IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Case Nos.: 332/2004
to
338/2004

In the matter between:

SALOMON SENEKAL BELEGGINGS (PTY) LIMITED	Applicants
HOTEL MAHEM (PTY) LIMITED	
And	
GIELIE NIEUWOUDT PROMOSIES CC AND OTHERS	Respondents

CORAM:	**HANCKE, J**
HEARD ON:	**20 MAY 2004**
DELIVERED ON:	**27 MAY 2004**

The applicants in this matter are Salomon Senekal Beleggings (Pty) Ltd (the applicant under cases nos. 332/04, 333/04, 335/04, 336/04 and 337/04) and Hotel Mahem (Pty) Ltd (the applicant under cases nos. 334/04 and 337/04). It is convenient to refer to them as “the applicant”, because the facts pertaining to all seven applications are substantially similar and the determination of any one of them will determine the outcome of the remaining six.

Applicant, which is the registered and beneficial owner of certain immovable commercial properties within Viljoenskroon, has instituted seven applications against, *inter alia*, Gielie Nieuwoudt Promosies CC, the first respondent in each of the applications. Only the first respondent opposes the relief sought by the applicant. Between March 2000 and September 2001 the applicant and first respondent concluded three sets of sale agreements, in terms of which the applicant sold to the first respondent the abovementioned properties. Each of the agreements contained a condition that the purchase price was to be paid by the first respondent furnishing the applicant with a bank guarantee to secure payment of the purchase price in full by a specified date, failure to comply with this condition constituting a breach which would entitle the applicant, after giving notice, to cancel the agreement.

In respect of four of the properties, the first respondent took occupation thereof on 1 May 2000, and on 20 November 2000, the first respondent took occupation of the fifth property. In terms of the first and second set of agreements, occupation was to be given to the first respondent on 1 May 2000, the third set of agreements providing that occupation was only to be given to the first respondent upon transfer.

It appears from the documents filed that the first respondent breached the terms of all three sets of sale agreements in that it failed to deliver the requisite guarantee stipulated in each of them. After giving notice in terms of clause 7 of the sale agreement to remedy the breaches of the third set of agreements, the applicant on 21 August 2003, cancelled that set of agreements being the set of agreements in force at the time.

In the applications bearing numbers 333/04, 336/04 and 337/04 the applicant seeks to evict respondents (tenants in the buildings erected on the premises) from premises which are being used by certain of them as a "dwelling or shelter", as envisaged in section 1 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, No. 19 of 1998 (the "Eviction Act").

It is not disputed that the applicant has complied with the relevant provisions of the Eviction Act for the purposes hereof. Save for the first respondent, the fourth respondent in case number 333/04 and the third respondent in case number 337/04, a tender has been made by the applicant to all respondents in each application. In the event of the tender being accepted and the terms of the tender having been complied with, the applicant has undertaken to withdraw the application against the relevant respondent and not to seek an order for costs against such respondent. To put it another way, the applicant has offered to conclude lease agreements with all existing tenants. The applicants tender in case number 332/04 has been accepted and a lease agreement concluded with the Department of Public Works. Accordingly, the applicant seeks no relief against the second respondent in the said application.

Despite several defences raised in its opposing affidavit, Mr Van Rooyen, counsel for the first respondent, in argument relied on the following three defences:

1. By virtue of the first respondent having affected certain improvements to the properties, the applicant has been enriched at the expense of the first respondent, with the result that it has a lien over each of the various properties, pending payment of the value of the improvements.

2. By virtue of an oral agreement allegedly concluded between the applicant and the first respondent at a meeting held during the period March to April 2003, the first respondent claims that it was not obliged to comply with the obligations in regard to payment (as opposed to the furnishing of guarantees, stipulated in the third agreement). The first respondent alleges therefore that it was given

an extension of time until the end of March 2004 to make payment of the purchase prices for the properties. In the result the first respondent alleges that the applicant was not entitled to give it notice on 1 August 2003 placing it in *mora* as it was not in breach of its obligations. In the circumstances the first respondent avers that the third agreements has not been cancelled validly by the applicant.

3. The applicant has lost its right to cancel due to the fact that it has not exercised its right to cancel the agreement within a reasonable time.

