



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

Reportable:	NO
Of Interest to other Judges:	NO
Circulate to Magistrates:	NO

Case No: 1050/2019

In the matter between:

STEPHANUS ARNODUS TALJAARD

Applicant

and

RHODA BARNARD

1st Respondent

**ANY UNKNOWN OCCUPIERS OF THE PRIVATE
PUB SITUATED AT 23 WHATKEY STREET, BFN**

2nd Respondent

CORAM: MOROBANE, AJ

JUDGMENT BY: MOROBANE, AJ

HEARD ON: 06 JUNE 2019

DELIVERED ON: 25 JULY 2019

- [1] This is an application by which the applicant seeks an order confirming the cancellation of the agreement and the return of business assets. While the first respondent opposed the application, nothing was filed on behalf of the second respondent.

- [2] The First Respondent raised two preliminary points. The first point relates to the applicant's lack of *locus standi* to seek an eviction order against her. She submitted that the applicant was not the owner of the property thus not entitled to such order. This point was conceded by the applicant and he accordingly amended his notice of motion to exclude his request for an eviction order.
- [3] The second point *in limine* pertains to the applicant's lack of *locus standi* to request an order for the re-transfer of the liquor licence ("the licence") to his name. The First Respondent submitted that the applicant was not the owner of the licence and that he was not entitled to a re-transfer. She further submitted that Private Pub was never issued with a licence due to the applicant's failure to adhere to the agreement.
- [4] Mr J Venter, who was the owner, sold the licence to the applicant. The agreement recorded that the applicant was in the process of registering the licence in his name. He would also pay all the costs for the transfer of the licence. Consequently, the licence was directly transferred from Mr J Venter of Laduma to the first respondent of Private Pub. The applicant consented to the direct transfer of the licence to the first respondent. On this basis alone, the applicant is entitled to request an order for the transfer of the licence in his name. It was the agreement between the applicant and Mr Venter that caused the direct transfer of the licence to the first respondent. There was no other way in which the first respondent could have acquired ownership of the licence. The preliminary point raised is without merit and is hereby dismissed.

[5] The facts of this case are as follows. On 10 April 2018 at Bloemfontein, the parties concluded a sale agreement (the “agreement”) in terms of which the applicant sold his business together with stock to the first respondent. The parties agreed to a purchase price of R280 000.00, payable as follows: A once off payment of R100 000.00; payment of arrear rentals as at date of signing the agreement; and the payment of monthly instalments of R11 000.00 until the balance was paid in full. It was also agreed that in the event of a breach of contract by the first respondent, the applicant would keep payments already made and to repossess the stock owned by the business as at effective date. After the first respondent had failed to pay, an addendum to the agreement was concluded. The first respondent did not pay and fell into arrears. She was called upon to rectify her breach, but she remained in arrears. On 20 February 2019 the applicant elected to cancel the agreement and instituted the current proceedings.

[6] Indeed the agreement was cancelled by the applicant. In that respect, in ***Cloete Murray v FirstRand Bank Ltd***¹ the court said that the term ‘cancellation’ connotes the termination of obligations between parties to an agreement. It is a unilateral act of a party to an agreement and, except for giving the other party notice of such cancellation, it does not occur in or by means of any process associated with any form of forum.

[7] The applicant alleged that he is entitled to apply for the restoration of her possession of the business. He stated that, due to the first

¹ *Cloete Murray & Another NNO v FirstRand Bank Ltd* 2015 (3) SA 438 (SCA) at 446B-E

respondent's failure to pay the amounts due, he delivered a written notice to her chosen address calling upon her to rectify her breach. Thereafter, the first respondent failed to bring her payments up to date and the agreement was formally cancelled on 20 February 2019. The agreement was effectively cancelled when the notice was delivered to the first respondent.

- [8] In her opposition, the first respondent alleged that she paid an amount of R17 336.00 to the applicant's attorneys for arrear rentals. A further amount of R20 500.00 was paid to the applicant. In addition, she alleged that the applicant was in material breach as he never transferred the licence to her name. In November 2018 she stopped paying the applicant as she could not sell liquor without a licence. She alleged that a licence from Mr J Venter of Laduma was transferred to her name.
- [9] On the contrary, the first respondent did not follow the stipulations of the agreement to bring the alleged material breach to the applicant's attention. She did not send a written notice by a prepaid registered post nor was such notice delivered by hand. She chose to communicate with the applicant's attorneys via the "whatsapp" media. On 20 February 2019 first respondent was given a proper notice of cancellation of the agreement. She failed to advance facts to dispute the applicant's claim against her.
- [10] In *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd*² the court observed that a bare denial of the applicant's material averments cannot be regarded as sufficient to defeat the

² *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA 1155 (T) at 1165

applicant's right to secure relief in appropriate cases. Upon considering the affidavit of the first respondent, her denials are bare and merely intended to delay the inevitable. It then follows that the agreement between the parties has been cancelled and the applicant is entitled to the relief sought in terms of the amended notice of motion.

[11] The following order is made:

1. Cancellation of the sale agreement and the addendum thereto is hereby confirmed;
2. The First Respondent to deliver all documentation and accounting books pertaining to the business known as Private Pub, situated at 23 Watkey street, Bloemfontein to the Applicant.
3. The First Respondent to deliver all assets set out in annexure "A" hereto to the Applicant.
4. The First Respondent to take necessary steps to facilitate the transfer of the liquor licence issued in respect of the property situated erf 1413, Watkey street 23, Bloemfontein, Free State Province to the Applicant within 30 days from date of service of this order.
5. In the event of the First Respondent failing and/or refusing to abide by the orders referred to in paras 2 and 3 above, the Sheriff of the High Court is authorised to take possession of all documentation and accounting books pertaining to the business, and all assets set out in annexure "A" hereto.

6. Should the First Respondent fail and/or refuse to abide by the order referred to in para 4 above, the Registrar of this Court is authorised to sign all such documentation required for the transfer.
7. The First Respondent to pay the costs on party and party scale.



V.M. MOROBANE, AJ

On behalf of the applicant:

Adv. R van der Merwe
Instructed by:
Van Wyk & Preller Inc.
BLOEMFONTEIN

On behalf of the 1st respondent:

In person