

REPUBLIC OF SOUTH AFRICA



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

CASE NO. 2014/10561

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

DATE

SIGNATURE

In the matter between:

DOUCAS, CALLIA

Applicant

And

MAYNE, PATRICK DOUGLAS

Respondent

JUDGMENT

NOCHUMSOHN AJ

1. This is an application for an Order:

- 1.1. Declaring the respondent's cancellation of the sale agreement concluded between the applicant and the respondent in respect of the Remaining Extent of Erf 33, Linksfield North to be invalid;

- 1.2. Directing the respondent to take all steps necessary to effect transfer of the aforesaid property to the applicant;
 - 1.3. Directing the sheriff of the court to take all steps necessary to enforce the terms of such Order, including the signature of all and any documents necessary to give effect to the transfer of the property by the respondent to the applicant.
2. It is common cause between the parties that:
 - 2.1. on 26 June 2011, at Linksfield the applicant and respondent concluded a written sale of land agreement in terms of which the applicant agreed to purchase from the respondent, who agreed to sell to the applicant, the property comprising the Remaining Extent of Erf 33, Linksfield North, at an agreed purchase consideration of some R3 280 000.00;
 - 2.2. The Agreement of Sale provided for:
 - 2.2.1. the payment of a deposit of R680 000.00 with the balance of the purchase price to be paid against registration of transfer and to be secured by banker's guarantees;

- 2.2.2. The granting of a loan to the applicant in the amount of R2 600 000.00, against the security of a first mortgage bond to be passed over the property, which loan was to be granted within a period of thirty days from the date of sale (*vide paragraph 3*);
- 2.2.3. The said R2 600 000.00 to be paid against transfer, secured by guarantees and delivered by no later than thirty days after the bond had been granted (*vide paragraph 2.2*);
- 2.2.4. The purchaser having been supplied "*with a copy of SG Plan No. 12331/1997 attached thereto and had been made aware that the occupants of the property on Portion 1 of Erf 33 were vested with a registered right of way through the driveway, as indicated on the site plan to allow access to Portion 1 of Erf 33*";
- 2.2.5. Transfer to be effected within a reasonable time after the purchaser had complied with the terms of clause 2 but not later than the date in clause 2.2 (*vide paragraph 6*);

2.3. An Addendum to the Agreement was concluded between the parties upon 31 March 2012, annexed to the Founding Affidavit as Annexure "FA4". As its terms are vital to this judgment, I paraphrase its material content, which provided:

2.3.1. The respondent owned Erf 33 Linksfield North, measuring 4,956 as reflected on SG Diagram 12331/1997;

2.3.2. The respondent had subdivided Erf 33 into Portion 1 of Erf 33 and the Remaining Extent of Erf 33;

2.3.3. The respondent had sold Portion 1 of Erf 33 to one Rikki Dworcan ("Dworcan") on 15 December 2006 and transfer in respect thereof was registered upon 18 October 2007;

2.3.4. Portion 1 of Erf 33 was transferred to Dworcan subject to a right of way servitude in the title condition that *"the property hereby transferred is entitled to a servitude of right of way over the Remaining Extent of Erf 33 as*

shown by the figure ABCDEA on SG Diagram on 12332/1997";

2.3.5. At the time of sale of Portion 1 of Erf 33 to Dworcan it was agreed in an Addendum dated 15 December 2006 and an Addendum dated 25 March 2007 between the respondent and Dworcan that the transfer of Portion 1 of Erf 33 be effected in terms of Diagram 12331/1997 and the aforesaid Right of Way Servitude shown on Diagram 12332/1997, **notwithstanding that the aforesaid right of way is incorrect** (my emphasis);

2.3.6. The correct right of way servitude for the driveway is a 9 metre width driveway on the west side of the Remaining Extent of Erf 33 up to the boundary of the existing flat and thereafter the driveway is 4.5 metres wide;

2.3.7. It was further agreed between the respondent and Dworcan that the correct Right of Way Servitude Diagram

would be obtained and would be registered against their respective title deeds;

2.3.8. This was not done by the respondent and Dworcan at the time and **THE PARTIES** (*my emphasis*) wished to rectify the situation;

2.3.9. The respondent, in January 2012, with the approval of Dworcan and the applicant, instructed Mr Mario Di Sicco, a town-planner, to attend to the amendment and correct positioning of the right of way servitude for the driveway and to instruct a land-surveyor to attend to and obtain an amended SG Diagram for registration against the title deeds;

