

COURT ONLINE COVER PAGE

IN THE HIGH COURT OF SOUTH AFRICA
Gauteng Local Division, Johannesburg

CASE NO: **2023-014196**

In the matter between:

DAYAL CONSULTING (PTY) LTD

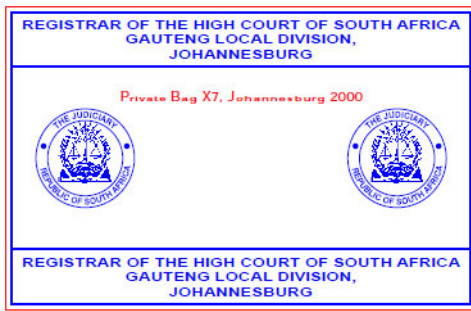
Plaintiff / Applicant / Appellant

and

THE UNLAWFUL OCCUPIERS OF UNIT 9 Defendant / Respondent
MONT BLANC HEIGHTS,THE
UNLAWFUL OCCUPIERS OF UNIT 60
MONT BLANC HEIGHTS,RUI MIGUEL DE
FIGUEIREDO N.O THE TRUSTEE FOR
THE TIME BEING OF THE LWWS
HOLDING TRUST WITH REGISTRATION
NUMBER IT3059/04(T),TANYA ROCHA
N.O THE TRUSTEE FOR TIME BEING OF
THE TRUST LWWS HOLDING TRUST
WITH REGISTRATION NUMBER
IT3059/04(T),MARIA DA CONCICAO DE
FREITAS VASCONCELOS N.O THE
TRUSTEE FOR TIME BEING OF THE
TRUST LWWS HOLDING TRUST WITH
REGISTRATION NUMBER
IT3059/04(T),MARIO ALEXANDRE DE
FIGUERIEDO ROSHA N.O THE
TRUSTEE FOR TIME BEING OF THE
TRUST LWWS HOLDING TRUST WITH
REGISTRATION NUMBER
IT3059/04(T),REVENUE ASSET
PROTECTION (PTY) LTD,REDLEX 297
(PTY) LTD,EKURHULENI
METROPOLITAN MUNICIPALITY

Judgement dated 07 Aug 2024 by Aswegen AJ

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ELECTRONICALLY SIGNED BY:

**Registrar of High Court , Gauteng
Local Division,Johannesburg**

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case Number: 2023-014169

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

Signature

7 August 2024

Date



In the application between:

DAYAL CONSULTING (PTY) LTD
Applicant

AND

**THE UNLAWFUL OCCUPIERS OF UNIT 9
MONT BLANC HEIGHTS**

First Respondent

**THE UNLAWFUL OCCUPIERS OF UNIT 60
MONT BLANC HEIGHTS**

Second Respondent

**RUI MIGUEL DE FIGUEIREDO N.O.,
THE TRUSTEE FOR THE TIME BEING
OF THE LWWS HOLDING TRUST WITH
REGISTRATION NUMBER IT3059/04(T)**

Third Respondent

**TANYA ROCHA N.O.,
THE TRUSTEE FOR THE TIME BEING
OF THE LWWS HOLDING TRUST WITH
REGISTRATION NUMBER IT 3059/04(T)**
Respondent

Fourth

**MARIA DA CONCICAO DE FREITAS
VASCONCES N.O., THE TRUSTEE
FOR THE TIME BEING OF THE LWWS HOLDING
TRUST WITH REGISTRATION NUMBER
IT 3059/04(T)**

Fifth Respondent

MARIO ALEXANDRE DE FIGUERIEDO ROCHA

Sixth Respondent

REVENUE ASSET PROTECTION (PTY) LTD

Seventh Respondent

REDLEX 297 (PTY) LTD

Eight Respondent

**EKURHULENI METROPOLITAN
MUNICIPALITY**

Ninth Respondent



JUDGMENT

Van Aswegen AJ

- [1] The Applicant launched an application in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, Act 19 of 1998 (PIE) for the eviction of the respondents and all persons occupying under or through them, from the immovable properties known as Unit 9 and Unit 60 of Mont Blanc Heights - situate at corner Sovereign and Oxford Streets Bedford Gardens, Bedfordview ("the properties")
- [2] The applicant is the registered owner of the properties in the sectional title scheme known as Mont Blanc Heights registered as such with Title Deed Number **ST277/2007**, and which are currently occupied from time to time by the first to the eight respondents.

