

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 40056/2019

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

Date: 26 March 2021 E van der Schyff

In the matter between:

VOX TERRA (PTY) LTD

APPLICANT

and

DIRK JACOB LEGEMAAT

FIRST RESPONDENT

CORNELIUS LEGEMAAT

SECOND RESPONDENT

JOHANNES LEGEMAAT

THIRD RESPONDENT

JUDGMENT

Van der Schyff J

- [1] In the notice of motion to the application, which was initially brought as an urgent application, the applicant seeks an order restricting the respondents from conducting any farming activities directly or indirectly through any legal

entity or a third party on the immovable property identified in the notice of motion. During argument, the applicant's counsel indicated that the applicant only seeks an order preventing the respondents from conducting farming activities on the identified immovable properties. It must be stated from the onset that condonation is granted for the late filing of affidavits and the filing of supplementary affidavits.

[2] It is evident from the founding affidavit that the applicant, and a person not joined as a party in these proceedings, one Cornelis Legemaat Snr ('Legemaat Snr'), concluded a written lease agreement in terms of which the said Legemaat Snr leased the identified immovable properties from the applicant. Legemaat Snr and the applicant are embroiled in litigation regarding the alleged cancelation and subsequent relocation of the lease agreement. Legemaat Snr instituted two actions against the applicant. The applicant issued summons against Legemaat Snr under case number 90290/18. In the particulars of claim, the applicant pleaded that there was a tacit relocation of the lease agreement concluded between itself and Legemaat Snr. It applied for summary judgment against Legemaat Snr. An opposing affidavit deposed to by the first respondent in these proceedings, Dirk Legemaat, was filed. In this affidavit, the first respondent stated that Legemaat Snr, his father, is 'an elderly retired farmer' who does not participate actively in farming activities anymore.

[3] In the founding affidavit to this application, the applicant states the following:

- i. The first respondent does not reside on any portion of the immovable properties but is in charge of the farming operations, a diary, on the identified properties;
- ii. The second and third respondents reside on a portion of the identified property;
- iii. The identified properties comprise Portions 5, 7, and 9 of the Farm Kaalfontein 513, District Rayton, Gauteng, and the remaining extent of portion 20 of the Farm Rietfontein;

- iv. The respondents are unlawfully utilising the immovable property to conduct farming operations.

- [4] A substantial portion of the founding affidavit deals with the dispute between Legemaat Snr and the applicant. It deals with alleged factually incorrect statements contained in Legemaat Snr's particulars of claim. Because Legemaat Snr is not a party to these proceedings and cannot answer to the allegations contained in the founding affidavit relating to him directly, I cannot make any findings in this regard, save for acknowledging that a dispute exists.
- [5] The applicant disputes the right of the three respondents to conduct farming activities on the identified properties. The agreement concluded between itself and Legemaat Snr did not provide for any property to be subleased. In the result, the applicant submits that the respondents are conducting farming operations on the applicant's immovable properties without any right to do so. The applicant avers that the respondents allowed their employees to erect informal housing on the identified properties and contaminated the groundwater. The applicant contends that the balance of convenience is in its favour because the respondents are currently deriving an unlawful benefit from the occupation of, and farming activities conducted, on the properties.
- [6] In their answering affidavit, the respondents oppose the relief sought on the basis that various lease agreements were concluded between their father, Legemaat Snr, and the applicant. Legemaat Snr engaged in, amongst others, dairy farming, commercial grain farming, and meat production. Legemaat Snr allegedly decided to unbundle the various farming activities, and the three respondents were placed in control of the various legal entities established to conduct the farming activities. The income generated still accrues to Legemaat Snr, and the respondents are only reimbursed from the income derived from these entities. The legal entities are managed by the respondents but controlled by Legemaat Snr. The farming activities conducted on the applicant's properties constitute a family business. The legal entities created did not need to enter into sub-lease with Legemaat Snr since it still formed part of his farming

activities. The dairy farm, specifically, is conducted through an entity Orono Trading 61 a private company. The first respondent is the director of Orono Trading.

- [7] The respondents raised the non-joinder of Legemaat Snr as a point in *limine*. They contend that since Legemaat Snr derives an income from the farming activities conducted on the properties, he has a direct and substantial interest in the subject matter of the litigation and is a necessary party that should have been joined. They likewise contend that it is not the farming activities through which the applicant is deprived of its possession of the farm, but due to the lease agreement it concluded with Legemaat Snr.

