IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NUMBER: 24535/2017

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED. ✓

2/5/2018 ....
DATE SIGNATURE

In the matter between: -

ELIT (SA) (PTY) LTD	Applicant
and	
STANLEY CHESTER PHEKANI N.O.	First Respondent
STANLEY CHESTER PHEKANI	Second Respondent
THE UNLAWFUL OCCUPIERS OF NO 2 WOODSIDE AVENUE, SANDHURST, SANDTON	Third Respondent
THE CITY OF JOHANNESBURG	Fourth Respondent

JUDGMENT

GRAVES AJ

1. By notice of motion issued on 7 July 2017 the applicant seeks an order evicting the respondents from an immovable property which it owns. In the founding affidavit the property is defined as Portion 5 of Erf 217, Sandhurst, Ext 3 Township, held by the applicant under Deed of Transfer No. T50278/1993 ('the property"). It is situated at 2 Woodside Avenue, Sandhurst, Sandton. The applicant's ownership of the property is not in dispute on the papers before me. [1]

2. The second respondent is cited in his personal capacity and in his capacity as the trustee of the Phex Family Trust ("the Trust"). The second respondent and members of his family reside in a dwelling on the property in circumstances explained below. Where applicable I will refer to the first and second respondents collectively as "the respondents" and I will refer to the first respondent, in his representative capacity as "the Trust". The City of Johannesburg, the fourth respondent was cited pursuant to section 4(7) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998 (the PIE Act").[2]

3. The respondents are presently in occupation of the property, which occupation the applicant styles as unlawful. The applicant seeks by the *rei vindicatio* to assert its rights of ownership against the respondents. An owner

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[1] An answering affidavit was delivered on behalf of the first and second respondents. No replying affidavit was filed.

[2] The application was duly served on the fourth respondent, as was a notice in terms of section 4(2) of the PIE Act.

need do no more than allege and prove that he is the owner and that the defendant is holding the property, which casts an onus on the opposing party to allege and establish any right to continue to hold against the owner. Adding the tag "unlawful", without more, does not alter this situation. However, if the owner concedes that the opposing party did have a right to hold which has been terminated, then the owner must prove termination.[3]

4. The history of the occupation by the respondents is not without complexity. A thread that runs through the narrative is a desire on the part of the Trust to acquire the property. This was sought to be achieved through diverse agreements, which included terms granting successive rights of tenancy to the respondents. The second respondent says that he lives in the dwelling on the property with his wife and his three children aged 17, 14 and 2.

5. On 27 October 2013 the applicant, the first respondent (representing the Trust) and the shareholder of the applicant, a company called Elit SPRL registered in the Democratic Republic of South Africa, concluded a written Memorandum of Understanding ("the first MOU"). The first MOU recorded that the Trust would purchase from the shareholder the 100% shareholding ("the shares") in the applicant for a purchase consideration of R9 million, to be formalised through the signature of a share sale agreement. The only asset of the applicant was recorded as the property and the Trust was granted the right to take occupation of the property on 1 November 2013. The Trust was required to settle the purchase price in instalments, R1 million on 15

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[3] **Chetty v Naidoo** 1974 (3) SA 13 (A) at 20C-H, **Airport Company South Africa Ltd v Airport Bookshops (Pty) Ltd t/a Exclusive Books** 2017 (3) SA 128 (SCA) at para 25.

November 2013, R1 million on 27 December 2013 and R7 million on 31 January 2013.

6. The first MOU recorded that occupation would be in terms of a lease agreement to be concluded, which would provide for the Trust to lease the premises to its trustees on the provision that it timeously made payment of rates, taxes, water and electricity charges each month, payable within 7 days of receipt of invoice. In the event of the Trust failing to make full payment of R1 million by 15 November 2014 it was required immediately to vacate the property unless otherwise agreed in writing. In the event of the Trust making the first payment but failing to make subsequent payments, it would be required to make payment of rental in the sum of R45 000,00 per month from date of occupation and during its occupation of the premises as well as the rates, taxes, water and electricity charges. In the event of the Trust not acquiring the shares as a result of failing to make payment of the full purchase price the lease agreement would continue to operate on a month-to-month basis, terminable by the applicant on 30 days' written notice to the trust. The respondents admitted the conclusion of the first MOU.

