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**REPUBLIC OF SOUTH AFRICA
SOUTH GAUTENG HIGH COURT, JOHANNESBURG**

CASE NO: 41754 /2012

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED.

11/03/2013

In the matter between:

Wastie: Michelle

Applicant

and

McConnahie: Adam Charles

First Respondent

Faurie Nell Inc

Second Respondent

JUDGMENT

Mia AJ:

[1] The applicant brought an application to interdict the second respondent from paying out the proceeds of the sale of the property Erf [...], Parkhurst situated at No [...], [...] Street, Parkhurst, Johannesburg (the property) to the first respondent. The applicant is a major female photographer currently in Johannesburg. The first respondent is a major male photographer also based in Johannesburg. The second respondent is a firm of attorneys with its place of business in Dunkeld West, Johannesburg. The second respondent is the firm of attorneys attending to the

registration and transfer of the property situated in 14h street, Parkhurst. The applicant claims half of the proceeds of the sale of the property as her share of a universal partnership which she stated existed between the parties. The purpose of the application is to ensure that the half portion of the proceeds of the sale is secured until the outcome of the action relating to the universal partnership is determined. The first respondent opposed the application. The second respondent abides the decision of the Court.

[2] The parties were involved in a relationship since approximately 2005. There are differently versions of whether this relationship was interrupted or continuous. During this period the parties engaged in joint projects. They invested in properties, renovated them and hoped to sell the properties at a profit. At least one of the properties, namely the Gleneagles property, on the respondent's version yielded a profit and the proceeds were shared. The parties also commenced a business venture in the field of photography known as Flamingo Photography. The business relationship ended when the personal relationship between the parties ended and the applicant moved to Cape Town to start afresh. The applicant relies on various email correspondence exchanged during this period to demonstrate that the first respondent is still indebted to her upon dissolution of the universal partnership.

[3] The first respondent denies that the applicant was the registered co-owner of the property. He does however concede that the applicant assisted the contractor with the management of the renovation. The first respondent denies that any monies are due to the applicant as a result of the universal partnership and stated in his opposing affidavit that he undertook to assist the applicant after she moved to Cape Town because "after being together for so long, I felt I could assist her." The first respondent also stated that he gave the applicant R377, 538.00 in total after their relationship terminated without any obligation to do so. The first respondent indicated in his opposing affidavit that he undertook to assist the applicant in the event the property was rebonded. The property was not rebonded and was sold at a price which yielded a profit. The first respondent now denies that the applicant is entitled to receive any monies from the proceeds of the sale of the property.

[4] The requisites for an interim interdict are (a) a right which though prima facie established is open to some doubt; (b) a well -grounded apprehension of an irreparable injury; and (c) the absence of an ordinary remedy. In exercising this discretion the Court is required to weigh, inter alia, the prejudice to the applicant if the interdict is withheld against the prejudice to the respondent if it were granted.

[5] On the papers on the respondent's version there was a "long " relationship and the parties entered business ventures together. The first respondent initially agreed to assist the applicant with her costs in relocating to Cape Town and then changed his mind in about October 2012 when he declared that he could no longer do so. The first respondent stated that the funds were his and he required same to pay creditors. Whether the basis for offering the assistance was the long relationship the parties shared, the business ventures joint and individual or some other basis is not clear on the papers as there appears to be a dispute in this regard.

[6] It appears that the applicant is concerned that the first respondent would not be in a position to satisfy her claim if the action was successful. The first respondent denies the claim and claims the funds as his own. The prejudice to the applicant if there are no funds to satisfy her claim is obvious. If the interdict is not granted and the applicant was successful she would be prejudiced if the funds due to her were used by the first respondent. The first respondent on the other hand had not raised any prejudice to himself if the interdict were granted. He makes a vague reference to creditors but does not deal with these claims or any prejudice to himself satisfactorily. He attached various receipts for purchases of materials to cover the renovation of the property but did not deal with who the creditors were and what amounts are due to these creditors. If the interdict is granted and the first respondent was successful in the action the monies would be paid out to him with interest. In the circumstances the applicant has demonstrated a balance of convenience in her favour. Accordingly I am of the view that an interdict should be granted restraining the second respondent from paying out a portion of the proceeds namely R307 000.00 and not to make payment pending the finalisation of the action instituted under case number 41754/2012 in the South Gauteng Provincial Division of the High Court. In view of there being no opposition from the second respondent it is not appropriate to make any costs order against the second respondent.

[7] In view of the above the following order is granted:

1. The second respondent is interdicted and restrained from paying out R307 000.00 of the proceeds of the sale of the property Erf [...], Parkhurst Johannesburg to the first respondent or any other person or institution nominated to receive such funds by the first respondent.
2. The orders in paragraph 1 above are to operate as an interim order only, pending finalisation and the decision in the action instituted by the applicant against the first respondent under the same case number.
3. The first respondent is ordered to pay the costs of application.

S Mia
Acting Judge of the South
Gauteng High Court, JHB

Counsel for the applicant: Adv. G Beytel

Instructed by: JL Van Der Walt Attorneys

Counsel for the first respondent: Adv. A Wilcox

Instructed by: Steve Merchak Attorneys