[3] The said properties were previously owned by Rapiprop 149 (Pty) Ltd ("Rapiprop") which was placed in final liquidation on or about 14 August 2018 (Annexure "FA2")¹.

[4] On 27 August 2018, the Master of the High Court, Johannesburg appointed Mr. Cloete Murray, Mr. Tshepo Harry Nonyane and Mr. Brian Itumeleng Nakedi of the Sechaba Trust (Annexure "FA3")² as the joint liquidators of Rapiprop ("the joint liquidators").



[5] The properties referred to in paragraph [1] here in before were to be sold at public auction and had been advertised in a general information pack – Annexure "FA4" - relating to the sale of the properties prepared by the auctioneers.³

[6] Paragraph 6 of the said auctioneer's Information pack heads *Financial Information* and reads as follows:⁴

"As per information received, there is an apparent "Head Lease" in place for all 17 units in terms of a rental pool/hotel type set up. The details of the income as per this Head Lease have not been provided to the WH or the Liquidators.

¹ 001-66.

² 00-67

³ Annexure FA4 at 001-68

⁴ 001-75

NOTE: The units are to be offered for sale as follows:

1. *Units to be sold as one parcel, subject to any head lease that may exist over the properties.*
2. *Units to be sold as a package, without any lease in place.*
3. *Units to be sold individually, without any leases in place.* (my underlining)

[7] On 14 March 2019 the Applicant purchased the two properties as advertised in the aforesaid information pack on an auction held at Mont Blanc.  The said properties relate to two of the 17 units in the Sectional Title Scheme known as Mont Blanc Heights namely units which were auctioned off by the liquidators of Rapiprop 149 Pty Ltd (in liquidation) ('Rapiprop') at Johannesburg.

[8] The applicant took transfer of the properties on the 9th of October 2020, and they are now held by Sectional Deeds of Transfer **ST29433/2020** marked as "RT1"⁵ and **ST29436/2020** marked as "RT2" respectively.

[9] The respondents admit the ownership of the applicant⁶ in respect of the properties but plead that the respondents are entitled to occupy because of long leases which are allegedly in place.

[10] It is apparent that although mentioned was made of an apparent head lease in place over all 17 units, it was however distinctly stated that units individually

⁵ 004-60 and 004-64

⁶ Para 67 003-30.

sold were sold without any leases in place. Clause 2.6 from the extract from the conditions of sale, Annexure A, "TRANSACTION DETAILS", between the purchasers and the liquidators of Rapirop marked as "FA1"⁷ shows clearly that the properties were sold subject to no lease. The wording - *subject to no lease* – was inserted in writing and subsequently initialled by all the parties.

[11] It is of importance to mention that no long lease had been registered against the title deeds of the two properties.⁸



[12] The applicant as the registered owner of the two properties in the application before me seeks the lawful possession of its properties.

THE APPLICANT'S LOCUS STANDI:

[13] The onus to prove *locus standi* for the institution of these proceedings is on the applicant.

[14] Section 4(1) of PIE provides that:

"[n]otwithstanding anything to the contrary contained in any law or the common law, the provisions of this section apply to proceedings by an owner or person in charge of land for the eviction of an unlawful occupier".

⁷ 001-61

⁸ 01-161 and 01-165.

“Owner”, insofar as is relevant, is defined in PIE as “the registered owner of land”.

- [15] The applicant, is the registered owner of the property as contemplated in section 1 (the definitions section) of PIE. The applicants’ *locus standi* is therefore beyond question.