7. It is common cause on the papers that these amounts towards the purchase price of the shares were not paid on the specified dates and that the only amount paid by the Trust was the sum of R500 000, paid during June or July 2014. The Trust placed in dispute that this non-payment was a breach of the agreement. The applicant says that as a consequence of the breach the Trust's tenancy operated as a monthly tenancy. Applicant's counsel, Mr Bitter, submitted that the terms of the first MOU created a tenancy in favour of the

Trust, on default of certain payment obligations of the Trust and notwithstanding that occupancy was expressed to be in terms of a lease agreement to be concluded. I agree. This flows from the Trust being granted occupation with effect from 1 November 2013 and from the express terms recording the terms of occupancy in the event of non-compliance with the payment obligations.

8. The applicant says that on or around 7 June 2014 (by which stage the month-to-month tenancy had come into operation) an oral agreement was concluded between the applicant and the Trust ("the oral agreement") in terms of which the sum of R500 000 held in Trust in respect of the payment received from the Trust towards the purchase price of the shares would be transferred to the applicant and set off against the arrears of rental and related charges owing in terms of the oral tenancy. The respondents say that whilst there was a meeting in June 2014 in respect of the purchase of the property and the payment made, there was no agreement that this sum was to be set off against arrear rentals. They maintain that this payment and other payments were made for the sole purpose of acquiring the shares.

9. On 20 September 2014 the applicant, the Trust and the applicant's shareholder entered into a further Memorandum of Understanding ("the second MOU"). The second MOU provided for the Trust to purchase the shareholding in the applicant for USD1 million, payable as to R6 million on 20 September 2014 and the balance to be paid within two months (said in this document to be before 1 December 2014). In the event of the Trust failing to make full payment of USD1 million by 1 December 2014 it was required

immediately to vacate the property unless otherwise agreed in writing. It was further provided that with effect from the date on which occupation was given (1 November 2013) the Trust was required to make payment of rental in the sum of R45 000 per month whilst in occupation of the property as well as rates, taxes, water and electricity charges, payable within seven days from receipt of invoice. Finally, in the event of the Trust not acquiring the shares as a result of failing to make payment of the full purchase price then the lease would continue to operate on a month-to-month basis, terminable on 30 days' written notice. The respondents admitted signature of the second MOU but said that there was a conflict between this agreement and the first MOU and that the second MOU is null and void. They maintain that the first MOU remains of full force and effect.

10. Contemporaneously with signature of the second MOU the applicant, the Trust and the shareholder of the applicant executed a Sale of Shares Agreement recording the Trust's purchase of 100% of the shares and claims held by Elit SPRL in the applicant for the sum of USD1 million. The payment terms were as recorded in the second MOU as were the arrangements relating to the monthly tenancy in the event of the full purchase price not being received. In their answering affidavit the respondents contend that the first MOU is the agreement applicable to the sale of shares and they refer to further payments made, totalling R2,5 million. They however say that these payments were made in respect of the property (and not the shares). They however do not deny signature of the Sale of Shares Agreement.

11. On 8 October 2014 the applicant's attorneys wrote to the Trust recording breaches of the Sale of Shares Agreement through non-payment of the balance of R6 million, calling for this breach to be remedied within 7 business days failing which the agreement would immediately and without further notice be cancelled by the applicant. Nevertheless, it appears that this agreement was not cancelled at this time. On 24 February 2015 Erasmus Attorneys wrote to the applicant confirming that a deposit of R3 600 000 had been paid into its trust account by Nazifar Distributors (Pty) Ltd/ the Trust, advising that the balance of the purchase price of R6 900 000 was to be derived from the sale of another immovable property and confirming instructions received to attend to the transfer of the property. The applicant says that throughout the intervening period the respondents continued to occupy the property and that no payments towards rental were made save for the sum of R500 000 dealt with in terms of the first oral agreement. The respondents do not deny remaining in occupation nor do they deny having failed to pay rental or services for the monthly tenancy as recorded in the first and second MOU's and in the Sale of Shares Agreement. They maintain that there was no obligation to pay rental because the applicant never sent an invoice to them, as required. Even if this were to be so in respect of the services, it could not have been so regarding the monthly rental which was stipulated and quantified in the first MOU, which the respondents say remains in force until the present time.