2.3.10. As between the respondent and applicant, the respondent would bear all of the costs in connection with the matter, the new Servitude Diagram, the cancellation of the registered Right of Way Servitude, the registration

of the new servitude and the rectification of the title deeds of Portion 1 of Erf 33 as well as the Remaining Extent of Erf 33;

- 2.3.11. The transfer of the Remaining Extent of Erf 33 from the respondent to the applicant would, "**as far as may be possible,**" (my emphasis) be registered simultaneously with the cancellation of the existing servitude and registration of the new servitude over the Remaining Extent of Erf 33, in favour of Portion 1 of Erf 33;

- 2.3.12. The parties recorded that the transfer of the property from the respondent to the applicant would be delayed pending the correction of the servitude set out. It was recorded further that the Agreement continued to remain of full force and effect and that the full purchase price for the property had been secured, all transfer costs paid, the transfer duty paid and all documents signed. The parties

agreed to co-operate in signing any documents that may be required to be signed in relation to the correction of the servitude;

2.3.13. Unless all the terms and conditions had been complied with, the Addendum would be subject to review upon 31 July 2012, whereafter should both parties be in agreement, the time frame would be reviewed.

3. The servitude of right of way over the property sold, *qua* servient tenement, in favour of the contiguous property, Portion 1 of Erf 33 Linksfield North, *qua* dominant tenement, was reflected on an incorrect portion of the Remaining Extent, when, *de facto*, upon the ground, the actual right of way was being exercised upon the western boundary. Hence, the need arose to correct such error, this being the manifest purpose of the aforesaid Addendum.
4. No fault can be imputed to the applicant for the aforesaid error, as same was clearly not of his making. It can only be for this reason that the respondent undertook to bear all the costs of fixing the servitude error, in the Addendum.

5. I agree with the submissions made by Mr Pye on behalf of the applicant that the Addendum stands as an agreement, separate and divisible from the main agreement of sale. I do not share the view bargained for by Mr West, for the respondent, in argument, to the effect that it is immaterial as to whether or not the Addendum is divisible from the main Agreement. There is nothing to suggest that the rights and obligations which flow from the Addendum inextricably connect to the rights and obligations flowing from the main Agreement. I therefore find that same is divisible and capable of separation.

6. The sole link between the Addendum and the main Agreement is that the Addendum speaks to the correction of the error in relation to the creation of the aforesaid Servitude of Right of Way. It was envisaged between the parties and recorded as such in paragraph number 5 of the Addendum that *"the transfer of the property from the seller to the purchaser shall be delayed pending the correction of the servitude as set out above."* The prior paragraph, paragraph number 4 reads *"the transfer of Remaining Extent of Erf 33 from the seller to the purchaser, shall, **AS FAR AS MAY BE POSSIBLE**, be registered simultaneously with the cancellation of the existing servitude and registration of*

the new servitude over the Remaining Extent of Erf 33 in favour of Portion 1 of Erf 33."

7. The latter provisions of the Addendum put paid to Mr West's submissions in argument for the respondent, that barring the Addendum, the transfer was to be registered within thirty days beyond the date of bond grant, in accordance with paragraph 6 as read with paragraph 2.2 of the main agreement. The fact remains that the Addendum superseded the latter terms and irrespective as to whether or not the Addendum lapsed upon 31 July 2014, by that time, the time period provided for in paragraph 6 as read with 2.2 of the main agreement had long since passed and had been effectively sterilised by operation of the Addendum.
8. Mr West submitted in argument that the Addendum is of no import and does not serve to create any rights or obligations, suggesting that same merely serves as a recordal of the events which had transpired. I find that there is no scope or application for such argument. Whilst the Addendum has been inelegantly drafted, its meaning and intention is crystal clear. Read as a whole, rather

than piece-meal, bit by bit, the overall import of the Addendum is such that the respondent would attend to the correction of the errors in relation to the servitude and that transfer would be passed to the applicant, simultaneously with the correction of such errors.