It is therefore necessary to deal with these defences, which I propose to do in the same sequence mentioned above.

1. The respondents alleged lien over the various properties:

It is the first respondent's case that it has effected certain improvements to the property and that as a result thereof it has a lien over the property until such time as it has been paid the value of the improvements, failing which the applicant would be in enriched at the expense of the first respondent. The applicant denies these allegations, but has furnished the first respondent with guarantees in the aggregate sum of R749 175,80, representing the total value of the alleged improvements effected to the property. It is furthermore alleged by the applicant that it is more than able to pay any costs order made against it, in that it has sufficient funds at its disposal and that it is the registered owner of the properties which form the subject matter of the various applications herein, which properties are unencumbered.

The owner of the property over which a right of retention is exercised may defeat the lien by furnishing adequate security. The furnishing of a banker's guarantee is a usual method of furnishing security. **ZEDA, FINANCING (PTY) LTD v DU TOIT T/A AMCO DIENSSTASIE 1992 (4) SA 157 (O); HOCH METALS AFRICA (PTY) LTD v OTAVI MINING CO. (PTY) LTD 1968 (1) SA 571 (A) at 582B-F.**

A Court has a discretion whether to order restoration of the property to its owner, in the event of adequate security having been put up, which discretion will be exercised having regard to what is equitable in all the circumstances. **<u>HOCH METALS AFRICA</u>** (***supra***) at **528D**.

It appears to be equitable that the first respondent should be ordered to restore the property to the applicant because it is obvious that the applicant has granted the first respondent every form of indulgence imaginable to enable it to deliver guarantees in accordance with the third set of agreements. Furthermore, the question whether or not the first respondent does enjoy an improvement lien over the property is in dispute. This can be determined in due course and there appears to me to be no reason why the applicant should be deprived of occupation of its property in the meantime. Consequently it is equitable that first respondent be evicted from the property even if the alleged improvements were effected.

2. <u>The alleged oral agreement</u>:

The first respondent alleges that pursuant to and as a consequence of the conclusion of an oral agreement in March/April 2003. Accordingly, performance by the first respondent was postponed for a year. The first respondent was not obliged to effect delivery of the guarantee and as a result the applicant's letters of 1 August 2003 and 21 August 2003 were of no force and effect. In view of the applicant's denial of the alleged oral agreement, a dispute of fact has arisen in this respect. Neither party asked that the matter be referred for evidence or trial and it is therefore necessary to deal with the application on the undisputed facts and the balance of probabilities. **DECRO PAINT AND HARDWARE (PTY) LTD v PLASCON-EVANS PAINTS (TVL) LTD 1982 (4) SA 213 (O) at 222E – 223H.**

It appears from the papers that the first respondent raised the existence of the oral agreement for the first time in its answering affidavit. Prior to the delivery of the answering affidavit there has never been a suggestion or even a hint in any of the documents or telephone conversations that such an agreement had been concluded. Indeed, the documents, and a conversation between the attorneys representing the parties, all point conclusively to the fact that no such an agreement was concluded. All letters written by both parties' legal representatives are inconsistent and irreconcilable with the conclusion of the alleged oral agreement upon which the first respondent now relies. For example, in their letter dated 7 July 2003 the first respondent's attorney seek indulgences from the applicant because of the "geweldige resessie" in the area. They propose that the first respondent take transfer of two of the properties "binne die volgende maand of twee" and postponing further the obligations to deliver guarantees and to take transfer of the other properties. This is entirely inconsistent with the alleged oral agreement. If it had been concluded, the first respondent would only have been obliged to make payment or to deliver guarantees by the end of March 2004. It would have been entitled to transfer upon making such payment and paying costs of transfer.

On 5 September 2003 the first respondent's attorneys wrote to the applicant's attorneys tendering, on first respondent's behalf, to make payment for, and to take transfer of erf 161 (case number 335/04). This is referred to specifically in the first respondent's answering affidavit wherein the deponent to the affidavit merely states that the letter was written. He continues that he wishes to draw the attention of the Court to the fact that the first respondent wished to take transfer of the property concerned. Once again, what is stated in this letter and the answering affidavit are entirely inconsistent with the conclusion of the oral agreement which the first respondent contends for. There is no explanation in the papers given for this contradiction.