12. On 1 February 2016 the applicant wrote to the Trust referring to the term in the second MOU that on default of full payment of the sum of $1 million on 1 December 2014, the Trust would be required immediately to vacate the

property. The applicant accordingly gave the respondents 30 days' written notice to vacate the property. This demand was never enforced. On 10 February 2016 the Trust executed a written Acknowledgement of Debt in favour of the applicant in which it acknowledged its indebtedness to the applicant for the sum of R1 256 458,18 in respect of rental and municipal costs incurred. The Trust undertook to repay the admitted amount in two equal instalments of R628 229,09 payable on 21 February and 31 March 2016. The Trust admits execution of the Acknowledgement of Debt but says that this document is "not applicable" because it conflicts with other agreements, particularly with the first MOU. It is further said that pursuant to the acknowledgement of debt, R400 000 was paid on 4 July 2016, R200 000 on 21 July 2016, R150 000 on 25 August 2015 and R150 000 on 16 October 2015. The respondent says that these payments were made towards purchase of the property in terms of the first MOU.

13. In its founding papers the applicant indicated that it would, prior to the application for eviction in terms of section 4(1) of the PIE Act approached the Court for authorisation to deliver a notice in terms of section 4(1) of that Act. Such an application was indeed brought by the applicant which resulted in an order of Court being granted on 4 August 2017 authorising the form and contents of the draft notice in terms of section 4(2) of the PIE Act and directing this noticed to be served on the respondents' attorneys of record in accordance with Rule 4(1) of the Uniform Rules of Court. There was considerable debate before me concerning the form of the notice and the authorisation granted by the Court, on 4 August 2017. I now turn to this.

14. Respondents' counsel raised a series of *in limine* points. The first point related to non-joinder. Counsel said that the applicant in these proceedings should have jointed, as a party, the shareholder which was a party to the first and second MOU's as also a party to the Sale of Shares Agreement. This contention is not well-founded. A review of the first and second MOU's reveals that the shareholder was a party to those agreements because of the recordal of the intention of the shareholder and the Trust to conclude a sale of shares agreement. The Sale of Shares Agreement was the commercial document that is the memorial of the sale of shares. The present application is one for eviction of the first, second and third (unnamed) respondents and has nothing to do either with the sale of shares. The basis on which the respondents were entitled to occupy the premises on a month-to-month basis is set out in the first and second MOU's. The applicant is the owner of the property and there was no need in these proceedings for the shareholder to be joined. In **Rosebank Mall (Pty) Ltd v Cradock Heights (Pty) Ltd**[4] a full Court of this Division considered the principles applicable to joinder, distinguishing between the case of necessary joinder (where failing to join a party amounts to non-joinder) and joinder as a matter of convenience (where joinder of a party is permissible and would not give rise to a complaint of misjoinder)[5]. The Full Court authoritatively held that the mere feature that a person is a party to a multi-party agreement does not necessarily have the consequence that such a person has a direct and substantial interest of a

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[4] 2004 (2) SA 353 (W).

[5] At para 11.

legal (in contradistinction to financial) nature in litigation between or amongst other parties to the agreement. Whether this is so depends on an analysis of the rights and obligations created by the multi-party agreement. Where a right sought to be enforced vests in parties jointly or an obligation sought to be enforced rests on a party jointly, joinder is generally necessary.[6] I respectfully agree. It is clear that any right asserted by the applicant in the instant case as owner, vests solely in the applicant. Even if this issue is approached from the perspective that the various written agreements provide that on default of payment obligations owed to the shareholder, obligations to pay rental and services are triggered, this would not require the joinder of the shareholder. On the Trust's own version, it never made payment of the full purchase price for the shares, which non-payment triggered the monthly tenancy. It is also conceded that no payments have been made in respect of rental or other services.

15. The second *in limine* contention raised by respondents' counsel related to whether the applicant complied with section 4 of the PIE Act. It was argued that the order seeking authorisation was granted *ex parte* and in contravention of the *audi alteram partem* rule, thus keeping this procedure from the other respondents. The process contemplated by section 4(2) of the PIE Act requires written and effective notice of the proceedings to be served on the unlawful occupier at least 14 days before the hearing of the application for eviction of an unlawful occupier. Section 4(5) sets out the detail of what this notice must contain. The judgment of the Supreme Court of Appeal in **Cape**

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[6] At para 14.