- [8] In reply, the applicant again referred to the agreement it concluded with Legemaat Snr and contended that Legemaat Snr was prohibited from ceding or waiving in favour of any third party any portion of the leased properties. Legemaat Snr was expressly prohibited from subleasing any portion of the property, save for a particular dwelling. As a result, the legal entities created to facilitate the unbundling of Legemaat Snr's farming activities constitute independent legal entities with which the applicant has not concluded any lease agreement.

- [9] The applicant submitted that it was unnecessary to join Legemaat Snr to the proceedings because the first respondent stated in the affidavit opposing summary judgment under case number 90290/18 that Legemaat Snr does not actively participate in farming activities.

- [10] A further affidavit, deposed to by the first respondent, was filed shortly before the application was argued. It was stated that the keys to the properties were handed over to the farm manager during July 2020. The remaining livestock was removed from the farm on 24 December 2020. In the result, they contend, the relief sought became mainly academic.

- [11] The applicant denied the averment that the property was not occupied by the respondents since July 2020 and attached as proof a copy of its bank

statements indicating that the respondents paid the monthly rental for January 2021 on 2 January 2021. They also refer to an e-mail dated 19 October 2020 wherein it is, among other things, acknowledged that the house was returned to the applicant. They also deny that the employees of the respondents vacated the property.

- [12] In order to obtain interim relief, the applicant must, at the very least, establish that it has a *prima facie* right, that there is well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted, that the balance of convenience favours the grant of the interim interdict and that the applicant does not have another satisfactory remedy – *Reckitt & Colman SA (PTY) Ltd v SC Johnson & Son (SA) (Pty) Ltd* 1995 (1) SA 725 (T) 729I-730G. In order to obtain final relief, the applicant must prove a clear right, an injury actually committed or reasonably apprehended, and the lack of an adequate alternative remedy – *Setlogelo v Setlogelo* 1914 AD 221 at 227.
- [13] The applicant is the owner of the identified immovable properties. On the respondents own version, the said properties are utilised by legal entities managed by them. These legal entities are distinct *legal personae*. The applicant did not conclude any agreement with any legal entity, other than Legemaat Snr, allowing it to utilise the property. Although the respondents vacated the property, the applicant is entitled to have peace of mind that the respondents will not continue with their activities.
- [14] I was requested to determine liability for the reserved costs associated with the urgent court application. The dispute between the parties is not, in my view, a dispute that required the attention of the urgent court. In the result, the applicant is liable for the costs. As for the costs of the application heard by me, there is no reason to deviate from the principle that costs follow suit. The second respondent withdrew his opposition to the application and the notice to that effect was filed with the applicant's attorney of record on 23 November 2020. The second respondent will not be liable for any costs incurred past this date.

ORDER

In the result, the following order is granted:

1. The respondents and /or any other person / entity through the respondents are interdicted from conducting any farming activities (including specifically a dairy) on any or all of the following immovable properties:
 - 1.1. The Remaining Extent of Portion 20 of the Farm Rietfontein 366, Registration Division JR Province Gauteng, 296 3304 hectares in extent;
 - 1.2. Portion 5 of the Farm Kaalfontein 513, Registration Division JR Province Gauteng, 14,5711 hectares in extent;
 - 1.3. Portion 7 of the Farm Kaalfontein 513, Registration Division JR Province Gauteng, 42,8266 hectares in extent;
 - 1.4. Portion 9 of the Farm Kaalfontein 513, Registration Division JR Province Gauteng, 462, 1707 hectares in extent.
2. The first to third respondents, jointly and severally, one paying the others to be absolved, are to pay the costs of the application, incurred until 23 November 2020.
3. The first and third respondent, jointly and severally, one paying the others to be absolved, are to pay the costs of the application, incurred from 23 November 2020.
4. The applicant is to pay the reserved costs of the urgent court application.



E van der Schyff

Judge of the High Court, Gauteng, Pretoria

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 26 March 2021.

Counsel for the applicants:	Adv. APJ Els
Instructed by:	Couzyn, Hertzog & Horak
Counsel for the respondent:	Adv. Nadia Nortjé
Instructed by:	JPA Venter Attorneys
Date of the hearing:	24 February 2021
Date of judgment:	26 March 2021