9. Notwithstanding the inelegant draftsmanship and contrary to Mr West's submissions, I find that the obligation created by the Addendum is for the correction of the errors relating to the servitude and that such obligations, are the obligations of the respondent. Conversely, the reciprocal rights embodied in the Addendum, are the rights to receive transfer of the property, simultaneously with the correction of the errors relating to the servitude. Such rights vest in the applicant. This was the sole purpose of the Addendum. Mr Pye correctly referred me to the judgment of **Ekurhuleni Metropolitan Municipality v The Germiston Metropolitan Retirement Fund 2010 (2) SA 498 (SCA) at paragraph 13,** which reads:

"The principle that a provision in a contract must be interpreted not only in the context of the contract as a whole, but also to give it a

*commercially sensible meaning, is now clear. It is the principle upon which Bekker N.O. was decided and more recently, **Masstores (Pty) Ltd v Murray & Roberts (Pty) Ltd** was based on the same logic. The principle requires a court to construe a contract in context, within the factual matrix in which the parties operated."*

10. I thus reject out of hand the submissions bargained for by Mr West to the effect that the Addendum does not embody any rights or obligations.
11. Thus, the right to have insisted upon the simultaneous transfer and correction of the error, was clearly the right of the applicant as he alone would bear the prejudice of transfer without the simultaneous correction. Therefore such right was the applicant's right to waive, as he has done.
12. It is clear from the papers that the correction of the aforesaid servitudes has to date not taken place. The reason why transfer has not been passed to the applicant in all of this time, arises out of the applicant's refusal to have taken transfer, without the implementation of the terms of the Addendum, as was the applicant's clear right.

13. It is equally clear that the implementation of the terms of the Addendum is fraught with conveyancing complexities none of which can be imputed to the applicant. Whilst I am not called upon to make any findings to the enforceability of the Addendum, my observations are that the onus rests fairly and squarely upon the respondent, contractually, to implement its terms, in one manner or another.
14. Whilst the applicant had steadfastly refused to take transfer, without the implementation of the terms of the Addendum, to which the applicant was entitled, with a view to now circumventing the difficulties posed by its implementation, the applicant now seeks an order for the transfer, without such implementation.
15. As I have already found that the Addendum is divisible and separable from the main Agreement, there is no reason to deny the applicant the relief that he seeks, purely by virtue of the difficulties posed by the implementation of the Addendum.

16. Whilst I am not called upon by the applicant to make any findings *apropos* the enforceability of the Addendum, it appears that the main thrust of the respondent's defence arises out of the so-called non-fulfilment of its terms, by the time period bargained for therein, being 31 July 2012. The respondent hangs its hat on paragraph 6 of the Addendum which reads: "*Unless all the terms and conditions have been complied with, this Addendum will be subject to review on the 31 July 2012. Thereafter should both parties be in agreement, the time frame will be reviewed.*"
17. The main theme of the defence, set out in the Answering Affidavit, as read with the letters written by the respondent's attorneys seems to be that the obligations under the Addendum had come to an end upon 31 July 2012, given that its terms had not been implemented by that date.
18. As I am not called upon in the application to make any findings *vis-a-vis* the enforceability of the Addendum, it is not necessary for me to draw any further conclusions in relation thereto.

19. Given the difficulties posed in correcting the servitude within the specified time frame, and the reluctance and failure of the parties to have mutually extended such time frame, the applicant is vested with the right to waive the requirement set out in the Addendum for the simultaneous registration of transfer together with the cancellation of the incorrect servitude and re-registration of a correct servitude.
20. The applicant makes it clear in the founding papers, that in making such waiver, he merely waives the requirement of the simultaneous registration, but does not walk away from his rights embodied within the Addendum.
21. In Annexure **"FA8"** at page 43 of the Founding Affidavit, the respondent's attorneys, Gishen Gilchrist Inc, addressed a letter to the applicant dated 4 November 2013, the relevant portions of which read as follows:
- "3. *Notwithstanding diligent attempts by our client to procure an amended SG Diagram, same has not been possible and on the advice of our client's town-planner and land surveyor a converse application was proposed to our client whereby the existing right of way servitude be*

terminated and replaced by a right of way servitude extending along the western boundary together with the imposition of three additional servitudes over the entire property, one of which encumbers the property in question and two encumber the adjoining property.

4. *This is a material deviation from the terms of the Addendum which our client is not prepared to accept or proceed with as, apart from the substantial additional costs to register and construct the servitudes in question, to so proceed would necessitate the consent of the owner and mortgagee of the adjoining property, who to date is not a party to the agreement and who it is doubtful would lend such consent."*
5. *The terms of the Addendum apart from being incapable of fulfilment were also to have been reviewed on the 31 July 2012 and that both parties be in agreement the time frame will be reviewed.*
6. *In overview and having regard to the approximate period of delay that now exceeds two years it is not feasible to proceed in this matter insofar as:*