Killarney Property Investments (Pty) Ltd vs Mahamba[7] accepts that the practicalities of such eviction applications will result in the application for date of hearing of the merits will only being determined after the papers have been filed, which means that the notice in terms of section 4(2) of the PIE Act will inevitably follow service of the notice of motion. Further, section 4 does not indicate how the Court's directions regarding the section 4(2) notice are to be obtained. However, Brand JA noted that a common-sense approach dictates that the applicant can approach the Court for directions by way of an *ex parte* application.[8] Section 4 of the PIE Act requires the Court to exercise judicial oversight of the entire process of eviction, including the contents of the notice of the proceedings contemplated in section 4(2). If the respondent in such proceedings believes that the notice is defective, then in the usual manner concerning *ex parte* applications, she or he may raise this when the matter is heard. There is no breach of the *audi alteram partem* rule in the *ex parte* procedure.[9]

16. The next point *in limine* raised concerns the staff members residing on the property.[10] Ms Mouton for the respondents referenced the definition of unlawful occupier" in the PIE Act, being a person who occupies land without

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[7] 2001 (4) SA 1222 (SCA)

[8] See at paras 14 and 15.

[9] It is worth noting that section 10.9 of the Practice Manual of the Gauteng Local Division makes express provision for the applicant to bring an *ex parte* interlocutory application authorising a section 4(2) notice and for directions on service. The practice manual was only circulated for use during February 2018 and is consequently not applicable.

[10] I was told by respondents' counsel at the commencement of the hearing that the notice of intention to oppose wrongly reflected that the third respondent was also represented by the respondents' attorneys.

the express or tacit consent of the owner or person in charge, or without any other right to occupy such land (with certain exclusions not presently applicable). Counsel submitted the PIE Act required that staff members of the Trust or of the second respondent must receive separate notice in terms of section 4(2) before they could be evicted. In support of this contention counsel referred to the applicant's founding affidavit which referred to certain staff members- effectively, so it was contended, the cited third respondent- who, counsel contended, were required to receive separate notice. The first obstacle that this submission faces is that the respondents in their answering affidavit deny the paragraph in the founding affidavit which states that a domestic employee and a gardener are resident on the property. That puts an end to this *in limine* contention. But in any event, the contention is without legal foundation. The PIE Act has been held to afford unlawful occupiers some procedural and substantive protection against eviction from land.[11] As with all legislation, a common-sense approach to the PIE Act must be followed. I find nothing in the provisions of the Act to suggest that each individual person in occupation of a single dwelling situated is required to be given a notice in terms of section 4(2). Were this to be so, then the application of the Act would be rendered practically impossible, as demonstrated by the following. A single unlawful occupier, having received notice, could thereafter invite other persons onto the property, who would (on the counsel's contention) fall within the definition of unlawful occupiers. These individuals, once served with the (second) section 4(2) notice, could

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[11] See **Ndlovu v Ncgobo** 2003 (1) SA 113 (SCA) at para 1.

repeat the process with other individuals. This revolving door process could continue *ad infinitem*, resulting in the complete emasculation of the Act. I decline to uphold such an impractical interpretation. Staff members derive their right to be on a property through their employer and they do not constitute a separate category of unlawful occupiers. It has long been the practice to seek an eviction order against individual respondents and to include in the prayer an order seeking eviction of all persons claiming occupation through those respondents.[12]

17. I now turn to the third and main *in limine* argument advanced on behalf of the respondents concerned the form and contents of the notice which was approved by this Court on 4 August 2017. The irregularities complained about were said to be that:

    17.1. The notice served on the respondents as authorised by this court on 4 August 2017 did not contain the date and time on which the eviction application was to be heard, as required by section 4(5)(b) of the PIE Act.

    17.2. The notice setting the evicting application down for hearing on 16 April 2018 did not have attached to it a notice a fresh notice in terms of section 4(2) containing the hearing date, namely 16 April 2018.

    17.3. The notice authorised by the Court did not contain sufficient details of the basis on which eviction would be sought.

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[12] Compare: **United Apostolic Faith Church v Boksburg Christian Academy** 2011 (3) SA 156 (GSJ).

18. The first point was demonstrated to be without foundation when Mr Bitter, counsel for the applicant handed up an original return of service by the Sheriff attaching that the notice in terms of section 4(2) of the PIE Act and expressly stating that the eviction application would be heard on 4 September 2017. This notice was served on the respondents' attorneys of record at 10h00 on 21 August 2017. Ms Mouton quite correctly accepted that this notice served complied with the requirements of section 4(5)(b) of the PIE Act.

