



**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2023/022072

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

DATE
SIGNATURE

In the matter between –

SA AD INVESTMENTS (PTY) LTD (IN LIQUIDATION)

1st APPLICANT

THEODOR WILHELM VEN DEN HEEVER N.O.

2nd APPLICANT

FRANS LANGFORD N.O.

3rd APPLICANT

And

MOGALE CITY LOCAL MUNICIPALITY

RESPONDENT

JUDGMENT

MOORCROFT AJ:

Order

[1] I make the following order:

1. *The respondent is ordered to furnish the applicants with clearance figures reflecting full and itemised particulars and dates in respect of Erf 183 and 1118 Chamdor Ext 1 for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties, and interests charged in respect of those amounts, incurred between 20 December 2020 and 19 December 2022 and due in terms of section 118(1) of the Local Government: Municipal Systems Act, 32 of 2000, within five days of the date of this order;*
2. *The respondent is ordered, upon payment of such sum tendered specifically for the purposes of discharging that indebtedness, to issue to the applicants a certificate as contemplated in section 118(1) of the Act within two days of such payment;*
3. *The respondent is ordered to pay the costs of the application.*

[2] The reasons for the order follow below.

Introduction

[3] The 2nd and 3rd applicants are the liquidators of the 1st applicant. The respondent (“the Council”) is a local authority exercising its jurisdiction in the area where properties of the company are situated. The liquidators have sold the properties and is now obliged to transfer ownership. For this purpose a prescribed certificate, commonly known as a “*clearance certificate*” in terms of section 118(1) of the Local Government: Municipal Systems Act 32 of 2000 is required.

[4] The Council is required to certify that “*all amounts that became due in connection with that property for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties during the two years preceding the date of application for the certificate have been fully paid.*” Application was made for the certificate on 19 December 2022.

[5] Subsection (3) provides that an “*amount due for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties is a charge upon the property in connection with which the amount is owing...*” It is irrelevant whether the property was occupied by the owner or a tenant during the two-year period; the amount due in respect of the two-year period must be paid before the certificate can be issued.

[6] It must be noted that subsection (3) is not subject to the two-year limitation period – debt incurred prior the two-year period are a charge on the property but are not taken into account for the purposes of the certificate.¹ Debt incurred more than two years earlier, and interest and other charges relating to that debt, therefore fall outside the scope of section

¹ *Steve Tshwete Local Municipality v Fedbond Participation Mortgage Bond Managers (Pty) Ltd and Another* 2013 (3) SA 611 (SCA) para 9; *BOE Bank Ltd v Tshwane Metropolitan Municipality* 2005 (4) SA 336 (SCA) para 7; *Jordaan and Others v Tshwane Metropolitan Municipality and Others* 2017 (6) SA 287 (CC) para 25. See also section 89 of the Insolvency Act, 24 of 1936.

118(1).²

[7] It is the practice that in order for the correct payment to be made, conveyancers request clearance figures from the Council.

[8] The applicants now seek an order compelling the Council to provide the clearance figures for the two-year period. The company become owner of the properties in 2008 and was owner for the whole of the two-year period from 20 December 2020 to 19 December 2022.

Urgency

[9] The matter is urgent as the liquidators are obliged to transfer ownership of the properties to purchasers who are now entitled to transfer, but they are not able to do so since the certificates have not been issued. It is in the interest of all the interested parties and in the public interest that the transfers take place as soon as practically possible.

² See *City Of Cape Town v Real People Housing (Pty) Ltd* 2010 (5) SA 196 (SCA) paras 11 to 17.

Authority of the deponent to the applicants' affidavits

[10] The deponent to the founding affidavit is the applicant's attorney. I am satisfied that the evidence in the applicants' affidavit fall within her personal knowledge and her evidence is supported by confirmatory affidavits by the 2nd and 3rd applicants.

[11] The 2nd and 3rd applicants have locus standi and the citation of the 1st applicant as a company in liquidation is probably unnecessary, but nothing turns on this.