CONFIRMATION OF UNITS SOLD SUBJECT TO NO LEASE:



- [16] Confirmation that the individual units were sold without a lease can be found in a letter dated 2 November 2021 to the trustees of LWWS Trust by the attorneys, Messrs Van der Meer & Schoonbee, representing the purchaser of another unit, unit number 5, in Mont Blanc Heights who stated that the sale of the properties took place subject to no lease.⁹
- [17] The aforesaid attorneys also noted that no claim for the LWWS Lease had ever been formally lodged with the liquidators of Rapiprop in accordance with insolvency proceedings, despite the effective date of liquidation of Rapiprop being 18 June 2018. Furthermore, the LWWS Trust did not made any attempt to prove the claim of the LWWS lease through due process and have not objected to the Draft Liquidation and Distribution Account of Rapiprop which disregards this claim. Accordingly, the said attorneys concluded that the claim had no legal standing. This court agrees that the respondents’ failure to:

⁹ FA11 001-176

- i) lodge their claim with the liquidators since 2018,
- ii) proof their claim and
- iii) object to the Draft Liquidation and Distribution Account of Rapiprop raises serious doubt over the existence of the respondents' claim and the LWWS Head Lease.



[18] The aforesaid letter also states that the claim of the LWWS lease had been orchestrated by Mr. Mario Rocha, the ex-director of Rapiprop and the sixth respondent in this matter. In respect of Mr. Mario Rocha it was alleged that:

[18.1] his business activities at Mont Blanc Heights through Rapiprop had costed First Rand Bank Limited a loss of over R30 million in addition to the huge losses to creditors sustained through his other liquidated entities.

[18.2] regarding the liquidation proceedings of Rapiprop, Mr. Mario Rocha had already been found to be:

- i) in contempt of court for failing to submit the "statement of affairs" (CM100),
- ii) failing to co-operate with the liquidators and

iii) failing to hand over the financial records of the company.¹⁰

[18.3] as an ex-director he had also failed to surrender control of the assets of Rapiprop to the liquidators in breach of statutory obligations and had continued to use such assets for his own direct or indirect benefit.

[19] On the 9 December 2021, the Gauteng Rental Tribunal further issued a Ruling in respect of Unit 5 under case no RT 624/21. (See; para 47, CaseLines 001-32, attached as FA13 at CL 001-187) in, *inter alia*, the following terms:



“Declaring that the LWWS lease (TAP6)” was invalid as per the prescripts of the Formalities in Respect of Leases of Land Act, 18 of 1969 (See Ruling 6)”

[20] This ruling stand to date, although it has the status of a magistrate’s court ruling.

[21] The Trustees of the LWWS Holdings Trust have lodged review proceedings in this court on or about October 2022. It is trite that review proceedings relate to irregular processes and that a review is not a bar to this PIE application.

[22] On 21 November 2023 De Beer AJ in case number 2022/23317 evicted the unlawful occupants from unit 5 in Mont Blanc Heights and interdicted and

¹⁰ Para 113 004-36

restrained the occupants from entering and occupying unit 5 pursuant to them having vacated the said unit.

- [23] De Beer AJ pronounced judgment in the said matter on the basis that it was clear that the property was subject to no lease. He adjudicated the matter on the concept of knowledge in terms of Section 1(2)(b) of the Formalities in respect of Leases of Land Act, 18 of 1969. The Court concluded that the applicable respondents did not discharge the onus of proving knowledge as required by the aforesaid Act.



- [24] The respondents subsequently applied for leave to appeal which the court dismissed.

- [25] Unit 5 was also sold on the public auction as was units 9 and 60 Mont Blanc Heights – the properties in the matter currently before me. De Beer AJ indicated that the long lease was not registered against the title deed of unit 5 and that the respondents, who were the applicants in the leave to appeal application, had failed to discharge the onus of satisfying the court that the owner of unit 5 had actual knowledge of the long lease. The Applicants wanted he said to create a dispute of fact where there was none. The information pack in respect of the auction of unit 5 was overridden the court found by clause 2.6 of the sale agreement which stipulated that the unit was sold subject to no lease. The information pack also specifically stated that units sold individually would be sold without any lease in place. For the principle *huur gaat voor koop* to apply

the applicants had to first establish knowledge of the long lease – which the applicants failed to do.

- [26] De Beer AJ had to determine precisely the same issue as in the matter currently before me, namely whether there was actual knowledge of the long lease in the absence of registration against the title deed in terms of section 1(2) of the Formalities in respect of Leases of Land Act, Act 18 of 1969 ("the Act").