19. The second leg of the respondents' contention was that, notwithstanding the date contained in the original section 4(2) notice served on the respondents' attorneys, a new notice, authorised by the Court and containing the details contained in section 4(5) was required for the hearing before me during the week of 18 April 2018. Once again, I can find no textual basis for such an interpretation of section 4 of the PIE Act. Section 4(2) importantly requires <u>effective notice</u> to be given in writing to the unlawful occupier and to the municipality. Adopting the common-sense approach of Brand JA in the **Cape Killarney** judgment I can find no reason why in a case such as the instant one, if the eviction application does not proceed on the date set out in the original section 4(2) notice, a new notice in identical terms – but with a different date inserted – must be served on the unlawful occupier. Different considerations would almost certainly apply if the grounds relied on by the applicant for eviction (see section 4(5)(c)) were to change materially between service of the first notice and the hearing of the eviction application. But this

does not apply here.[13] Effective notice as required by section 4(2) must contain the essential elements set out in section 4(5) which are:

(a) a statement that proceedings are being instituted in terms of sub-section 4(1) for an order for the eviction of the unlawful occupier;

(b) an indication on what date and what time the Court will hear the proceedings;

(c) set out the grounds for the proposed eviction; and

(d) a statement that the unlawful occupier is entitled to appear before the Court and defend the case and, where necessary, has the right to apply for legal aid.

All of these elements are contained in the notice served upon the respondents' attorney on 21 August 2017. When the matter was re-enrolled for hearing for 16 April 2018, the notice of set down indicating this date was served on the respondents' attorneys on 17 January 2018. In the present case (which is all that I need to consider) there can be no good reason why the effective written notice required by section 4(2) of the PIE Act cannot be contained in two separate documents, the first containing all of the requirements in terms of section 4(5), including the date, and the second document, being the notice of set down, advising the respondents of the new

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[13] Section 10.9 of the Practice Manual of the Gauteng Local Division expressly states that where an eviction application is postponed in open court on a day of which notice in terms of section 4(2) has been given, and if the postponement is to a specific date, it will not be necessary to serve another notice in terms of section 4(2) in respect of the latter date. I do not know how the postponement in the instant case came about, but this is moot because the new Practise Manual is not applicable to this matter.

date for hearing of the eviction application. I find that in the circumstances effective notice as required by section 4(2) of the PIE Act was given to the respondents.

20. In support of submissions on the third leg of this argument it was contended that section 4(5)(c) of the PIE Act had not been complied with in the applicant's notice. What the notice stated was that the applicant applied for eviction of the respondents on the grounds that the applicant is the owner of the property and that the respondents occupy the property without its consent and against its will, rendering the occupation unlawful. It was submitted that there was no allegation in the notice that the Sale of Shares Agreement or any of the lease agreements had been cancelled. I cannot agree that these details were required to be included in the applicant's section 4(2) notice. The reason is that the detailed evidence required to justify an application for eviction will be set out in the founding affidavit. The notice in terms of section 4(2) does not serve as a substitute for the evidence that will be found in the founding affidavit. To my mind, what is required by section 4(5)(c) is that there must be reference to the title of the applicant to the property (whether as owner or person in charge)[14] and the reason for the application for eviction being brought. The details contained in the notice in question in question are somewhat terse. However, what is conveyed to the respondents is that the applicant is the owner of the property, that the respondents occupy the property without its consent and that the applicant requires this situation to cease, hence its application for eviction.

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[14] See the respective definitions in section 1 of the PIE Act.

21. The second respondent is no unsophisticate; he holds a senior employment position and has concluded a series of commercial agreements aimed at the acquisition of the shares in Elit SPRL for sums ranging between R9 million and some R10 500 000. He says that he has made a number of payments totalling some R2.5 million towards purchase of the shares, and he is plainly a man of means. I readily accept that with unsophisticated occupiers, the imperative of effective notice imposed by section 4(2) may require greater detail to be contained in a notice in terms of section 4(2). However, I find that this is not such a situation, and I hold that the details contained in the applicant's notice, albeit terse, were sufficient. The respondents have at all times been represented by attorneys and it is apparent from their answering affidavit that they fully understood the issues that arose for determination and dealt with these issues in their answering affidavit.

22. This brings me to the merits of the eviction application. Respondents' counsel contended that there were material disputes of act which precluded the grant of relief on motion. In truth, such disputes that do exist are largely disputes as to the legal effect of the various agreements entered into. For the most part, the respondents' contentions as to the import and effect of the two MOU's and the Sale of Shares Agreement lack legal foundation. Although the applicability of the Acknowledgement of Debt was challenged, the respondents did not deny concluding this document. It clearly reflects an admitted indebtedness on the part of the Trust to the applicant for the sum of R1 256 458,18 in respect of rental and municipal costs due up to March 2018. This unmistakeably constitutes a recognition, and indeed an admission by the respondents that a tenancy had existed and that the Trust was required to pay

rental and municipal charges. I do not need to make any express findings on the details of the agreement regarding the payment of rental and services, nor do I need to deal with the rights to the amounts paid by the respondents which they say were part of the purchase price.