On 18 September 2003 the first respondent's attorneys wrote to the applicant's attorneys tendering to make transfer of the Magistrate's Court property (case number 332/04) which once again is inconsistent with the conclusion of the alleged oral agreement.

On 1 October 2003 the applicant's attorney, and the first respondent's attorney, spoke telephonically. During the course of that conversation the first respondent's attorney made an offer which, once again, is inconsistent with the alleged oral agreement. It appears from the first respondent's attorney's note that a proposal was made that immediate transfer be taken of the first three properties and that the remaining two be transferred "oor 'n jaar". This offer is entirely inconsistent with the alleged oral agreement. It is important to note that the first respondent makes no attempt whatsoever to explain the inconsistencies. The first respondent's allegation of an oral agreement is in the circumstances so implausible and improbable that it can be rejected on affidavit, without the need for oral evidence. **PIETERSEN v CUTHBERT AND CO LTD 1945 AD 420 at 425 and 427-8.**

There appears to be no explanation furnished by the respondent as to why the existence of the oral agreement was not raised earlier. It is fundamental to its defence to the applications and it is inconceivable that it would not have been relied upon in the correspondence and negotiations which took place after it had allegedly been concluded.

Having regard to the circumstances of this case, I am satisfied that *viva voce* evidence will not disturb the balance of probabilities. **SEWMUNGAL AND ANOTHER NNO v REGENT CINEMA 1977 (1) SA 814 (N) at 821B-C; WIESE v JOUBERT 1983 (4) SA 182 (O) at 203**.

Mr Hoffman, counsel for the applicant, submitted in the alternative that the alleged oral agreement constitutes a "variation" of the provisions of paragraph 1 of the third agreement. As the variation is not contained in a written document signed by both parties, it is void in that it does not comply with the provisions of section 2(1) of the Land Act. He also submitted that the oral agreement, had it been concluded, would be void for vagueness in that it is impossible to ascertain from the terms of the oral agreement when the purchase price for the property was to be paid, or whether the first respondent was obliged to have paid the remaining purchase prices for all the properties in full and have taken transfer by the unspecified date referred to in the opposing affidavit, or whether the obligation to take transfer was delayed for a time thereafter, in accordance with the third agreement, and if so, until when. He also submitted that in so far as the oral agreement was concluded, such agreement would in any event amount to a material variation of the third agreement which must be in writing and signed by the parties before the first respondent can rely on it. There appears to be substance in this argument but, in view of the conclusion reached by me, it is not necessary to deal with these submissions.

3. <u>Has the applicant lost its right to cancel due to the lapse of time?</u>

Mr Van Rooyen, on behalf of the first respondent, submitted that the applicant has not exercised its right to cancel the agreement within a reasonable time and that the purported cancellation was of no legal effect.

It is important to have regard to the events that took place before the purported cancellation of the contract by the applicant. The third agreement was concluded on 26 September 2001. In terms of clause 1 thereof, the first respondent was obliged to deliver a bank guarantee within 30 days after signing of the contract, which 30 days expired on 27 October 2001. On 22 November 2001 the applicant's former attorneys made enquiries in respect of the delivery of the guarantees. In another letter by the applicant's attorneys dated 21 December 2001, the first respondent is requested to deliver the said guarantees on or before 3 January 2002 "by gebreke waarvan ons verplig sal wees om in terme van die koopkontrak hul regte af te dwing."

The next letter addressed to the first respondent is dated 21 August 2002. Paragrapgh 6 thereof reads as follows:

> "We are instructed to demand that you produce a bankers guarantee in terms of the agreement as referred to above, guaranteeing payment in the amount of R535 800,00 and that the same is delivered to their offices within 7 days after the date of receipt by you of this letter. Should you not comply with this demand timeously our client will then make an election as to whether or not to cancel the agreement and appropriate further legal action will be taken immediately thereafter without any further notice to you."