6.1 *Despite the provisions of paragraph 5 of the Addendum, it is an existing fact that the Investec mortgage grant is suspensive upon a correction of the subdivision of the entire property (a factor neither addressed nor covered in either the Agreement of Sale or the Addendum) and also in total disregard of the fact that both existing properties that constitute the subdivision are presently properly mortgaged and constituted under a Regulation 38 Consent by the Municipality to the existing subdivision;*

6.2 *Our client is not prepared to extend or amend the terms of the Addendum any further nor indeed incur any further extensive costs in this matter.*

In the premises our client is only prepared to proceed with this sale on the basis of the terms of the existing Agreement of Sale which provide that you procure an unconditional mortgage loan or secure the agreed

purchase price. Should you fail to so confirm your intention to proceed within ten days of receipt hereof, our client will accept that you do not want to purchase the property as viewed by you and presented in the existing Agreement of Sale and whereupon the Agreement will be lawfully and properly cancelled and of no further force or effect whatsoever."

22. For the reasons already stated, the content of the above letter, particularly numbered paragraphs 3 and 4, fall to be rejected in their entirety, as the respondent was liable to correct servitude errors, at its cost, in terms of the Addendum, and in so doing, it, at that stage, ought to have considered that the owner of Portion 1 of Erf 33 Linksfield North may have been required to consent to the correction of the errors, as would the mortgagee.

23. Whilst the Addendum confirms that the purchase price has been secured, mention is made at paragraph 6.1 of the aforesaid Annexure **"FA8"** to the founding papers that the bond grantor, Investec, have granted the mortgage suspensive upon a correction of the subdivision of the entire property.

24. This complaint is remedied, given the response by the applicant in **"FA9"** at page 45 of the Founding Affidavit, in the letter written by the applicant's attorney, Shaie Zindel, dated 12 November 2013, paragraph 8 of which reads *"that having been said my client is committed to the transaction and hereby demands transfer. My client is prepared to accept transfer with the new driveway and garden servitudes referred to in previous correspondence being registered and the cancellation of the old driveway servitude. My client's bankers have indicated that they will honour their bond grant on this basis and in the event they do not, **my client has sufficient cash available to defray the purchase price in full.**"*

25. On this point, Mr Pye correctly sought to amend the Notice of Motion at paragraph number 2 thereof, so as to read:

"That the respondent be directed to take all steps necessary to effect transfer of the aforesaid property to the applicant, against payment by the applicant to the respondent of the full purchase consideration of R3 280 000.00."

26. Such amendment serves to protect the respondent against non-payment and alleviates the obligation of the respondent to pass transfer without full banker's guarantees for the whole purchase price, expressed to be payable, as against registration of transfer.

27. In "**FA10**" at page 48 of the Founding Affidavit, the respondent's attorneys, Gishen Gilchrist Inc respond by way of letter on 27 November 2013, the last three paragraphs of which read:

"Despite concerted effort by our client, the procurement of the necessary diagram is not possible without revisiting the subdivision of the property, which escalation our client is not prepared to do, both from a financial and practical point of view.

Furthermore, paragraph 6 of the Addendum clearly places a time frame for the completion of the exercise, reviewable on consensus of both parties. Our client is not prepared to extend the date any further and accordingly instructed us to serve our correspondence dated the 4 November 2013 on your client.

In the premises and with the absence of our client's consent to extend the terms of the Addendum, the Agreement of Sale is of no further force or effect and consequently legally cancelled, for which purposes this correspondence serves as due and formal notice of cancellation."

28. I have already found that the agreement is separate and divisible from the Addendum, as both documents are capable of standing on their own. I have already found that the applicant was well able to waive his right to insist upon the simultaneous transfer of the property into his name, together with the registration of cancellation of the incorrect servitude and registration of the corrected position.
29. There is no basis for the respondent to have cancelled the Agreement of Sale, as it did do in Annexure **"FA10"**. I have already found that the obligations in the Addendum were those of the respondent and the applicant cannot be visited with the problems encountered by the respondent, in its words *"from both, financial and practical point of view"*.