- [27] In *Bloemfontein Town Council v Richter* the Appellate Division said the following about *stare decisis* ("to stand by things decided"):



"The ordinary rule is that this Court is bound by its own decisions and unless a decision has been arrived at on some manifest oversight or misunderstanding, that is there has been something in the nature of a palpable mistake, a subsequently constituted Court has no right to prefer its own reasoning to that of its predecessors - such preference, if allowed, would produce endless uncertainty and confusion. The maxim 'stare decisis' should, therefore, be more rigidly applied in this the Highest Court in the land, than in all others".¹¹

- [28] Despite this court's previous ruling as aforesaid, namely that the sale of the properties took place without any leases, which I take cognisance of, I will in detail ventilate all the issues which came before me.

- [29] I commence with a discussion of the applicant's control of the properties.

¹¹ Bloemfontein Council v Richter, 1938 AD 195.

USE OF THE PROPERTIES:

[30] The applicant is unable as owner of the properties, to gain and control the properties, it alleges, for the following reasons:

[30.1] the properties are situated within a block of flats with a single entrance to the building.

[30.2] the building is guarded by a security company apparently in the control of the previous director of Rapiprop who refuses and/or removes any representative of the applicant who attempts to take possession of the property.



[30.3] The respondents, save for the sixth and eight respondents are in occupation of the properties.

[31] The applicant initially instituted an application for the eviction of the unlawful occupiers in the Germiston Magistrates Court which application was withdrawn.

[32] During the litigation in the Germiston Court, one Ms. Tanya Du Preez ("Ms. Du Preez" now Rocha), the fourth respondent in the matter before me, apparently acting on behalf of the LWWS Trust deposed to an affidavit to intervene in the eviction application.

[33] Ms. Du Preez alleged that a lease agreement had been concluded between Rapiprop and the LWWS Trust at Johannesburg on 15 November 2009 ("the Head Lease").¹²

[34] The material, tacit and/or implied terms of the Head Lease were allegedly as follows:

[34.1] The trust was the lessee and Rapiprop was the lessor.



[34.2] The property description was ERF 60 Bedford Gardens with sectional title scheme, namely section 2, 4, 5, 6, 7, 9, 10, 11, 12, 15, 34, 35, 56, 57, 58, 60 and 22, 25, 50 and 55 (Unit number 002, 004, 005, 006, 101, 103, 104, 105, 106, 203, 504, 505, 902, 903, 904, 906, 802, 304, 401, 901) of the scheme SS227/2007, together with all improvements thereon including fixtures, furniture and fittings, which shall include the right to the exclusive use areas and the undivided share in the common property in the scheme apportioned to these sections in accordance with the Participation Quota as endorsed on the sectional title plan, and the right to the sue of exclusive use of the exclusive use areas apportioned to the sections. The trust would have the right to recover all the operating costs, levies, rates, consumables and any other costs arising from the operation of the enterprise from the current tenants and future tenants ("the premises").

¹² Annexure FA6

[34.3] The head lease would commence on 1 December 2009 ("the commencement date") and would endure until 31 December 2060. The trust would be entitled to a beneficial occupation period for 24 (twenty-four) months reckoned from 1 December 2009 to 30 November 2011, which period would be rent free as because of the exclusion of tenant allowances in favour of the trust (clause 2.1).

[34.4] Notwithstanding clause 2.1 mentioned here in before, the trust would have the option to renew the head lease for a further period of 30 years, if it gave Rapiprop notice in writing of its intention to exercise its option, at least two calendar months prior to the expiry of the fifty-year period (clause 2.2).



[34.5] The monthly rental payable by the trust to Rapiprop would be an amount of R142 000.00 (one hundred and forty-two thousand Rand) per month furnished by the trust (clause 3.1).

[34.6] The trust would utilize the properties only for office purposes (clause 5.1).

[34.7] The trust would comply strictly with and would not permit the contravention of (clause 5.2):

[34.7.1] the provisions of any statute, law, ordinance by-law or regulations (clause 5.2.1).

[34.7.2] the provisions of any conduct rule, house rule or constitution of any sectional title scheme as may be applicable to the properties, or to the occupation thereof (clause 5.2.2).

[34.8] The trust would have the right to sublet, cede, transfer, or assign the head lease and the various terms and options, right of first refusal and the deemed offer of this agreement to a third party without having to give notice to Rapiprop. The cession is exclusive and irrevocable to the trust and binding on all parties (clause 9).



