicated to abide with the order to follow. To burden the Second Respondent with costs in my view will be unnecessary harsh and for the Applicant to seek costs against the Second Respondent is opportunistic. The Second Respondent, in opposing the costs sought against it by the Applicant, was warranted to oppose such relief. In my view the Applicant ought to have waived any costs order against the Second Respondent but by continuing with the costs relief against the Second Respondent the Applicant caused unnecessary opposition and it is fair and justified that the Applicant bears these costs.

[60] The Fourth Respondent, although it abides with the order (to have the transfer reversed), knew what was to follow but decided to oppose the application despite being forewarned. I am satisfied that the Fourth Applicant is the author of its own fate and should be held liable for the Applicant's costs.

[61] The First Respondent did not oppose the application but it had a responsibility towards the Applicant as a shareholder thereof to protect the interests of the minority shareholder against the oppressive conduct of Maritz as director thereof. This however does not in my view warrant any cost order against the First Respondent.

[62] The Third Respondent is ordered to pay the Applicant's costs for its opposition.

[63] I am satisfied that the scale on which the costs should be on an attorney and client scale in respect of the Third and Fourth Respondents to illustrate the court's displeasure with their respective conduct.

[64] I am satisfied that the Applicant is the successful party against the Third Respondent and that the Third Respondent should bear the Applicant's costs of the application.

ORDER:

The following order is made:

1. That in terms of Section 163 (2) of the Company Act, Act 71 of 2008, the sale of Erf 3726 Benoni Extention 10, Ekurhuleni Metropolitan Municipality, Ekurhuleni, Gauteng ("the property"), by the First Respondent to the Fourth Respondent on 17 March 2020 for the sum of R 300 000-00 is declared in conflict with the Court Orders made by this Court on 15 November 2019 and 21 September 2020 under case number 72514/2018, and therefore void;

2. That the sale of the property known as Erf 3726 Benoni Extention 10, Ekurhuleni Metropolitan Municipality, Ekurhuleni, Gauteng, by the First Respondent to the Fourth Respondent on 17 March 2020 for the amount of R 300 000-00 is set aside, and that the First Respondent be ordered to:

2.1 To take re-transfer of the property;

2.2 To make payment of the purchase price of R 300 000-00 to the Fourth Respondent; and

2.3 To pay the costs involved with the re-transfer of the property to the First Respondent.

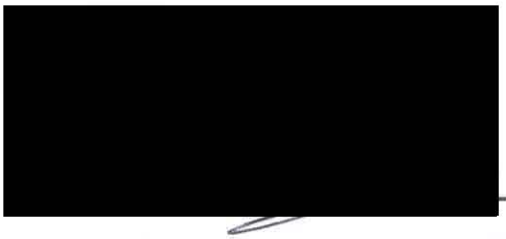
3. That the Fourth Respondent is ordered to re-transfer Erf 3726 Benoni Extention 10, Ekurhuleni Metropolitan Municipality, Ekurhuleni, Gauteng to the First Respondent, and to sign all documents necessary for such re-transfer within 21 (Twenty one days) of this order, failing which the Sheriff within whose jurisdiction area the property is situated is authorised to sign all the necessary documentation to effect the re-transfer of the property to the First Respondent.

4. That the First Respondent is ordered to give effect to the Court Orders of 15 November 2019 and 21 September 2020 under case number 72514/2018, within the time periods as indicated in the said orders. Should the First Respondent fail to adhere to this order and that the Sheriff has to sign the necessary documentation for the re-transfer, the First Respondent is ordered to pay any costs incurred in this regard on a party and party scale.

5. That the costs of this application be paid by the Third and Fourth Respondents jointly and severally, the one to pay the other to be absolved, jointly and severally with any other party opposing the relief requested by the Applicant excluding the Second Respondent. The scale of the cost order is on an attorney and client scale.

6. That the Applicant is ordered to pay the costs incurred by the Second Respondent to oppose this application on a party and party scale.

Signed at Pretoria on 16 May 2024.



J HOLLAND-MUTER 15/5/2024

Judge of the Pretoria High Court

Matter heard on: 15 & 16 February 2024

Judgment delivered on: 16 May 2024

TO: **GRIESEL VAN ZANTEN ATTORNEYS**

Attorney obo Applicant

Adv J G Bergenthuin SC

AND **CAREL VAN DER MERWE ATTORNEYS**

Attorney obo First & Third Respondents

Adv H F Oosthuizen SC

VAN HEERDEN FOURIE INCORPORATED

Attorney obo Second Respondent

Adv A Koekemoer

CARRIM ATTORNEYS

Attorney obo Fourth Respondent

Adv T A L L Potgieter SC