IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case number: 39315/2014

76206/2014

Date: 14/3/18

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHERS JUDGES: ~~YES~~/NO
(3) REVISED

14/3/2018 ....
DATE SIGNATURE

In the matter between:

VICTOR LANGKILDE N.O	**FIRST PLAINTIFF**
MARY-LYNN LANGKILDE N.O	**SECOND PLAINTIFF**
BRIAN ERIC REES N.O	**THIRD PLAINTIFF**

And

SANDRA JULIET WESSELS	**FIRST DEFENDANT**
WYNAND JURIE WESSELS	**SECOND DEFENDANT**
GELDENHUYS MEYER ATTORNEYS	**THIRD DEFENDANT**

JUDGMENT

PRETORIUS J,

(1) This is a consolidated action, where two cases, namely case number 39315/2014 and case number 76206/2014, were consolidated by court order on 24 August 2016.

THE PARTIES:

(2) Case number 39315/2014:

2.1 The first plaintiff is Victor Langkilde NO, who sues in his capacity as a trustee of the Vic Langkilde Family Trust ("the Trust"), number IT9807/97.

2.2 The second plaintiff is Mary-Lynn Langkilde NO, who acts in her capacity as a trustee of the abovementioned trust.

2.3 The third plaintiff is Brian Eric Rees NO, who acts as a trustee of the Vic Langkilde Family Trust. He is also a chartered accountant.

2.4 The first defendant is Sandra Juliet Wessels married to the second defendant;

2.5 The second defendant is Wynand Jurie Wessels, who is cited in that he may have an interest in the outcome of the action, as he is presently still married to the first defendant.

2.6 The third defendant is Geldenhuys Meyer Attorneys, who has an interest in the proceedings as it holds the proceeds of the sale of the property which had belonged to the first defendant and which is the object in this action. No costs order is sought against the third defendant.

(3) Case number 76206/2014:

3.1 In this matter the plaintiff is Wynand Jurie Wessels.

3.2 The first defendant is Sandra Juliet Wessels.

3.3 The second defendant is Geldenhuys Meyer Attorneys, who is holding the proceedings of the sale of the property by the first defendant. No costs order is sought against the second defendant.

INTRODUCTION:

(4) On the date of trial, the plaintiff in case number 76206/2014 withdrew his action. In the action before court, case number 39315/2014, he was not represented and did not partake in the trial, although he had been cited as having an interest in the outcome of the trial.

(5) The plaintiffs instituted action against the first defendant for payment of an amount of R885 000, which claim is based on a written agreement in which the first defendant bound herself to make payment, under certain conditions.

(6) On 31 August 2006, the Trust, represented by the first plaintiff and the first defendant acting personally and other parties concluded a written agreement whereby the Trust agreed to lend and advance various amounts of money to the company B-Tell (Pty) Ltd. The second defendant was the sole director and a 30% shareholder in the company, B-Tell (Pty) Ltd. One of the conditions, in terms of the agreement was that the first defendant had to provide a property, belonging to her, as security for the repayment of the monies to be lent and advanced to the company, B-Tell (Pty) Ltd.

(7) The express, or implied terms of the agreement, according to the plaintiffs, were that the Trust agreed to lend an amount of money to the company B-Tell (Pty) Ltd, which was limited to an amount of R900 000. The first defendant agreed to bind her property, 41 Willem Road, Eldoraigne Extension 3, Centurion, belonging to her, as full and final security on any amount the Trust lends to her husband's, the second defendant's, company. Clause 6 of the Memorandum of Agreement ("the MOA") provided:

> *"6. SECURITY*
>
> *6.1 THE PROPERTY: 41 Willem Road, Eldoraigne x3, Centurion, Pretoria. Stand number 1572*
>
> *6.2 SJ declares that THE PROPERTY is solely registered in her name, and that it is bonded at ABSA Bank, and the*

total outstanding is not higher than R450 000.00.

6.3 *As security, SJ hereby agrees and bound THE PROPERTY currently registered in her name to LANGKILDE as full and final security on any amount in the loan account of B-Tell.*

6.4 *Should LANGKILDE at any stage during this agreement not be in a position to supply the finances as agreed, the security hereby given will only be limited to the amount actually received from LANGKILDE.*

6.5 *Should it be necessary to call on the security, the parties hereto agree to sign all documentation necessary to sell THE PROPERTY, in which event the amount given as security will firstly be paid out of any proceeds to LANGKILDE.*

6.6 *Should SJ refuse to sign any documentation after being called on to do so, the parties hereby instruct the sheriff of Centurion to sign on her behalf all documentation so required to be signed."*

(8) On 13 December 2013 B-Tell (Pty) Ltd was indebted to the Trust in the sum of R885 000. The Trust obtained knowledge during December 2013 that the first defendant had sold the property, without making any payment to the Trust, according to the agreement. It was agreed between all the parties that the proceeds of the sale had to be kept in

the trust account of the third defendant, pending the outcome of the actions instituted. Hence the present action before court.

