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**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable: YES/NO
Of Interest to other Judges: YES/NO
Circulate to Magistrates: YES/NO
Case number: 1065/2024

In the matter between:

KEDISALETSE GLORIA RAMOREI

Applicant

and

ERF 3[...] BLOEMFONTEIN (PTY) LTD

1st Respondent

(Reg. no.: 2017[...])

JOHANN COERTZEN INC

2nd Respondent

(Reg. no.: 2012[...])

CENTURY 21 BLOEMFONTEIN

3rd Respondent

THE REGISTRAR OF DEEDS: BLOEMFONTEIN

4th Respondent

CORAM: MOLITSOANE, J

HEARD ON: 23 FEBRUARY 2024

JUDGEMENT BY: MOLITSOANE, J

DELIVERED ON: 26 FEBRUARY 2024

[1] The applicant seeks an order on an urgent basis for the following relief:

- a) That the fourth respondent be prohibited from granting transfer of the property to the applicant pending the finalisation of an action to be instituted to cancel the sale agreement and intended transfer of the property into the applicant's names and that the purchase price in the amount of R570 000.00 (five hundred and seventy thousand rand) be repaid/restituted to the applicant;
- b) That this order should operate as an interim order with immediate effect pending the final adjudication of the action.

Only the first, second and third respondents oppose the application. For convenience, unless the context indicates, reference to respondents will be to the three opposing respondents.

[2] The facts of this case are largely common cause or are not seriously in dispute. Charmain du Preez (Charmain) is an estate agent employed by the third respondent. She is also entrusted with the responsibility of managing the rental of the applicant's investment property situated at Sereno complex, Shellyvale, Bloemfontein. She also undertook the marketing of the developer's property acting as the agent of the first respondent.

[3] Around 17 January 2024 the applicant approached Charmain to find her an investment property that she could rent out as student accommodation. It is apposite at this early stage to indicate that the applicant avers that Charmain made certain representations to her, however, the deponent on behalf of the respondents pleaded that he could not respond to what was discussed between the applicant and Charmain as he had no knowledge thereof. He took note of the allegations attributed to the discussion between the applicant and Charmain and thus did not dispute them.

[4] According to the applicant, Charmain discouraged her from purchasing property for student accommodation. She encouraged her to buy property sold by the first respondent, who is a developer. She also informed her that the property levies amount to approximately R800.00 per month per unit .She informed her

that the unit to be purchased could generate rental income of about R7 600.00 per month. She went to view the property after which she made an offer. At the time of submitting the offer, the applicant also addressed an email to Charmain in which she expressed the following sentiments:

“Mme

I am doing this against my better judgment. Reliance only on your word and commitment.”

Her offer was subsequently accepted. On 31 January 2024 she paid the whole purchase price after Charmain had provided her with an account. Two days thereafter the second respondent forwarded her transfer documents which she signed and returned.

[5] Thereafter in her communication with Charmain, she learnt that there was no luck in finding a tenant. She then formally in writing purported to cancel the agreement on the basis of “unforeseen and pressing financial circumstances.” The second respondent informed her that the deeds were to be lodged on 9 February 2024. It is common cause that such deeds were indeed lodged on the said date but were rejected on 14 February 2024 by the Deeds Office. The applicant then instructed her attorneys of record to seek cancellation of the agreement. Attempts were made to settle the matter to no avail hence this application was instituted on an urgent basis.

[6] The respondents contend that the applicant has failed to demonstrate that the application is urgent. According to the respondents, the urgency alleged by applicant is self-created as the applicant had been aware of the pending registration since 8 February 2024. The respondents contend that had the Deeds Office not rejected the documents on 14 February 2024 the property would already have been registered in the names of the applicant.

[7] Urgent applications are governed by Rule 6(12)(b). It provides as follows:

“In every affidavit or petition filed in support of any application under para(a) of this subrule, the applicant shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course.”

This Rule requires the applicant to establish two requirements, namely, the circumstances relating to urgency which have to be explicitly set out as well as the reasons why the applicants cannot be afforded substantial redress at a hearing in due course. According to the oft-quoted case of *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another(t/a Makin's Furniture Manufacturer's*¹ an applicant must make out a case in the founding affidavit to justify the particular extent from the norm, which is involved in the time and day for which the matter has been set down."

[8] The evidence reveals that on 9 February 2024 when the second respondent rejected the purported cancellation of the agreement, the applicant immediately sought the assistance of her current attorneys of record. The latter immediately dispatched a letter to the second respondent. There was exchange of correspondence in the following days between the second respondent and the applicant's attorneys of record. The exchange in correspondence culminated in the meeting of 20 February 2024. The applicant avers that the second respondent would also have attended the meeting but ultimately did not do so. In response to this allegation the second respondent does not put this allegation in dispute. In my view, from the moment the applicant became aware of the intended transfer she sought to seek an amicable resolution to the dispute without recourse to litigation. None of the respondents contend that they informed her that they were not amenable to amicable resolution of this dispute. As soon as she became aware that the matter could not be resolved, she took steps to bring this application.

