

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE , PORT ELIZABETH)**

CASE NO.: 1216/2009

In the matter between:

**CHRISTIAAN LOUIS NORTIER
GOLDBERG& DE VILLIERS INC**

**FIRST APPLICANT
SECOND APPLICANT**

and

LEONARD RANDALL

RESPONDENT

JUDGMENT

MBENENGE AJ:

[1] The judgment that I penned, delivered on 24 September 2009 in this matter, embodies an extensive narrative relative to the interdict being sought by the applicants against the respondent. The presentation of that narrative in my initial judgment renders it unnecessary for me to present it in this judgment. Apart from

defining the issues and setting out the parties' respective contentions anent thereto, I also pointed out that the matter of whether the applicants are entitled to an order effectively restraining the respondent from defaming, insulting and harassing the applicants and/or their employees is capable of being resolved on the papers, but did not pronounce thereon at that stage.

[2] One of the controversial pamphlets that is the subject of my initial judgment is annexure "M" to the applicants' founding papers. The relevant passages of the annexure are copiously referred to in the initial judgment. After finding that there was a material dispute of fact on the issue of whether the respondent authored and/or distributed the controversial pamphlet, I referred the application to the hearing of oral evidence for a determination of whether or not the applicant authored and distributed/ disseminated the pamphlet.

[3] The applicants did not themselves testify at the hearing of oral evidence. They were content to call a staff member of Ikamva Veritas Transcribing Services to merely testify and confirm the correctness of the transcript of the proceedings of 3 September 2009 during which the respondent stated, *inter alia*, as follows:

"And as a matter of fact, the Counsel for the Applicant states that this is my type of story, this is my style of writing and my style of the story, which is incorrect. And when he refers to a certain document on page 74, and I will repeat it. '*It was suggested that the ex-buyer put a bullet in the brain of*

the instigator', and its scratched out Nortier, '*But- dead men feel nothing- he should have every hair ripped out of his skull,*' *etcetera, etcetera, etcetera*. I am not going to go into the whole long story, but this does not come from me, **these are not my words, these, this suggestion, it comes from a person that I was speaking to**. They asked me with regard to this case. Now we're going back to this case, 15 years back and at some stage along the line, **this person asked me certain questions, I explained to him, this is the story and this is what he commented on. These were his words, they not in my words. In other words, what I'm saying is that this paragraph that was pointed out by the Applicants' Counsel, does not come directly from me. These are the words from another person...**"(emphasis supplied)

- [4] The respondent testified in pursuit of his opposition to the application, distancing himself from the authorship and distribution or dissemination of the controversial pamphlet. When asked who the person referred to in the quotation and to whom he claims to have spoken was, he said the person was a member of the Estate Agents Board. Of moment in this case is the respondent's testimony that he will bear a grudge against the first applicant for the unbecoming conduct meted out to him until he enters the grave. The respondent never secured for himself a pronouncement by any competent tribunal that any one of the applicants acted wrongly or unethically towards him. On the contrary , on the two occasions that complaints were lodged with the Law Society of the Cape of Good Hope concerning, *inter alia*, poor service, incompetence and unprofessional conduct on the part of the

first applicant, the first applicant was absolved from any misdemeanour and/or improper and/or unprofessional conduct.

- [5] The tone of the letters which, it is common cause, were penned by the respondents, is unsavoury in the extreme. More particularly, the letter written by the respondent to *Media 24* which eventually landed on the desk of the editor of the *Express* newspaper circulating in Port Elizabeth (quoted in paragraph [18] of the initial judgment) is defamatory of and concerning the applicants. It tarnishes the applicants' professional integrity. The statements made by the respondent to *Media 24* of and concerning the applicants have no foundation, and are devoid of merit. The Bill of Rights enshrined in the Constitution of this Country does not grant the respondent the right to state his views in the reckless and wanton manner he did of and concerning the applicants.

- [6] There is yet another pamphlet that must surely have been aimed at scandalising the applicants' name and reputation and that was dispatched at one of the offices of a Port Elizabeth Estate Agency, Remax, on 21 June 2006. The pamphlet implied that the first applicant was corrupt and had acted fraudulently in dealing with the transfer of the property purchased by the respondent in 1994. It stated that the first applicant had bribed estate agents and bank officials for work. None of those allegations had a basis.

- [7] What of the controversial pamphlet disseminated on 6 April 2009? I have noted that the font, style and layout of the pamphlet , annexure “M” , is similar to others from which the respondent does not distance himself. The tone and language of the documents is similar. Not only in his opposing affidavit, but even during his oral testimony before me did the respondent justify his conduct and evince a settled determination to stop at nothing in informing others of “*wrong*” and “*unethical*” treatment allegedly meted out to him by the applicants.
- [8] There is also annexure “O”, addressed to the Nelson Mandela Metropolitan Municipality for the attention of Mr Richards, the Municipality’s Manager. The document, which was received by Mr Richards, contains the same defamatory rhetoric and threats concerning the applicants.
- [9] I have also noted, with regret, the persistent conduct by the respondent of also engaging in a campaign that effectively lambasts Mr Justice Ludorf for alleged favouritism and improper conduct, which is utterly baseless.
- [10] Apart from the similarities and language style in the documents that form the subject of this application, the welter of detail contained therein could only have been from the respondent. I am therefore satisfied, on a preponderance of probabilities, that the respondent

authored and distributed the annexures which form the subject of this application, including annexure “M”. The respondent’s denial that he has had nothing to do with some of the annexures is rejected. That annexure “M” was authored by a member of the Estate Agents Board is a fiction of the respondent’s own imagination. I am also satisfied that the contents of the annexures are defamatory of and concerning the applicants and that some, especially annexure “M”, are sufficient to instil in the first applicant the fear that the immediate family members and children of the directors and employees of the applicants may be molested.

[11] The applicants have, in my view, established, with the requisite degree of proof, the requisites for the grant of the interdict they are seeking.

[12] In the result-

(a) the rule *nisi* granted by this Court on 7 May 2009 is hereby confirmed: and

(b) the costs of the application shall include those reserved on 3 September 2009.

S M MBENENGE

ACTING JUDGE OF THE HIGH COURT

Applicants' Counsel : Mr J D Huisamen

Applicants' Attorneys : Spilkin Inc
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PORT ELIZABETH

Ref: S P SPILKIN/M Human

Respondent : Mr Leonard Randall (in person)

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PORT ELIZABETH

Heard on : 7 April 2010

Delivered on : 9 April 2010