23. The respondents claimed in answering papers that a number of meetings were held at which agreement was reached that the payments totalling 2.5 million were made towards the purchase price of R9 million. If this is accepted on the basis that the first MOU remains extant, then I cannot comprehend on what grounds the Trust can contend, as it does, that there has been no breach of this MOU and that it is entitled to receive transfer of the property.[15]

24. As I have noted earlier the respondents admit that the applicant is the owner of the property and that the respondents are in occupation.[16] Contrary to the respondents' denials, I am satisfied that a monthly tenancy existed between the applicant and the Trust since November 2013. The respondents' version is that the first MOU remained applicable. If this is accepted, then this document created a monthly tenancy on default of payment of the purchase price for the shareholding in the applicant. It is specifically recorded in this document that in the event of the Trust not acquiring the shares as a result of failure to make payment of the full purchase price, then there would be a lease agreement operating on a month-to-month basis, terminable by the

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[15] On the basis contended for by the Trust it would not receive transfer of the property, but rather transfer of the shares in the applicant.

[16] The exact basis on which the second respondent occupies the property the property is unclear, but nothing turns on this. The second respondent's answer does not distinguish between himself and the Trust, and the second respondent's family occupy through him or through the Trust.

applicant on 30 days' written notice to the Trust to vacate. This provision is repeated in the second MOU, which logically would seem to have replaced the first MOU. The Sale of Shares Agreement also repeats the terms concerning a monthly tenancy in the event of default. I am satisfied that even on the respondents' version a monthly tenancy was created once the first MOU was breached. I need not resolve the question as to which of the three written agreements prevails. Once the Trust failed to make payment of the purchase price for the shares- whichever agreement prevails, or if none prevails- the only legal basis for continued occupation is a monthly tenancy. [17]

25. I find that such formal disputes as are raised by the respondents are bald and uncreditworthy denials and are further implausible, far-fetched and clearly untenable and can safely be rejected on the papers.[18]

26. In a letter from the applicant's attorneys addressed to the Trust on 5 April 2017 payment of the admitted debt recorded in the Acknowledgement of Debt was demanded. The letter further gave 30 days' notice of cancellation of any lease or sublease and required the respondents to vacate the property on or before 7 May 2017. It is common cause that the respondents did not so vacate and I find that the continued tenancy continued on a month-to-month basis, terminable on reasonable notice.

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[17] Compare **Airports Company South Africa Ltd v Airports Bookshops (Pty) Ltd t/a Exclusive** Books 2017 (3) SA 128 (SCA).

[18] See **Media 24 Books (Pty) Ltd v Oxford University Press Southern Africa (Pty) Ltd** 2017 (2) SA 1 (SCA) at 18A-B.

27. I have considered the provisions of section 4(7) and (8), having regard to the papers before me. I am satisfied that the second respondent is able to make provision for alternative accommodation for his wife and children and that the involvement of the City of Johannesburg is not required. I find that no valid defence has been raised by the respondents to the eviction application and I am further satisfied that 30 calendar days' notice following the grant of this judgment is a just and equitable date for the respondents to vacate the property. In this regard I take note of the extended period that the second respondent and his family have resided on the property, without paying rental or municipal charges.

28. I make the following order:

28.1. The first and second respondents and all persons claiming occupation through these parties are required to vacate the property described as remaining extent of Portion 5 of Erf 217, Sandhurst, Ext 3 Township, situated at 2 Woodside Avenue, Sandhurst, Sandton within 30 calendar days following the grant of this order.

28.2. In the event that the first and second respondents and all persons claiming occupation through them do not vacate this property by the end of the 30-day period the Sheriff of the High Court is authorised to take whatever steps as may be necessary to evict these parties from the property.

28.3. The first and second respondents are directed to pay the costs of this application.

Graves AJ

Acting Judge of the High Court of South Africa

Appearances:

For Applicant: J J Bittter

Instructed by: Thomson Wilkes

For First and Second Respondents: C Mouton

Instructed by: Michael Krawitz & Co

Date of hearing: 18 April 2018

Date of judgment: 2 MAY 2018