REPUBLIC OF SOUTH AFRICA

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

(1) Reportable: No
(2) Of Interest to other judges: Yes
(3) REVISED.

Case number: 2015/19426

In the matter between:

Daag Investments CC	**First Applicant**
Dale Shafer	**Second Applicant**
Steven Karp	**Third Applicant**

and

Sheriff of Roodepoort	**First Respondent**
Mike Trenchard	**Second Respondent**
Trebelin Investments (Pty) Ltd	**Third Respondent**
Anthony John Joseph	**Fourth Respondent**
Krishna Periasamy Naicker	**Fifth Respondent**

Coram: VALLY J

Heard: 16 May 2016

Reasons sought: 19 May 2016

Delivered: 14 October 2016

Summary: Opposed-Unwarranted Resistance to application-Costs

Order

The application is dismissed with costs.

Judgement

Vally J

Introduction

1 In this matter, after reading the papers filed on record and after extensive robust discourse with counsel for the parties, I issued an order *ex* tempore. The order reads:

1.1 That the sale in execution of one Anthony Brian Lansdell's 25% member's interests in Daag Investments CC, which sale took place by way of Sheriff's auction by the Sheriff of Roodepoort on 2 April 2015 under case number 33101/2013 is set aside;

1.2 That the attachment of one Anthony Brian Lansdell's 25 % member's interest in Daag Investments CC is set aside.

2 That the following costs order is made:-

2.1 The Second and Third Respondents are liable for the costs jointly and severally on a scale as between party and party.

2. The second and third respondents have asked for reasons for my order. These are they.

3. The first applicant, Daag Investments CC, (Daag) was established in 2009. The second applicant (Dale Shafer), the fourth respondent (Anthony Joseph), the fifth respondent (Krishna Naicker) and one Anthony Brian Lansdell (Anthony Lansdell) each held a 25% interest in Daag. The business of Daag concerned investments in commercial immovable property for purposes of deriving rental income. Lansdell was entrusted with taking care of the day-to-day management affairs of Daag. He engaged in unlawful activities to the detriment of Daag. He was eventually arrested, charged and convicted on numerous counts of fraud, theft and contraventions in terms of the Value Added Tax Act 89 of 1991. He has received a custodial sentence for his misdeeds.

4. Prior to his arrest and conviction Lansdell partook in various private commercial transactions and as a result had become indebted to the third respondent, Trebelin Investments (Pty) Ltd (Trebelin Investments), for a substantial sum of money. On 5 March 2014, Trebelin Investments secured a money judgment of R1m against Lansdell from this Court. It had also secured other money judgments against Lansdell from this Court. However, relying on the judgment of 5 March Trebelin Investments issued a writ of execution against the 25% interest held by Lansdell in Daag. A sale in execution was conducted by the first respondent, the Sheriff of Roodepoort, on 2 April 2015 for purposes of

selling Lansdell's 25% interest in Daag. The second respondent, Mike Trenchard, purchased the interest for R100.00.

5. This application, which is referred to as a counter-application in the papers because it was a counter-application to an application brought by the second respondent for the liquidation of Daag, will nevertheless be referred to as "the application" in this judgment. It concerns the setting aside of the sale in execution as well as the writ of execution. The notice of motion reads:

> "1. Ordering and directing the Sheriff of Roodepoort ("the Sheriff") to comply with section 34A read with section 34 of the Close Corporations Act 69 of 1984 (the Act) and in particular directing:
>
> 1.1 in terms of section 34(2)(a) of the Act that the Sheriff offers the 25% interest of judgment debtor, Anthony Brian Lansdell in Daag Investments CC (the members interest), which was put on auction on 2 April 2015 and in terms of which the judgment creditor accepted on auction the value of R100 for the member's interest, to the first applicant and the existing members of the first applicant pursuant to their pre-emptive right to acquire the member's interest;
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> 1.2 that in terms of section 34(2)(b) of the Act the first applicant and its members are provided a period of 28 days within which to exercise their right/rights to be substituted as the purchaser/s of the of the member's interest at the price of R100 and on the terms as set out in the written statement issued by the Sheriff in terms of section 34(2)(a).
>
> 2 Alternatively to paragraph 1 above:
>
> 2.1 Reviewing and setting aside the sale in execution of one Anthony Brian Lansdell's 25% member's interest in Daag Investments CC, which sale took place by way of Sheriff's auction by the Sheriff of Roodepoort on 2 April 2015;
>
> 2.2 Reviewing and setting aside the Registrar's writ of attachment dated 20 January 2014 ("the writ") in respect to [sic] the attachment of Anthony Brian Lansdell's 25% member's interest in Daag Investments CC, a copy of which is attached hereto marked "D12";

3 Ordering the second and third respondents to pay the costs of this application on an attorney and client scale."

6. The second and third respondents were from the very beginning alerted to the reliance on the provisions of s 34(2)(a) of the Act by the applicants for the relief they sought. Despite the clear provisions of this section of the Act, these respondents deemed it necessary to oppose the application and filed a detailed answering affidavit. The opposition was vigorous. This caused the applicants to incur costs.

7. The second respondent was adamant that the sale in execution was valid and that his purchase of the 25% interest of Lansdell in Daag was unassailable. He states in his answering affidavit that he has validly "*purchased the member's interest in execution and … that* (he is) *now the rightful owner thereof*". So strongly does he feel about this that he repeats the claim a few times in his answering affidavit. He also claimed, more than once, that the writ of execution against 25% interest of Lansdell was validly issued. In this regard he averred: "*I deny that the sale in execution was invalid for non-compliance with the Close Corporations Act. I will provide the Court with the details and events surrounding me purchasing the members' interest at the sale in execution. Full legal argument will be addressed on this point at the time of hearing this matter.*"

8. As a result of the opposition, the applicants were required to file a replying affidavit

9. The application rests on the provisions of ss 34 and 34A of the Act. These provisions are without complication and their meaning is crystal clear. Their application to the facts of this case would have resulted in the Sheriff offering to sell Lansdell's 25% interest to Daag or to the other members of Daag. This would have occurred after the sale in execution where he would have furnished a written statement to Daag giving it the particulars of the second respondent, the purchase price as well as the time and manner of payment agreed to between himself and the second respondent. Thereafter he would have given the other members of Daag 28 days to match the price and terms of the sale agreed to between himself and the second respondent. Should they have matched the price and terms of the sale the Sheriff would have been required to sell the Lansdell's interest to them and not to the second respondent. It is common cause that this was not done.

10. Despite the clear meaning of the provisions of ss 34 and 34A of the Act the second respondent chose to oppose the application and then much later he conceded that the process followed by the first respondent, the Sheriff, was, *inter alia*, not fully compliant with the provisions of s 34A read with s 34 of the Act, as a result of which the sale in execution had to be set aside. This concession came very late in the day. What it reveals though is that the second respondent had no basis, *ab initio*, to oppose the

application. His opposition was unnecessary and costly for the applicants. He should bear the consequences of this by having to pay their costs.

11. It is on the basis of these reasons that the order in [1] above was issued.

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VALLY J

Counsel for Applicants:	
Instructed by	Karen Shafer Attorneys
Counsel for 1st and 2nd Respondents:	Adv Steyn
Instructed by	Jay Mothobi Inc
Date of hearing	16 May 2016
Date of order	16 May 2016
Reasons sought on:	19 May 2016
Reasons furnished on:	14 October 2016