In response to the letter the first respondent's attorney wrote a letter dated 7 July 2003. Paragraph 2 thereof reads as follows:

> "Ons kliënt voorsien dat hy binne die volgende maand of twee reëlings kan tref om waarborge aan u kliënt te lewer ten opsigte van erwe 46 en 161, Viljoenskroon. In die lig van die huidige ekonomiese toestand in Viljoenskroon wil ons kliënt verder uitstel hê om waarborge te lewer en transport te neem van die ander eiendomme wat hy by u kliënt gekoop het."

Thereafter, on 1 August 2003, the applicant's present attorneys wrote two letters, the one addressed to the first respondent's attorneys and the other addressed to the first respondent. The last mentioned letter, *inter alia*, reads as follows:

> "We are instructed to demand, as we hereby do, that you furnish the required bank guarantee in terms of the agreement to our client c/o our offices within 7 days. Should you fail to remedy your breach and not to deliver the guarantee, our client will exercise its rights in terms of clause 7 of the agreement of sale dated 26 September 2001."

It is the applicant's case that despite delivery of the said letter, the first respondent has failed to effect delivery of the guarantee. As a result thereof, on 21 August 2003, the applicant cancelled the third agreement in accordance with the provisions of clause 7 thereof.

In view of the aforesaid delay in making an election to cancel, Mr Van Rooyen, counsel for the applicant, submitted that the applicant's right to cancel has lapsed. In this regard he relied on the case of **NORTH VAAL MINERAL CO. LTD v LOVASZ 1961 (3) SA 604 (T)**, where Jansen, J (as he then was) stated the following on **611H-612A**:

> "On the authority of *Voet* and ***Schuurman v. Davey***, *supra*, however, I incline to the view that a lapse of a reasonable time after accrual of a right of cancellation in terms of a *lex commissoria* (in the wide sense)

per se destroys the right, i.e. unless the party entitled elects to rescind within a reasonable time, the right lapses."

(Cf. **<u>SCHUURMAN v DAVEY</u> 1908 TS 665 te 672**).

In **<u>SEGAL v MAZZUR</u> 1920 CPD 634** the following is stated on **644-5**:

"Now, when an event occurs which entitles one party to a contract to refuse to carry out his part of the contract, that party has the choice of two courses. He can either elect to take advantage of the event or he can elect not to do so. He is entitled to a reasonable time in which to make up his mind, but when once he has made his election he is bound by that election and cannot afterwards change his mind. Whether he has made an election one way or the other is a question of fact to be decided by the evidence. If, with knowledge of the breach, he does an unequivocal act which necessarily implies that he has made his election one way, he will be held to have made his election that way; this is, however, not a rule of law, but a necessary inference of fact from his conduct ….. As already stated, the question whether a party has elected not to take advantage of a breach is a question of fact to be decided on the evidence, but it may be that he has done an act which, though not necessarily conclusive proof that he has elected to overlook the breach, is of such a character as to lead the other party to believe that he has elected to condone the breach, and the other party may

> have acted on such belief. In such a case an estoppel by conduct arises and the party entitled to elect is not allowed to say that he did not condone the breach."

As far as the "doctrine of election" is concerned, the following is stated in **<u>The Law of Contract in South Africa</u>** (4th ed.) by R.H. Christie on p.627:

> "It is not a mechanical rule of law but a combination of waiver and estoppel – the *onus* is on the defendant to prove that, as a question of fact, the plaintiff has waived the relief he claims or, failing such proof, that he is estopped from claiming it – reinforced by a logical bar to claiming inconsistent remedies, but only if the claims are truly inconsistent. ….

The necessity to elect within a reasonable time must be looked at in the same way. The law lays down no time, and it is for the defendant to show that the delay has been such as to prove the plaintiff's *waiver* of his right to cancel for the breach or repudiation, or such as to induce the defendant to commit himself to further performance, so raising an *estoppel*."