(9) Mr Pieters, the 100% shareholder and sole director of Dunrose Trading 188 (Pty) Ltd, gave evidence that he had entered into an acquisition agreement on behalf of Dunrose Trading with Mr Wessels, Mr Ford, Mr and Mrs Langkilde. The purpose of the agreement was to acquire all the loan accounts or other claims that the vendor may have against B-Tell (Pty) Ltd, jointly or individually.

(10) Mr Pieters testified that at no stage did Mr Wessels provide him with the physical address of B-Tell, no phone number of the company was provided and he did not provide the securities register or memorandum or incorporation at any stage. Mr Pieters eventually cancelled the agreement as he realised that Mr Wessels could not perform on behalf of B-Tell (Pty) Ltd. He realised that he was buying a non-existing loan account and cancelled the agreement in writing. He had never met Mr Langkilde before coming to court and did not know him.

(11) Mr Langkilde, the first plaintiff, testified that he had invested in the B-Tell company as a result of the business opportunity given to the Trust on behalf of B-Tell (Pty) Ltd by Mr Wessels, the second defendant. According to Mr Langkilde, he constantly made enquiries from Mr Wessels as to the situation of the company, but Mr Wessels was

elusive and did not attend appointments. According to Mr Langkilde, the Trust had already invested approximately R4 million in B-Tell (Pty) Ltd at that time.

(12) Mr Langkilde's evidence was that during August 2006 Mr Wessels once more required more money from the Trust, but Mr Langkilde refused to grant any loan without security being provided. An agreement was signed on 31 August 2006. According to the agreement the property belonging to the first defendant, was bound to Langkilde Trust *"as full and final security on any amount in the loan account of B-Tell"*. The property of the first defendant, so bound as security, is described in the agreement as 41 Willem Road, Eldoraigne X3, Centurion, Pretoria and the first defendant declared that the property was solely registered in her name, although there was a bond on the property.

(13) Mr Langkilde transferred the amount of R885 000 to the account of B-Tell (Pty) Ltd on 31 August 2006, the same day the memorandum of agreement was signed, due to the fact that the property was bound as security.

(14) It became apparent to Mr Langkilde in the ensuing three years that B-Tell (Pty) Ltd had no money and the shares could not be traded. On 12 December 2013 Mr Bester, an attorney from the firm Spies, Bester,

Potgieter informed Mr Langkilde that the first defendant was selling the bonded property, as according to her the debt of R885 000 had been settled by her husband, Mr Wessels. On 17 January 2014 the first defendant's attorneys were informed that the debt was due and owing and that the first defendant's assumption that the debt had been extinguished was incorrect. It was subsequently agreed that the amount of R885 000 would be held in trust by the transferring attorneys, the third defendant, whilst action would be instituted.

(15) On 30 May 2014 the plaintiffs issued summons, which was served on the first defendant on 10 June 2014. Mr Langkilde testified that he was not a party to the cancellation of the Dunrose agreement at any stage. He and the other parties entered into the MOA on 31 August 2006, knowing the precarious position they were in. The loan was claimed on a constant basis by him from Mr Wessels, to no avail. It became clear that Mr Wessels could not repay the loan.

(16) Mr Langkilde further testified that at no stage was the MOA varied. The buyers of the property were informed by Mr Wessels of the lien against the property.

(17) Mr Rees, the third defendant, and the accountant of the Trust, testified that he had been aware of the B-Tell (Pty) Ltd venture, at all times. According to him the trustees had decided that no further loans would

be granted to Mr Wessels, unless security was provided. This decision of the trustees was taken in 2006 when the amount of R885 000 was loaned to B-Tell (Pty) Ltd against the security provided by the first defendant in the MOA of 31 August 2006. Although the resolution taken in December 2013 to institute action was not in writing, all trustees were *ad idem* that action should be instituted and were party to the resolution.

(18) Mrs Langkilde's evidence confirmed that of both the first and third plaintiffs that a resolution had been taken by the three trustees during December 2013, to institute action.

(19) Mrs Wessels, the first defendant, gave evidence that she and her husband, Mr J Wessels, had been living apart since 2011, although they have not yet been divorced. She had not previously known any of the witnesses and had seen them for the first time at court.

(20) She denied knowing anything about B-Tell (Pty) Ltd or any businesses of Mr Wessels, the second defendant. She had signed a document as requested by the second defendant, which was the MOA of 31 August 2006. She sold the property as the second defendant had offered her R800 000 for the house. This caused her to sell the house, as she did not trust the second defendant and she had realized it was not a realistic price for the property. Her evidence concerning her instructing

attorney, Mr Bester, was that she only knew that he was in business with the estate agent who had sold the house and did not know him at all. She had never met him. It was put to her that Mr Bester wrote the letter on her behalf and on her instructions on 18 January 2014 to the attorney of the Vic Langkilde Trust and stated:

> *"We confirm that we act on behalf of Mrs SJ Wessels and is this letter addressed to you as per our instructions.*
>
> *We confirm that an agreement was indeed entered into on 31 August 2006 between inter alia VIC Langkilde Family Trust, W Wessels, SJ Wessels and B-Tell Pty Limited. As per said agreement Vic Langkilde Family Trust was willing to provide finance to the maximum of R900 000.00 to B-Tell Pty Limited and did our client, Ms SJ Wessels agreed to buy the property as security for the successful repayment of the debt to the Maximum of R900 000.00."*

(21) Once more she denied knowing Mr Bester. According to her the estate agent, Mr van der Merwe, took an active interest in her affairs and her conjecture was that Mr Bester wrote the letter on her behalf in these circumstances. The witness was unsure of herself whilst giving evidence and pleaded ignorance about the affairs of Mr Wessels, although she admitted signing the MOA and binding her property.

