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 no: **4314/2023**

In the matter between:

ATLANTIC OIL INLAND(PTY) LTD APPLICANT

and

NELLOCK MOTORS CC 1st RESPONDENT

FRITZ WEILBACH EIENDOMME CC 2nd RESPONDENT

JOHAN FREDIRIK WEIBACH 3rd RESPONDENT

REGISTRAR OF DEEDS BLOEMFONTEIN 4th RESPONDENT

JUDGMENT BY: **MOLITSOANE, J**

HEARD ON: **30 NOVEMBER 2023**

DELIVERED ON: **06 MAY 2024**

---

[1] The Applicant initially sought final relief in the form of specific performance on the motion of two written agreements as well as interim interdictory relief against the respondents. In the Heads of Argument and during the hearing

before me, the Applicant now seeks alternative prayer for interim relief against the Respondents pending the finalisation of this matter.

[2] The following facts are common cause: The First Respondent is the owner of two service stations in Ladybrand which conduct business under the names Panorama Motors and Autorama Motors. Prior to 10 June 2022, the First Respondent had been purchasing petroleum fuel products from the company known as Atlantic Oil Inland Propriety Limited.

[3] On 1 July 2022 the members of the Applicant met the Third Respondent at his home in Ladybrand where a written installation and supply agreements annexed to the papers and marked Annexures 'OA1' an 'OA2' were signed by the First Respondent. These agreements were backdated. It is common cause that the Third Respondent signed the said documents without reading them.[1]

[4] The version of the Applicant is that during 2013 and 2015 respectively, it and the First Respondent entered into a verbal agreement in terms of which it sold and supplied petroleum fuel products to the First Respondent's two service stations. This verbal agreement remained in place until it was replaced.

[5] During December 2020 or the beginning of 2021 the Applicant and the First and entered into a further verbal agreement. The material terms of this agreement were, inter alia, that the Applicant would refurbish and/or rebuilt and /or upgrade the service stations of the First Respondent by installing high volume suction pumps, hose suction pumps, steel tanks, composite bonded tanks, and rebrand the service stations as Atlantic Oil service stations. The Applicant alleges that it was an express, alternatively implied, alternatively tacit term of the third agreement that such an agreement would in due course be reduced to writing. This verbal agreement contained various terms like the duration of the agreement, that the tanks and equipment would remain the property of the Applicant, that the First Respondent would purchase petroleum products exclusively from the Applicant; terms relating to the quantity to be

[1] See AA page 202 para 57.7 and RA page 261 para 4.16.

sold and dispensed on at given intervals, maintenance and a hist of other numerous terms.

[6] The Applicant avers that this agreement was implemented and refurbishment completed during 2021. It is the case for the Applicant that initially the First Respondent complied with the terms of the agreement and purchased petroleum products solely from the Applicant. According to the Applicant, the last order for the purchase of petroleum products it received from the First Respondent was on 10 June 2022.

[7] It is the case of the Applicant that it became aware that the First Respondent had started to purchase the petrol products from another entity called Lesotho Petroleum. Pursuant to this Mr Oosthuizen, an employee of the Applicant avers that he contacted the Third Respondent and the latter informed him that he was in the process of selling the business. The Third Respondent further confirmed that the Third agreement would be replaced by a written installation and supply material agreement to ensure that the oral agreement was reduced to a written agreement.

[8] According to Oosthuizen, the Third Respondent confirmed the sale of the business to him on 1 July 2022 to one Mr Halse. The First Respondent also confirmed that the purchaser was aware of the terms of the installation and supply agreement. Oosthuizen confirmed that the Third Respondent is still the controlling member of the First Respondent. Oosthuizen alleges that First Respondent signed the supply and installation agreement in 2022 but same was backdated to 25 June 2021 as the written agreements would apply retrospectively from the stage that the service stations were rebuilt and/or refurbished and/r or upgraded.

[9] According to Oosthuizen, the Third Respondent also signed a so-called *'consent to landlord'* in which the landlord acknowledged the agreement between the First Respondent and Atlantic Oil Inland (Pty)Ltd in respect of the premises as well as the requirement to the registration of a servitude. The Third Respondent, according to Oosthuizen signed a power of attorney to

enable the registration of the servitude over the immovable property in favour of the Applicant. It appears that Oosthuizen contacted the purchaser, Mr Halse around August 2023 and also sent the agreements and the prices but nothing bore any fruit.

[10] It is submitted on behalf of the Applicant that there is a contractual relationship between the Applicant, the First and Second Respondents. The Applicant contends that it has a contractual right to enforce which is currently being infringed by the conduct of the First and Second Respondents.