The case of **<u>MAHABEER v SHARMA NO AND ANOTHER</u>** **1985 (3) SA 728 (A)** puts the legal question in this respect beyond doubt. In this case the first respondent sent a letter dated 14 August 1980 to the appellant, which letter evinced a clear election on her part to cancel the agreement in the event of his failure to comply with the demand made therein. Thereafter he received no further communication until February 1981 when his attorney was informed that the sale had been cancelled and the property resold to the second respondent. The Court was concerned with the effect of first respondent's failure until February 1981, i.e. a delay of about six months, to notify appellant of the cancellation. Hefer, JA stated the following on p.735J – 736 I:

> "Appellant's counsel submitted that this lapse of time (which he maintained was unreasonably long) brought about *per se* that the agreement was never effectively cancelled for, so the argument went, a right to cancel lapses unless it is exercised by informing the guilty party of the cancellation within a reasonable time. This submission cannot be upheld. A similar proposition was rejected by this Court in ***Potgieter and Another v Van der Merwe*** 1949 (1) SA 361 (A) at 371-2 where Pollock's statement in his ***Principles of Contract*** 8th ed at 618 that
>
> > "omission to repudiate within a reasonable time is evidence, and may be conclusive evidence, of an election to affirm the contract; and this is in truth the only effect of lapse of time"
>
> was accepted as correct. Unless it is read in context this statement and

particularly the description of the evidential effect of the lapse of time as its only effect, may be debatable (*cf* the remarks of Jansen J (as he then was) in ***North Vaal Mineral Co Ltd v Lovasz*** 1961 (3) SA 604 (T) at 612). …. Apart from the law relating to prescription, there is no principle of South African law of which I am aware that justifies a conclusion that a right may be lost through mere delay to enforce it and no reason exists for holding otherwise in the case of the right to cancel an agreement.

It is often said (usually on the authority of Voet *Commentarius Ad Pandectas* 18.3.2) that the right to cancel an agreement must be exercised within a reasonable time. I have no quarrel with that statement – as far as it goes. But it does not follow that failure to exercise the right within such a time results *ipso iure* in its loss. In ***Potgieter's*** case *supra* this Court also approved in the present context of a passage which appears in *Pollock* at 629 to the effect that

> "the contract must be rescinded within a reasonable time, that is, before the lapse of a time after the true state of things is known, so long that under the circumstances of the particular case the other party may fairly infer that right of rescission is waived",

which puts failure to exercise the right to cancel within a reasonable time in its true perspective. Depending on the circumstances, such a failure may, eg, justify an inference that the right was waived or, stated differently, that the party entitled to cancel has elected not to do so …… In such cases the lapse of an unreasonably long time forms part of the material which is taken into account in order to decide whether the party entitled to cancel should or should not be permitted to assert his right. But *per se* it cannot bring about the loss of the right."

From the authorities quoted above it is clear that a right to cancel a contract is not lost through mere delay in enforcing it. Although such right must be exercised in a reasonable time, failure to do so does not result *ipso iure* in the loss of the right. Such failure may, depending on the circumstances of the case, justify an inference that the applicant has elected not to do so. The delay is part of the material to be taken into account in deciding whether such party should or should not be permitted to assert his right. **<u>MAHABEER</u>** (***supra***) at **736H-I**.

From the facts in the present matter it is clear that the applicant gave every possible indulgence to the first respondent to enable it to furnish the said guarantees. It, however, never suggested that it will not cancel the agreement. The first respondent on numerous occasions requested the applicant for more time to enable the first respondent to perform. It is important to note that five different properties were involved and that the transportation of the properties were interlinked with each other. The applicant was entitled to suspend its decision to cancel the agreement, or not, without forfeiting its right of choice. **<u>TRYTSMAN v DOHNE</u> 1951 (1) SA 736 (N) at 740A-B**. As far as *estoppel* is concerned, it was never raised by the first respondent in its opposing affidavit, nor could it reasonably be inferred from the facts. The same applies to *waiver* – on the evidence the first respondent could not fairly have inferred that the applicant had waived its right to cancel.

It follows that the applicant has validly cancelled the agreement between the parties and that it is entitled to the relief claimed.

4. <u>Costs:</u>

Mr Hoffman, on behalf of the applicant, submitted that the first respondent's conduct was vexatious and that the applicant was therefore entitled to costs on an attorney and client scale.

It is trite law that a Court will grant such an order only in exceptional circumstances where special grounds are present. **<u>The Law of South Africa</u>** 1st re-issue Vol.3 part 2, paragraph 321. I am of the view that such circumstances do not exist in the present matter and that the applicant is only entitled to costs on a party and party scale.