[34.9] Should the trust fail to make payment of any rental or other amount payable to Rapiprop in terms of the head lease on due date, Rapiprop would be entitled without prejudice to its rights to charge interest on such amounts at a rate of 1% above the prime lending rate from time to time of the Standard Bank of South Africa Limited, however Rapiprop, undersigned and their respective heirs executives, administrators, successors, transferees, assignees, agents, financial institutions and attorneys will have no right to cancel the lease and/or head lease or any parts thereof (clause 10.2). (my underlining)

[34.10] The trust would at any time during the currency of the head lease have the unfettered right to convert the head lease into a Head Lease in respect of the entire property as contemplated in Appendix 1 (clause 13.1).

APPENDIX 1

[34.11] Rapirop, in its capacity as the Head Lessor, granted to the trust, an exclusive and irrevocable option, which option may be exercised by the trust at any time during the duration of the lease term to enter a new lease as head lessee over the entire extent of the properties for the period of 50 years commencing on the date on which the option is exercised (clause 1.1).



[34.12] The trust wished to exercise its rights under the option with immediate effect on signature date of 15 November 2009. (clause 2.1).

[35] Ms. Du Preez alleged that the head lease is a long lease subject to Section 1(2) of the formalities in respect of Leases of Land Act 18 of 1969 ("the Act"). It was however not alleged that the head lease had been registered as required in terms of section 1(2) (a) of the Act.

[36] Section 1(2) of the Act states the following:

"(2) *No lease of land which is entered into for a period of not less than ten years or for the natural life of the lessee or any other person mentioned in the lease, or which is renewable from time to time at the will of the lessee indefinitely or for periods which together with the first period of the lease amount in all to not less than ten years, shall, if such lease be entered into after the commencement of this Act, be valid against a*

creditor or successor under onerous title of the lessor for a period longer than ten years after having been entered into, unless-

(a) *it has been registered against the title deeds of the leased land;*

or

(b) *the aforesaid creditor or successor at the time of the giving of credit or the entry into the transaction by which he obtained the leased land or a portion thereof or obtained a real right in respect thereof, as the case may be, knew of the lease."*



[37] The head lease if not registered against the title deed of the land is therefore invalid unless the applicant, when acquiring the properties, knew of the long lease.

[38] Ms. Du Preez also referred to an additional written lease titled "*Agreement of Lease Incorporating a Head Lease*" with Revenue Asset Protection Services (Pty) Ltd ("RAPS") the seventh respondent at Johannesburg on the 1st of December 2015 ("the RAPS Lease")¹³

[39] The material, express, tacit, and/or implied terms of the RAPS lease were the following:

¹³ Annexure FA7

[39.1] RAPS hired from the LWWS trust, the property described in the RAPS lease on the terms and conditions set out in the Schedule and General Terms and Conditions of the RAPS lease as per the property description ERF 60 Bedford Gardens with sectional title scheme, namely section 2, 4, 5, 6, 7, 9, 10, 11, 12, 15, 34, 35, 56, 57, 58, 60 and 22, 25, 50 and 55 (Unit number 002, 004, 005, 006, 101, 103, 104, 105, 106, 203, 504, 505, 902, 903, 904, 906, 802, 304, 401, 901) of the scheme SS227/2007, together with all improvements thereon including fixtures, furniture and fittings, which shall include the right to the exclusive use areas and the undivided share in the common property in the scheme apportioned to these sections in accordance with the Participation Quota as endorsed on the sectional title plan, and the right to the sue of exclusive use of the exclusive use areas apportioned to the sections. RAPS would have the right to recover all the operating costs, levies, rates, consumables and any other costs arising from the operation of the enterprise from the current tenants and future tenants ("the premises") (page 1).



[39.2] The RAPS lease would commence on 1 December 2015 ("the commencement date") and would endure until 31 December 2022 ("the initial period"). RAPS would be entitled to a beneficial occupation period of 24 (twenty-four months reckoned from 1 December 2015 until 31 December 2017, which period would be rent free because of the execution of the tenant allowances in favour of RAPS (clause 2.1).