[9] It is now settled² that an applicant in order to be successful for relief for an interim interdict, must prove the following four requirements:

- a) prima facie right, even if it is subject to some doubt;
- b) a reasonable apprehension of irreparable and imminent harm if an interdict is not granted and ultimate relief is eventually granted;
- c) the balance of convenience favours the granting of the interdict; and
- d) the absence of any satisfactory remedy,

¹ 1977(4) SA 135(W) at 135F.

² See *Setlogelo v Setlogelo* 1914 AD 221 at 227.

- [10] At the heart of this dispute are the allegations of misrepresentations attributed to the employee and/or agent of the first respondent. The case for the applicant is that as a result of the alleged misrepresentations she was induced by Charmain to purchase the unit which is the subject matter of this dispute. The version of the applicant amounts to the view that had she not been induced by material misrepresentation to purchase this property, she could not have bought it. The only evidence at this stage is the version of the applicant. The first respondent chose not to counter the allegations by giving a version of Charmain, though Charmain is its agent. The end result is that this application ought to be adjudicated on the undisputed version of the applicant and only for the purposes of this interim application. I am satisfied that the applicant has established *prima facie* right, though open to doubt, and that the respondents threaten such a right.
- [11] Much was also made about the issue of the alleged cancellation of the agreement by the applicant. This court cannot be drawn into this issue as it is an issue for the trial court.
- [12] The evidence reveal that the applicant and Charmain had some form of a business relationship. Charmain was entrusted with the rental of the applicant's property at Sereno. She approached Charmain to find her another investment property. Common sense would dictate that she would not settle for property which would set her back in her purse. She wanted an investment property. According to her, Charmain informed her that she had a long list of potential tenants. She could not have anticipated that there would be no tenants and that she would have to pay for the levies from her pocket. Should this eventuate, this would cause her irreparable harm as she cannot later recoup this unforeseen expense.
- [13] It is contended by the respondents that the balance of convenience does not favour the granting of the interdict. According to the respondents, the registration of the sectional title scheme and transfer of the properties are lodged as one transaction with the Deeds Office. The transfer of the sectional

title units is done by transferring all units at the same time into the names of the various purchasers. It is thus contended that holding one transfer will hold the entire process. If one were to weigh where the interests of justice lie, in a situation where a person, assuming she is correct, that she was induced into concluding an agreement she could not have entered into, but for the material misrepresentations, against the plight set out by the respondents, in my view the scales would tilt in favour of the person who was induced into an agreement by false misrepresentations. The prejudice she will suffer if the order is not granted, far outweigh the prejudice to either of the respondents. I am satisfied that the applicant has no other alternative remedy and is entitled to the relief sought.

- [14] It is trite that the issue of costs lies in the discretion of the court. In my view, despite the opposition of this application, the issues raised in this application would be ventilated in the action to be instituted. The proper order would thus be that the costs shall be costs in the trial. I accordingly order:

ORDER

1. That this application be heard as an urgent application and that the non-compliance with the time limits, forms and service be condoned as envisaged by Rule 6(12) of the Uniform Rules;
2. That a rule nisi be issued returnable on 28 March 2024 at 9h30 wherein the respondents are called upon to show cause, if any, why the following orders should not be made:
 - a) That the fourth respondent be prohibited from transferring, at the instance of the first respondent, a sectional title unit situated in the sectional title development known as SISULU HEIGHTS, STAND 2[...], DISTRICT BLOEMFONTEIN, EXT 148, and with physical address situated at 5[...] J[...] Avenue, Lourier Park, Bloemfontein, purchased by the applicant from the first respondent;

- b) That paragraph 2(a) above shall serve as an interim interdict with immediate effect pending the finalization of an action to be instituted by the applicant against the first respondent for confirmation of the cancellation of the sale agreement and intended transfer of the property into the applicant's name and for the repayment of the purchase price in the amount of R570 000(Five Hundred and Seventy Thousand Rand) to the applicant, which action must be instituted within 14 days from the date of the final adjudication of this application;
- c) That the costs of the application be costs in the main application.

P. MOLITSOANE, J

For the applicant:	Adv. CD Pienaar
Appearing with:	Adv. M Moeng
Instructed by:	LM Attorneys and Partners Bloemfontein
For the respondents:	Adv. Van der Sandt
Instructed by:	Coetzer Inc. Bloemfontein