Mr Hoffman also applied for the costs of two counsel. Having regard to the factual and legal difficulties involved in the present matter, I am of the view that the engagement of two counsel is warranted. **The Law of South Africa** *op cit* paragraph 418. As for the costs of 11 March 2004, which was reserved, it appears that the applicant enrolled the matter without notice to the first respondent. From the papers it is clear that it was desirable that all the applications should be heard at the same time and that applicant was not entitled to enrol the matter without notice to the first respondent. The first respondent is therefore entitled to the wasted costs incurred on 11 March 2004.

It follows, from the aforegoing, that the applicant is entitled to an order declaring that the agreement between the parties has been validly cancelled, as well as an order for ejectment.

CONSEQUENTLY the following orders are issued

1. An order in terms of Annexure "A" hereto.
2. As for costs –

(a) Applicant is ordered to pay the first respondent's wasted costs incurred on 11 March 2004.

(b) Apart from (a), first respondent is ordered to pay the costs of all the applications, including the costs consequent upon the employment of two counsel.

S.P.B. HANCKE, J

On behalf of Applicant:

Adv. G.I. Hoffman SC
Assisted by:
Adv. A.J. Eyles
Instructed by
Webbers
Bloemfontein
Cliffe Dekker Inc.
Johannesburg

On behalf of First Respondent:

Adv. P.C.F. van Rooyen
Instructed by
Naudes
Bloemfontein

/scd

ANNEXURE "A"

Case No. 332/04

1. The written sale agreement concluded between the applicant and the first respondent on or about 26 September 2001 has been validly cancelled.

2. That the first and second respondents together with any other person that may occupy the buildings situated at 21 Engelbrecht Street, Viljoenskroon under or through them, and/or by virtue of the first and second respondent's occupation thereof:

   2.1 vacate the said property within one (1) month from date of service of this order upon the first and second respondents; and

2.2 deliver up to the applicant all keys to the property that they first respondent may have in its possession or under its control.

3. In the event that the first respondent and/or any persons occupying through or under it, fail to vacate the said property within a month from date of service of this order upon them, authorising the sheriff of this Court to evict the first respondent and/or any persons occupying through or under them, from the property on a date not being less than one month from the date of service of this order upon them.

Case No. 333/04

1. The written sale agreement concluded between the applicant and the first respondent on or about 26 September 2001 has been validly cancelled.

2. That the first, second, third, fourth, fifth and sixth respondents, together with any other person that may occupy the building situated at 32 Piet Retief Street, Viljoenskroon, including shops nos. 1 to 4 within the said building, under or through them, and/or by virtue of the first to sixth respondents' occupation thereof.

2.1 vacate the said property within a period of one (1) month from date of service of this order upon first to sixth respondents; and

2.2 deliver up to the applicant all keys to the property that the first to sixth respondents may have in their possession or under their control.

3. In the event that the first to sixth respondents and/or any persons occupying through or under them, fail to vacate the said property within the period of one month from date of service of this order upon them, authorising the sheriff of this Court to evict the said respondents and/or any persons occupying through or under them, from the property on a date not being less than one month from the date of service of this order upon them.

Case No. 334/04

1. The written sale agreement concluded between the applicant and the first respondent on or about 26 September 2001 has been validly cancelled.

2. That the first, second and third respondents together with any other person that may occupy shops nos. 2 and 3 at 12 Mahem Street, Viljoenskroon, under and through them, and/or by virtue of the first to third respondents' occupation thereof:

2.1 vacate the said property within one (1) month from date of service of this order upon the first to third respondents; and

2.2 deliver up to the applicant all keys to the property that the first to third respondents may have in their possession or under their control.

3. In the event that the first to third respondents and/or any persons occupying through or under them, fail to vacate the said property within the period of one month from date of service of this order upon them, authorising the sheriff of this Court to evict the said respondents and/or any persons occupying through or under them, from the property on a date not being less than one month from the date of service of this order upon them.

<u>Case No. 335/04</u>

1. Declaring that the written sale agreement concluded between applicant and the first respondent on or about 26 September 2001, has been validly cancelled.