[39.3] Notwithstanding clause 2.1, RAPS would have the option to renew the RAPS lease for a further period of 30 years, if it gives the trust notice in writing of its intention to so exercise its option, at least two calendar months prior to the expiry of the fifty-year period. Should RAPS exercise its option as provided for in the RAPS lease, then the RAPS lease would be renewed on the same terms and conditions save that the monthly rental payable by RAPS to the trust would be an amount equivalent to that payable in the final month of the initial period escalated by 6% and save that such monthly rental would thereafter escalate on the anniversary date by 6% per annum (clause 2.2).



[39.4] The monthly rental payable by RAPS to the trust would be an amount of R1 000.00 per month fully furnished by the trust in lieu of security services provided on all the properties and the monthly rental collection from all the other properties as (clause 3.1).

[39.5] The trust would be, in addition to the monthly rental payable to it by RAPS, liable to pay for all the electricity, water, gas, refuse removal, sewerage of other such services supplied to, or consumed on the premises (as defined in the RAPS lease), any increase in the rates and taxes levied in respect of the premises (clause 4.1) (my underlining)

[40] The scheme number of Mont Blanc Heights is SS277/2007 and not SS227/2007 as depicted in both the LWWS Lease and the RAPS lease.

[41] The RAPS Lease is also subject to section 1(2) of the formalities of the Act.

[42] The RAPS lease was also not registered in terms of section 1(2)(a)/(b) of the Act.

[43] Ms. Du Preez did however not mention that another "head lease" had allegedly been concluded, namely Annexure "FA8".¹⁴

[44] In terms of "FA8", Rapiprop duly represented by Mr. Mario Rocha, the sixth Respondent, entered into a written agreement on 20 September 2017 with Redlex 297 (Pty) Ltd duly represented by Mr. Junaid Ali - titled the Agreement of Lease (Head Lease) ("the second head lease").



[45] The material terms of the second head lease were as follows:

[45.1] Redlex hired from Rapiprop the premises described in the second lease on the terms and conditions set out in the schedule and general terms and conditions of the second lease as per the property description ERF 60 Bedford Gardens with sectional title scheme, namely section 5, 6, 7, 9, 10, 11, 12, 15, 34, 35, 56, 57, 58, 60 and 22, 50 and 55 (Unit number 002, 004, 005, 006, 101, 103, 104, 105, 106, 203, 504, 505, 902, 903, 904, 906, 802, 304, 401, 901) of the scheme SS227/2007, together with all improvements thereon

¹⁴ 001-124

including fixtures, furniture and fittings, which shall include the right to the exclusive use areas and the undivided share in the common property in the scheme apportioned to these sections in accordance with the Participation Quota as endorsed on the sectional title plan, and the right to the sue of exclusive use of the exclusive use areas apportioned to the sections. Redlex would have the right to recover all the operating costs, levies, rates, consumables and any other costs arising from the operation of the enterprise from the ~~current~~ tenants and future tenants (first paragraph on page 2).



[45.2] The initial period of the lease would be 10 years, commencing October 2017 and ending November 2027 (clause 2 of the schedule).

[45.3] Rapirop lets the premises to the Redlex who hired the premises, subject to the terms and conditions set out in the second lease. Redlex would only be required to pay a minimum lease fee of R20 000.00 during the first 24 months of the second lease to recover all upfront costs incurred by the Redlex in establishing the rental pool, i.e. furniture, staff contract costs, rental pool launch and marking costs etc. as agreed with Rapirop. Thereafter Redlex will pay a minimum of R40 000.00 per month. Redlex would take on all risk related to vacancies of the units in the rental pool and would irrespective be obliged to pay the minimum amount mentioned above. Thereafter, Redlex would pay over all the rental received

monthly, within 30 days of receiving the said rental to Rapiprop after deducting for its minimum head lease fee of 10% of rental turnover (clause 2).

[46] It is also interesting to note that comparable to the LWWS Lease and Redlex Lease the scheme number of Mont Blanc Heights is SS277/2007 and not SS227/2007 as defined in the second head lease.

[47] By the same token:



[47.1] The second head lease is subject to section 1(2) of the formalities of the Act.

[47.2] It was not alleged that the second head lease was registered in terms of section 1(2)(a)/(b) of the Act.