[11] The Respondents' version as narrated by the Third Respondent is as follows: The First Respondent had a business relationship with the Applicants which dates back few years prior to the dispute before me. The First Respondent has purchased petroleum products from Atlantic Oil Inland Proprietary Limited for a few years. It is disputed that the First Respondent entered into any verbal agreement with the Applicant during 2013 and 2015. It is further disputed that the First Respondent concluded a new installation and supply agreement. It is submitted that in view of the fact that the First Respondent did not enter into this latter agreement, it follows that it cannot be in breach thereof.

[12] According to the Third Respondent, on 1 July 2022 he had a visit at his home from Messrs Oosthuizen, Van Vuuren and Me Fourie. The visit lasted for about 45 minutes. When this visit took place, Oosthuizen, Van Vuuren and Fourie were aware that the Third Respondent was no longer involved in the business of the First and Second Respondents as he had sold his member's interest in those two entities. The three informed him that they needed his assistance and that he should complete some documents for them to get their paper work in order.

[13] According to the Third Respondent, he was provided with documents (Annexures AO 1 and AO2 of the founding affidavit). These documents comprised a total of 106 pages. He was asked to initial and sign them. He duly signed same in circumstances as indicated in the previous paragraph. He is adamant that when he signed the said documents, he did not know that he

was signing the agreements in the form of Annexures AO1 and AO2, nor did he suspect that he was signing such agreements. He insists that he was misled into signing the said agreements. According to him when he signed the said agreements, he was not alerted to the true nature of the documents he was asked to sign.

[14] The requirements for the granting of an interim interdict are trite. In order to obtain interim relief, the applicant must establish the following: A prima facie right even though open to some doubt; a well-grounded apprehension of irreparable harm if the interim relief is not granted; that the balance of convenience favours the granting of an interim relief and; the lack of another satisfactory or adequate remedy in the circumstances.

[15] It is settled that application procedures are designed to deal with legal issues on common cause facts[2]. In *Plascon -Evans Paints Ltd v Van Riebeek Paints (Pty) Ltd*[3] the court held as follows:

"It is correct that, where in proceedings in motion disputes of fact have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicants affidavits have been admitted by the respondent, together with the facts alleged by the respondent, justify an order."

Wightman t/a JW Construction v Headfour(Pty) Ltd and Another reiterated that "an applicant who seeks final relief on motion must, in the event of conflict, accept the version set up by his opponent unless the latter's allegations are, in the opinion of the court, not such as to raise a real genuine or bona fide dispute of fact or are so far fetched or clearly untenable that the court is justified in rejecting them merely on the papers..."

The court in this case went further and said:

" [13] A real, genuine and bona fide dispute of fact can exist only where a court is satisfied that the party who purports to raise the dispute has in his affidavit strongly and unambiguously addressed- the fact said to be disputed."

[2] National Director of Public Prosecutions v Zuma[2009] ZASCA 1;2009(2) SA 277(SCA) at 228.

[3] [1984] ZASCA 55; 1984(3) SA 623(A).

[16] In *Simon NO v Air Operations of Europe AB and Others*[4] the following was said:

> "The accepted test for prima facie right in the context of an interim interdict is to take the facts averred by the applicant, together with such facts set out by the respondent that are not or cannot be disputed and to consider whether, having regard to the inherent probabilities, the applicant should on those facts obtain final relief at the trial. The facts set up in contradiction by the respondent should then be considered and, if serious doubt is thrown upon the case of the applicant, he cannot succeed."

[17] It is common cause that the First Respondent owns two service stations which conduct business under the names Panorama Motors and Autorama Motors. It is also common cause that the First Respondent had a business relationship and purchased petroleum products from the Applicant. Although there seems to be a dispute about the entity from which the First Respondent purchased the products from, such dispute in my view revolves around typographical error or is a clear mistake. Such mistake has no bearing to the dispute between the parties.

[18] The case of the Applicant is premised on three agreements allegedly entered into between the Applicant and the First Respondent. The relief sought against the Second and Third Respondents is dependent on the alleged agreement between the Applicant and the First Respondent. The Applicant relies heavily on the written agreement which it alleges is simply the second verbal agreement reduced to writing by consent of the Third Respondent. What is clear about the alleged second verbal agreement is that it is not correctly pleaded as required by Uniform Rule 18. Full particularity is lacking in it.

[19] It is undisputed in my view that the First Respondent signed the written installation and supply agreement. What is also undisputed is the fact that the Applicant spent large sums of money to refurbish and rebrand the two service stations. What is however in dispute is the terms pertaining to such rebranding and refurbishment.

---

[4] 1999(1) SA 217(SCA) at 228.