30. The issue left for me to consider, which is not on the papers, and not placed in counsel's Heads of Argument, but raised by me during the argument, is whether or not it is competent to order the transfer of the Remaining Extent of Erf 33 Linksfield North from the respondent to the applicant, knowing that the respondent's existing title thereto is somewhat tainted and/or defective, by virtue of the creation of an erroneous Servitude, which does not accord with the *de facto* position upon the ground.
31. In deciding whether or not to order the transfer sought by the applicant, consideration must be given to the rights of third parties, who may be significantly affected thereby. In this regard, one must place under the spotlight, the rights of Dworcan, in his capacity as the owner of Portion 1 of Erf 33 Linksfield North. In **Pretorius v Slabbert 2000 (4) SA 935 SCA at 939 E** it was clear that consideration must be given to the rights of third parties who may be affected.
32. Dworcan was not joined as a co-respondent in the application and neither did he support the application by way of any evidence. There are no allegations

made in the founding papers to the effect that Dworcan supports the relief sought and there is no Confirmatory Affidavit from Dworcan. The Founding Affidavit is silent as to whether or not it is the applicant's intention to respect the rights of Dworcan in seeing through the correction of the errors in relation to the servitude of right of way.

33. There is very little said in the papers about Dworcan, or, how the parties intend to uphold and respect his rights. There is a bleak reference to the rights of Dworcan in paragraph 10.9 of the Answering Affidavit at page 62 of the papers, where the respondent says *"I was transparent in relation to the aforesaid as I was intent on protecting the rights of the owner of Erf 33 Portion 1 in respect of the servitude and wanted no misunderstanding in this regard with the applicant"*. It is pertinent to note that at paragraph 12 of the Applicant's Replying Affidavit, at page 132 of the papers, which serves to reply to the paragraph in question, there is no comment from the applicant in relation to the protection of the rights of Dworcan.

34. I am thus left somewhat concerned about the position of Dworcan, as the affidavits do not speak to his rights, or the manner in which they are to be protected, were the relief to be granted. It is of concern to me that, as things stand, Dworcan may be vested with rights as against the respondent, for the correction of the position in relation to such servitudes, in accordance with the agreements that Dworcan entered into with the respondent, and not the applicant.
35. The question that arises is how Dworcan would enforce any rights that may have arisen between him and the respondent, contractually, as against the applicant, who was not a party to any such agreements with Dworcan, in the event of an Order being made for the transfer of the Remaining Extent. One could not leave Dworcan out in the cold, without a remedy, if the applicant were to refuse him a right of way along the western boundary, coupled with a refusal to correct the errors in the servitude in the future.
36. As the Affidavits are silent on this point, one must look to the Addendum itself at page 36 of the papers, where it is recorded at paragraph number 1(c) and

1(d) that the respondent had sold Portion 1 of Erf 33 to Rikky Dworcan on 15 December 2006 and transfer was registered on 18 October 2007.

37. It is recorded further at paragraph 1(d) of the Addendum that at the time of sale of Portion 1 of Erf 33 to Rikky Dworcan, it was agreed in an Addendum dated 15 December 2006 and Addendum dated 25 March 2007 (which are not placed before the court) between the respondent and Rikky Dworcan that the transfer of Portion 1 of Erf 33 be effected in terms of SG Diagram 12331/1997 and the aforesaid Right of Way Servitude shown on SG Diagram 12332/1997 **notwithstanding that the aforesaid Servitude of Right of Way is incorrect.** (my emphasis).

38. It thus appears that Dworcan acquired transfer of Portion 1 of Erf 33, with knowledge of the error or so called defect in title, in relation to the incorrect registration of a servitude. Since the outbreak of these proceedings, the applicant has likewise been aware of the position in relation to Dworcan as well as the rights which vest in him, for the correction of such errors.

39. As Dworcan acquired transfer of Portion 1, with knowledge of the defect in title, his position in real terms, is hardly worsened by the transfer of the Remaining Extent to the applicant, if so ordered.
40. Such position would only be worsened, were the applicant to refuse to co-operate in the taking of the necessary remedial steps, for which reason, the Order which I make below shall be couched in a form akin to a rule nisi, calling upon Dworcan to show cause as to why such order should not be confirmed.
41. Thus, in circumstances where I have already found that the cancellation by the respondent of the Agreement of Sale is invalid in law, on a balance of convenience, for both applicant and respondent, I ought to grant the Order transferring the Remaining Extent of Erf 33 by the respondent to the applicant, against payment of the purchase price. Were I to refrain from granting such relief, for fear of the position of Dworcan, I would be creating a practical nightmare for both the applicant, who is entitled to receive transfer of the property purchased, as well as for the respondent, who is entitled to receive the

full purchase consideration against registration of transfer thereof to the applicant.