2. That the first, second, third and fourth respondents together with any other person that may occupy the building situated at 29 Theron Street, Viljoenskroon, under or through them, and/or by virtue of the first to fourth respondents' occupation thereof:

2.1 vacate the said property within a period of one (1) month from date of service of this order upon the first to fourth respondents; and

2.2 deliver up to the applicant all keys to the property that the first to fourth respondents may have in their possession or under their control.

3. In the event that first to fourth respondents and/or any persons occupying through or under them, fail to vacate the said property within the period of one month from date of service of this order upon them, authorising the sheriff of this Court to evict the said respondents and/or any persons occupying through or under them, from the property on a date not being less than one month from the date of service of this order upon them.

<u>Case No. 336/04</u>

1. Declaring that the written sale agreement concluded between the applicant and the first respondent on or about 26 September 2001 has been validly cancelled.

2. That the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth and tenth respondents together with any other person that may occupy the building situated at 14 Mahem Street, Viljoenskroon, including flats numbered 1 tot 7, within the said building under or through them, and/or by virtue of the first to tenth respondents' occupation thereof:

2.1 vacate the said property within a period of one (1) month from date of service of this order upon the first to tenth respondents; and

2.2 deliver up to the applicant all keys to the property that the first to tenth respondents may have in their possession or under their control.

3. In the event that the first to tenth respondents and/or any persons occupying through or under them, fail to vacate the said property within the period of one month from date of service of this order upon them, authorising the sheriff of this Court to evict the said respondents and/or any persons occupying through or under them, from the property on a date not being less than one month from the date of service of this order upon them.

Case No. 337/04

1. Declaring that the written sale agreement concluded between the applicant and the first respondent on or about 26 September 2001, has been validly cancelled.

2. That the first respondent, together with any other person, save for the second and third respondents, that may occupy the building situated at 12 Mahem Street, Viljoenskroon, including the frail care centre within the said building but excluding shop no. 2, under or through the first respondent and/or by virtue of the first respondent's occupation thereof:

2.1 vacate the said property within a period of one (1) month from date of service of this order upon the first respondent, failing which the sheriff of the Court is authorised to evict the first respondent and/or any persons occupying through or under the first respondent from the property on a date not being less than one (1) month from the date of service of this order; and

2.2 deliver up to the applicant all keys to the property that the first respondent may have in its possession or under its control.

3. That the second and third respondents, together with any other person that may occupy the building situated at 12 Mahem Street, Viljoenskroon, including the frail care centre within the said building but excluding shop no. 2, under or through them, and/or by virtue of the second and third respondents' occupation thereof:

3.1 are afforded a period of two (2) months from date of service of this order to negotiate and conclude a lease agreement with the applicant;

3.2 in the event that the said parties do not conclude a lease agreement, then and in that event:

3.2.1 the occupants are ordered to vacate the said property three (3) months after the expiry of the said two (2) month period, failing which the sheriff of the Court is authorised to evict the occupants from the property;

3.2.2 the occupants are ordered to deliver up to the applicant all keys to the property that the occupants may have in their possession or under their control;

3.3 In the event that the said parties do conclude a lease agreement, then and in that event the provisions of 3.2 above shall fall away.

<u>Case No. 338/04</u>

1. Declaring that the written sale agreement concluded between applicant and the first respondent on or about 26 September 2001 has been validly cancelled.

2. That the first, second, third, fourth and fifth respondents together with any other person that may occupy the building situated at 14 Mahem Street, Viljoenskroon, including shops nos. 1 to 5 within the said building, under or through them, and/or by virtue of the first to fifth respondents' occupation thereof:

2.1 vacate the said property within a period of one (1) month from date of service of this order upon the first to fifth respondents; and

2.2 deliver up to the applicant all keys to the property that the first to fifth respondents may have in their possession or under their control.

3. In the event that the first to fifth respondents and/or any person occupying through or under them, fail to vacate the

said property within the period of one month from date of service of this order upon them, authorising the sheriff of this Court to evict the said respondents and/or any persons occupying through or under them, from the property on a date not being less than one month from the date of service of this order upon them.

/scd