(22) The second defendant always paid the bond, but was sequestrated on

29 August 2012 and the bond fell behind. She admitted to signing the MOA on 31 August 2006 and that she had been aware of the contents of clause 6 of the MOA and what it entailed. She was the only witness for the defence. Mr Bester, the attorney acting on her behalf, when corresponding with the Trust, was not called to confirm her version. The estate agent, who she testified, might have given instructions to Mr Bester, was not called to confirm her version of the events.

(23) The following facts are common cause:

23.1 The plaintiffs have *locus standi*;

23.2 The plea had been amended;

23.3 The MOA was entered into on 31 August 2006;

23.4 B-Tell (Pty) Ltd had been deregistered on 16 July 2010 as set out in the pre-trial minute.

(24) The first technical defence by the first defendant was that there had been no resolution by the trustees to institute action. This defence was abandoned during argument by counsel for the first defendant. Furthermore, it was conceded that the numbering of the Trust was inadvertently wrong in the MOA and was no longer an issue. The further special plea of non-joinder of B-Tell (Pty) Ltd was waived and the court did not have to deal with it.

(25) Counsel for the first defendant, correctly argued that immovable

property's real rights can only be transferred by registration against the title deed. However, in this instance there is a written agreement between the parties, which was entered into for the payment of the outstanding amount by the first defendant. Clause 6.4 provided that the security given was limited to the amount actually received from Langkilde, which in this instance was R885 000.

(26) I must agree with counsel for the plaintiffs that this was security for a loan and did not require registration against the title deed. The loan was secured through the property, according to the agreement. This was confirmed by the first defendant whilst testifying. The reason why the proceeds of the sale is being kept in trust by the third defendant, pending the determination of this action, is as a result of the provisions of clause 6. The letter of 18 January 2014 written by Mr Bester on behalf of the first defendant confirmed the position.

(27) Therefor the special plea of prescription has to be dismissed, as the relevant date was the date the property had been sold, which was during 2013. Summons was issued on 30 May 2014 and served on 10 June 2014. There can be no doubt that the claim has not prescribed.

(28) Counsel for the first defendant argued that the first defendant should not be mulcted with costs due to Mr Wessel's conduct. According to the first defendant he was a significant role player in the events leading

up to the conclusion of the MOA. That may be so, but it cannot indemnify the first defendant, who confirmed under oath that she had signed the MOA. Her further evidence that she had not requested the attorney, Mr Bester, to act on her behalf is found to be so unlikely that it cannot be true. There is no evidence to confirm her version and it is clear from the letter from Mr Bester that he had full instructions in respect of the loan, the MOA and the terms of the agreement. This information he could only have obtained from the first defendant. In any event, Mr Bester was not called as a witness to confirm her evidence.

(29) The first defendant did not impress the court as a good witness as she tried to avoid answering direct questions and pleaded ignorance in instances where she clearly had the information. The three witnesses for the plaintiff were honest witnesses who only gave evidence on the facts before court and did not embellish their evidence. The court accepts that the plaintiffs have proved their case on a balance of probabilities. It may be so that the second defendant had played a role in the first defendant's misfortune, but she had voluntarily signed the MOA. She may, in the circumstances, have a claim against the second defendant, but this court cannot deal with such an eventuality.

(30) In the circumstances it will be fair for her to pay the costs of this action. The costs that were reserved on the previous occasion, when the

cases were consolidated cannot be blamed on her and the court will not grant an order that she has to pay the costs of the previous court date.

(31) In the result the following order is made:

1. The third defendant is hereby authorised and directed to pay to the plaintiffs the sum of R885 000 from the proceeds of the sale of the property being 41 Willem Road, Eldoraigne Ext 3, Centurion, Pretoria, also known as Stand number 1572 Eldoraigne Ext 3;
2. The third defendant is hereby authorised and directed to pay to the Trust interest on the sum of R885 000 calculated at the rate of 15.5% per annum with effect from the date of transfer of the property out of the name of the first defendant, to date of payment;
3. An order for rectifying the written contract between the parties, annexure 'B' to the particulars of claim, by substituting the registration number of the Vic Langkilde Family Trust with the No IT9807/97;
4. The first defendant to pay the costs of suit.

Judge C Pretorius

Case number	: 39315/2014 & 76206/2014
Matter heard on	: 19 & 20 February 2018
For the Plaintiffs	: Adv AP Bruwer
Instructed by	: Du Plessis De Heus & Van Wyk Attorneys
For the First Defendant	: Adv J Vlok
Instructed by	: Fivaz Incorporated
Date of Judgment	: 14 March 2018.