42. I have weighed all of these aspects up in the balance and have concluded that it would give rise to an absurdity to refuse transfer, purely as a result of the failure to have drawn Dworcan into the proceedings, in circumstances where Dworcan can be drawn in, in a form akin to a Rule Nisi Order. I raised this thought with counsel, during argument and my thinking in this regard was supported by Mr Pye, for the applicant.
43. Finally, the last point which I am compelled to consider, being the very first point raised by the respondent in the Answering Affidavit is the issue of non-joinder of The Standard Bank, in its capacity as the existing bondholder over the Remaining Extent of Erf 33. The respondent submits that the property is bonded in favour of The Standard Bank and I am therefore precluded from ordering the transfer, as the property forms the subject matter of the bank's security, secured under a registered mortgage bond, and, to order the transfer would violate the rights of the bank.

44. The applicant's response to these allegations, is to be found at paragraphs 9 and 10 of the Replying Affidavit to be found at page 130 of the papers, where the applicant correctly avers that the bondholder has no direct interest in the relief sought and the mortgagee is always entitled to prevent transfer of an immovable property, prior to the satisfaction of the debt owed to it, with such right existing, as a matter of law.
45. I agree fully with this submission made by the applicant and agree with the further submission made in the same paragraph to the effect that the mortgagee does not have to be joined in an application to enforce a sale agreement in order for it to enjoy such protection.
46. Be that as it may, the applicant has correctly conceded in the Replying Affidavit, as aforesaid, that the mortgagee is always entitled to prevent transfer of an immovable property prior to the satisfaction of the debt owed to it.
47. Accordingly, and for the sake of clarity, the terms of my Order below specifically disempowers the sheriff from signing any consents to cancellation on behalf of The Standard Bank, and, same is subject in all respects to the respondent

obtaining a signed consent to cancellation from The Standard Bank, as is the case, in the normal course of events.

I accordingly make an Order in the following terms:

1. Directing that the respondent's cancellation of the sale, concluded between the applicant and the respondent in respect of the Remaining Extent of Erf 33, Linksfield North, be declared to be invalid.
2. That the respondent be directed to take all steps necessary to effect transfer of the aforesaid property to the applicant against payment by the applicant to the respondent of the full purchase consideration for the property in the amount of R3 280 00.00.
3. That the sheriff of the above Honourable Court be authorised to take all steps necessary to enforce the terms of this Order, to which end, the sheriff of the above Honourable Court is authorised to sign the Power of Attorney to Transfer in the name, place and stead of the respondent, together with all other transfer duty declarations

and related conveyancing documentation, in the name, place and stead of the respondent, should the respondent fail to so sign all of such documentation within seven days of being called upon to so sign. Such documentation as may be signed by the sheriff, in accordance with this Order, does not include the signing of a Consent to Cancellation in respect of any existing mortgage bond registered by the respondent over the property in favour of any mortgagee.

4. Within fourteen days from the date of the handing down of this Order, the Notice of Motion, Founding Affidavit, annexures, Answering Affidavit, annexures, Replying Affidavit, annexures thereto, and this Judgment and Court Order shall all be served upon Rikki Dworcan, who shall, if so desired by him, file an Affidavit within twenty court days from the date of service of the aforesaid documents upon him, setting out the basis of his opposition to the relief granted herein, should he elect to oppose such relief. In such event, the applicant and the respondent shall each be entitled

to file affidavits in response to any such affidavit as may be filed by Dworcan, within the ensuing twenty court days thereafter.

Dworcan, shall in turn be vested with the right to file Replying Affidavits to any such affidavits as may be filed on the part of the applicant or respondent, within the ensuing fifteen court days, whereafter the application may be re-enrolled for hearing by any one of the parties, including Dworcan.

5. The Order embodied in paragraphs 2 and 3 above shall operate as an interim order, pending the filing by Dworcan of an Affidavit resisting the relief so granted. Failing the filing by Dworcan of such affidavit within twenty court days from the date of service upon him of the aforesaid documents, such interim order shall be confirmed, to which end, the applicant shall be required to re-enrol the application upon the unopposed motion roll in this court, for an order confirming the said interim rule.

6. The respondent is directed to pay the costs of the application, taxed upon the tariff as between party and party, excluding the costs of service of the papers upon Dworcan or any future costs as may be incurred in relation to any future proceedings as may be brought by Dworcan, as envisaged by the terms of this Order.

NOCHUMSOHN, G
ACTING JUDGE OF THE HIGH COURT

On behalf of the Applicant:	Advocate WB Pye
Instructed by:	Shaie Zindel Attorneys
On behalf of the Respondent:	Advocate H West
Instructed by:	Gishen Gilchrist Inc
Date of Hearing:	29 October 2014
Date of Judgment:	31 October 2014