[20] The Applicant contended initially that the third written agreement was entered into on or about 25 June 2021[5]. It was at that early stage pointed to the Applicant that the members of the Applicant visited the First Respondent during June 2022 where various documents were presented for signature. A request was then made by the attorneys of the Respondent to be furnished with the documents alleged to have been signed during June 2021.Upon this date of the signature being raised, the Applicant capitulated and averred that the written agreement was actually signed in June 2022 but backdated to 25 June 2021 *"as agreed by both parties to reflect the intention of the parties that the written agreements operate retrospectively."* The backdated date is alleged to coincide with the stage that the service stations were rebuild or refurbished.

[21] I find it difficult to accept this explanation. The Applicant does not explain why, the Third Respondent, if he knew of the 2021 agreement would ask his attorneys to seek same from the Applicant's attorneys for perusal. The issue that the written agreement was backdated was disputed right from the beginning. In spite of the contention by the Applicant that the parties agreed that the effective backdated date would be 25 June 2021, both Annexures AO1 and AO2 provides that the agreements would commence on 1 January 2021, being the "effective date". Even on its own version, there is a discrepancy in the version of the Applicant about the so called back dated date.

[22] The evidence reveals that on 22 September 2022 the Third Respondent and his late wife concluded two written sale agreements in terms of which they both sold their entire members interests in the First and Second Respondents to AC Halse Trust for a total amount of R8 000 000.00. Proof of such payments were admitted into evidence which evidences those payments were made into the account of the Third Applicant on 7 June 2022. The effective date of the sale of both agreements is 1 June 2022. The said trust performed in terms of the agreement and paid the agreed price in full. If one were to accept that such sale took place as alleged by the Third respondent, then one would surely also

[5] See paginated record page 161.

have to accept the contention by the Third Respondent that on 1 July 2022 when the alleged written agreement was signed, he was no longer involved with the business of the First and Second Respondents. The date of payment of the purchase price clearly shows that when the Third Respondent had a meeting with the members of the Applicant, the applicant had already sold and received the purchase money. The contention of the Third Respondent is that the outstanding issue remaining in the sale transaction was the formal registration. This in my view caters for the contention by the Applicant that the Third Respondent was still the controlling member of the First Respondent.

[23] Much argument is made on behalf of the Applicant that in a letter dated 14 December 2022 it is said that the Respondents attorneys acted for the Third Respondent on behalf of the First Respondent. This may be so but one has to read the whole letter in order to understand the context in which it was written. The attorney indicated that they were not able to "comprehensively consult" with the Third respondent and requested an indulgence to do so. Clearly upon comprehensive consultation the true facts came to the fore.

[24] The second verbal agreement does not refer to a servitude to be registered. The power of attorney as well as the annexures attached to schedule 6 of Annexure AO1 are incomplete. All these go to the heart of the credibility of the Applicant. The First respondent, about 83 years at the time led evidence as to the circumstances under which he signed the written agreements. He denies that he knew what he was signing and is adamant that he was misled in signing the agreement. This is obviously denied by the applicant and gives a wholly divergent view as to how the documents were signed. I however cannot ignore the facts that it is admitted that the Third Respondent did not read the documents himself. The documents were voluminous for an old man of 83 years and contained complex legal terms. The time taken to have this discussion was less than an hour

[25] It cannot be disputed that the Applicant refurbished the two service stations. In my view because of the serious dispute about whether there was an agreement or otherwise to refurbish the service stations as well as the terms

of the refurbishment and the fact that the business has been sold, I have to exercise my discretion to refuse the granting of the interim order. The Applicant ought to have foreseen during correspondence with the attorneys for the Respondents that there will be a serious dispute of fact. It is unnecessary for this court to decide whether a proper case has been made out because even if I were to find that such a case has been made out, this court still possessed a wide discretion to decline same. The fact that the Respondents deny the agreement, they allege that the true nature of the agreement was not explained to him, that he was misled into signing the agreement, that the service stations have been sold and AC Halse trust has not been joined although the Applicants are aware of the interest the trust may have in the outcome of this matter calls for this court to decline to grant the interim order. In my view this matter would best be ventilated in the action proceedings as there a number of issues which cannot be resolved on papers. I accordingly make this order:

ORDER

1. The application is referred to the trial court;
2. The Notice of Motion shall stand as a simple summons;
3. The Applicant shall deliver a declaration in terms of Rule 20 within 30 days from date of this order;
4. The rules of this court will apply in the further prosecution of this matter;
5. The costs of this application shall be costs in the cause.

[redacted]

P. E. MOLITSOANE, J

On behalf of the Applicant:	Adv. HJ de Wet SC
Appearing with:	Adv R Britz
Instructed by	Matsepes
	BLOEMFONTEIN

On behalf of the 1st,2nd and 3rd Respondents:	Adv. N Snullenburg SC
Appearing with:	Adv. WJ Groenewald
Instructed by	Matsepes BLOEMFONTEIN