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NOT REPORTABLE

IN THE SOUTH GAUTENG HIGH COURT OF SOUTH AFRICA

JOHANNESBURG

CASE NO: 21149/2011

DATE: 2011-08-10

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In the matter between

R M

APPLICANT

and

N M

RESPONDENT

Interdict – requirements – husband and wife co-owners of matrimonial home – divorce proceedings contemplated – wife (applicant) seeking interdict against husband to protect her rights as co-owner pendent lite – failure to show a clear or prima facie right or reasonable apprehension of harm – application dismissed.

J U D G M E N T

VAN OOSTEN, J: The applicant and the respondent were married to each other on 19 October 1996, out of community of property, excluding the accrual system. In terms of the antenuptual contract the respondent undertook "in consideration of the said intended marriage" to "give and grant and settle upon" the applicant "an undivided one half share in the immovable property owned by the respondent being erf 205 Bryanston and situate at 15 Ashley Avenue Bryanston" (the property). The marriage relationship between the parties has irretrievably broken down. The respondent left the property, which until then had been the matrimonial home of the parties, in January 2011. No divorce proceedings have as yet been instituted by either party. During divorce settlement negotiations the
10 applicant's attorney sought an undertaking by the respondent "not to encumber the property in any manner or cause the property to be disposed of" pending the outcome of the proposed divorce action. The respondent through his attorney, refused to give the undertaking. The respondent's refusal, which the applicant describes as "point blank" and "unreasonable", the applicant states, instilled in her the suspicion that the respondent has no intention of honouring the terms of the antenuptual contract, which prompted her "as a last resort" to launch the present application, in which she seeks the following three interdicts against the respondent, *pendente lite*:

1. From alienating, mortgaging or encumbering the immovable property.
2. From interfering with the conducting by the applicant of her business from the property.
- 20 3. From causing third parties to attend at the property.

The respondent opposes the relief sought *inter alia* on the ground that the applicant has failed to satisfy the requirements necessary for the granting of an interdict.

The applicant has since moving onto the property some 17 months prior to the marriage, conducted her business known as Trade Marketing Link CC, from the property.

She has employed two staff members to assist her in the business. It is common cause between the parties that the applicant's undivided half share in the property has not been registered against the title deeds of the property. The respondent concedes and admits the applicant's entitlement to one half share in the property. The respondent states that he has never denied the applicant's entitlement and indeed, in this application, tenders payment to the applicant of half of the nett proceeds realised from the sale of the property.

The applicant, in order to succeed on the first interdict sought, must show *inter alia* a clear or *prima facie* right. In support hereof the applicant states the following.

- "7.1 My rights to a share of the property are enshrined in the antenuptual contract and will be claimed in divorce proceedings to be launched by either the respondent or myself shortly.
2. The contractual rights contained in the antenuptual contract have never been disputed by the respondent and comprise a clear right to protect same in circumstances where the terms of the antenuptual contract provide for a share in the property and not a share of the debts arising from the mortgage bond.
3. As a result of the respondent's conduct third parties dealing with the respondent being estate agents or unsuspecting buyers have no way of ascertaining from an inspection of the title deeds of the property that I have the right which I claim".

This, in my view, and as I read the papers, is not the right relied upon by the applicant for purposes of this application. The applicant, as correctly submitted by counsel for the respondent, seeks to extend her right to co-ownership to a right to security of tenure by way of an indefinite extension of the co-ownership arrangement, which would deprive the respondent of his right to terminate his ownership in the property and compel him to remain co-owner thereof against his will. It is clear that the applicant's right is that of a co-owner of the property. Absent a divorce settlement the property will have to be sold in order to give proper effect to the rights of the co-owners. The eventual sale of the property accordingly is unavoidable and is admitted on the papers.

The applicant has accordingly failed to show a clear or *prima facie* right relating to the first interdict sought. The application for the first interdict must therefore fail on this ground alone. But it does not end there. The applicant has moreover failed to show a reasonable apprehension of harm. The respondent, as I have indicated, admits the applicant's entitlement to one half share in the property. There is nothing in the conduct of the respondent referred to by the applicant in the papers before me, which would justify a reasonable apprehension of harm concerning the rights of the applicant. The applicant's reliance on a right to "possession" of the property for purposes of conducting a business is misplaced. She obviously has no right to hold the respondent at ransom on the basis of a

10 non-existing permanent right to conduct a business from the property. The respondent has tendered to pay to the applicant one half of the nett proceeds from the sale of the property which in all respects duly recognises the rights of both the respondent and the applicant in regard to the property. I am accordingly not satisfied that the applicant will suffer any harm should the property be sold.

This brings me to the second interdict. Nothing has been put forward by the applicant in support of the interdict she now seeks against the respondent. The application in regard to the second interdict must accordingly fail.

Finally, I turn to the third interdict. All that the applicant states in support of the interdict sought is the following.

20 "8.4 From the past conduct of the respondent in bringing lady friend(s) to the property it is apparent that he has no respect for my dignity and will continue his conduct unabated unless ordered to desist".

The allegations are vague and unsubstantiated. The respondent in reply hereto refers to one single incident when a lady friend, who had accompanied him while taking

the dogs for a walk in a nearby park, was allowed to use the toilet facilities at the property. This of course does not constitute unlawful conduct nor does it provide justification for the applicant's expressed fears that the respondent will "continue his conduct".

In the result the application is dismissed with costs.

COUNSEL FOR THE APPLICANT
COUNSEL FOR THE RESPONDENT

ADV (Ms) K GREEN
ADV (Ms) T EICHER