The clearance figures

[12] Clearance figures have been provided by the Council but the liquidators say that they have been provided with "first clearance figures" and "second clearance figures" and "revised figures" that fall outside the scope of what is required in terms of section 118(1) of the Act. The Council also provided the applicants with journals that referred to various amounts included in the accounts from previous accounts or tenant accounts. The dates of the charges are not apparent and it is not clear what relates to the last two years and what to previous years.

[13] The applicants allege that the clearance figures provided include prescribed debt, i.e. older than three years (and potentially of course older than 30 years in respect of taxes) and also for a tenant's account. Since the scope of the section limits the certificate to a two-year period, it is not possible for the clearance figures to include prescribed debt as prescribed debt will be older than three years.

[14] In letters dated 15 March 2023

14.1 the Council refers to two outstanding amounts in respect of the first property, erf 183, Chamdor Ext 1: R265 174.76 due in respect of the “*Section 118 (1) figures (payable)*” and R395 183.62 in respect of “*Balance outstanding (once Section 118(1) payment received)*”.

14.2 The corresponding figures in respect of the second property, erf 1118, Chamdor Ext 1 are R2 486 464.42 and R8 319 715.21.

[15] It is then stated that:

You are hereby advised that the Balance outstanding as reflected above remains due, owing and payable.

The Municipality will accept an irrevocable guarantee from your office that once payment of the purchase price is received, the Balance outstanding will be paid to the municipality prior to any proceeds being distributed to the seller.

Your client has the following options available:

1. Pay the full amount outstanding prior to lodgment of the transfer documents;
2. Enter into payment arrangement acceptable by the Municipality;
3. Furnish the municipality with an irrevocable guarantee from your office that once payment of the purchase price is received, the Balance outstanding will be paid to the municipality prior to any proceeds being distributed to the seller;

failing which the account/s will be handed over to the Municipality's debt collectors/attorneys and your client will be held liable for all legal costs incurred on an attorney and own client scale.

[16] The Council therefore seemingly insisted on payment or the guarantee of both these amounts in respect of each of the two properties. This is misleading . For the purposes of the clearance certificate only the amounts of R265 174.76 and R2 486 464.42 (if correct) would be payable and the balance of R395 183.62 and R8 319 715.21 would have to be claimed separately.³ It also seems that the Council was influenced by accounts in the name of tenants that should have no bearing on the amounts due as the amounts due constitute a charge on the property irrespective of a disputes about tenant accounts. The applicants deny the existence of tenant accounts but this dispute need not be resolved in this application.

[17] The applicants are therefore entitled to clearance figures reflecting –

³ See *City Of Cape Town v Real People Housing (Pty) Ltd* 2010 (5) SA 196 (SCA) para 11.

- 17.1 municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties, charged in respect of those amounts, and interest on the amounts so due;
- 17.2 incurred between 20 December 2020 and 19 December 2022,
- 17.3 in respect of the properties described as Erf 183 and 1118 Chamdor Ext 1,
- 17.4 together with all payments made towards the indebtedness referred to in the first sub-paragraph above.

[18] This debt must then be paid in order for a clearance certificate to be issued.

[19] Debts incurred since 19 December 2022 must of course be paid and the applicant did not argue otherwise.⁴ This, and the debt arising before 20 December 2020, are independent of the certificate and the debt to be paid under the certificate.

[20] I therefore grant the order in the first paragraph above.

J MOORCROFT
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG

Electronically submitted

⁴ See section 10 of the Council's debt collection and credit control policy quoted in the answering affidavit.

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **27 MARCH 2023**.

COUNSEL FOR THE APPLICANT:	M RODRIGUES
INSTRUCTED BY:	KGT ATTORNEYS
COUNSEL FOR THE RESPONDENTS:	F MUTAMWA
INSTRUCTED BY:	MADHLOPA & THENGA INC
DATE OF THE HEARING:	24 MARCH 2023
DATE OF JUDGMENT:	27 MARCH 2023