[48] It is accordingly the Respondents' case, as set out by Ms. Du Preez, who asserts her authority to do so based on a resolution signed by the trustees of the LWWS Holdings Trust¹⁵ dated 19 October 2020, that the LWWS Trust holds a "*Poison Pill*" Head Lease over the disputed properties, which grants it substantial rights, including the right of first refusal and a deemed offer, both of which were exercised at the time of the lease's conclusion. The Respondents contend that the *Poison Pill* Head Lease is still of force and effect in respect of the entire building, including

¹⁵ TAP2 at 003-400

the subject matter of this application. The aforesaid Head Lease has not been cancelled and is furthermore not capable of cancellation without a penalty fee.

[49] Insofar as the *Poison Pill* Head Lease is concerned Ms. Du Preez alleges that the LWWS Holdings Trust therefore have rights over the disputed properties. She challenges the basis for the eviction application arguing that it fails to take into consideration the existence and implications of the "*Poison Pill*" Head Lease. Reliance is placed on "*huur gaat voor koop*" in that the LWWS Holding Trust's "*Poison Pill*" Head Lease precedes the sale of the properties. The Head Lease it is alleged trumps the real rights of the applicant as the registered owner annexed with the title deeds.



[50] The signatories to the "*Poison Pill*" Head Lease¹⁶ were Ms. Du Preez and her spouse - the sixth respondent. The sixth respondent and a Mr. Jorge Martins were the former directors of Rapirop. The RAPS sub-lease was signed by Ms. Du Preez and a Mr. David Safi.

[51] The LWWS Holding Trust and/or occupants of the units are according to the Respondents in lawful possession of the property, based upon the "*Poison Pill*" Head Lease and sub-lease which are in place. Ms. Du Preez states that the LWWS Holdings Trust's "*Poison Pill*" Head Lease gives the respondents a real right over the property.

¹⁶ TAP 6 003-202

[52] The Applicant however disputes the validity of the so-called "*Poison Pill*" Head Lease and related leases and argues that they are all contrived agreements to perpetuate occupation of the property unlawfully and defy the liquidation order of Rapirop.

[53] The Respondents furthermore allege misconduct by the liquidators responsible for selling the properties, including claims of unlawful, irregular and unconstitutional actions as determined by a public protector's report and subsequent investigations including an investigation in terms of section 381(1) of the Companies Act 61 of 1971.



[54] It is abundantly clear that the "Poison Pill" Head Lease and sub-lease were not registered against the deeds of the property. The said lease and sub-lease are however subject to the formalities of section 1(2) of the Act. If there was no registration against the title deeds the respondents had to show that the Applicant had knowledge of these leases at the time of acquiring the properties.

[55] Despite the respondents having alleged that all these leases existed and created rights for them, Mr. Rocha, a director of both Rapirop and Redlex and the sixth respondent apparently, having some right to the property in the liquidated estate in terms of "the leases", refused and/or neglected and/or failed to co-operate with the joint liquidators and handover financial records needed (Page 2 of the Second and General Meeting of Creditors' report, Annexure "FA9").¹⁷

¹⁷ 001-144

[56] If these leases were legitimate, the sixth respondent would most surely:

[56.1] have provided these leases to the joint liquidators and/or

[56.2] registered a claim in the estate. No such claim exists as can be seen from the schedule of claims (Annexure "FA10")¹⁸

[56.3] have made the applicant or even the WH auctioneers aware of the leases.



[56.4] have records reflecting payments of the leases in the accounts of Rapiprop or rental payments made to the joint liquidators of Rapiprop by Redlex at least in terms of the second lease or even have showed the 15 years of financial statements which reflected a loan account.

[57] The two head leases and the RAPS lease also, as indicated herein before, all depict the sectional title scheme number as SS227/2007 instead of ST277/2007.

[58] Rapiprop had leased the properties to the LWWS trust and to Redlex. If indeed the Head lease was a legitimate arm's length transaction Rapiprop could not and would not have leased the properties to Redlex as the Head lease could not be cancelled in terms of clause 10.2 of the Poison Pill Lease. Clause 10.2 reads as follows:

¹⁸ 001-155

“10.2 Should the Tenant fail to make payment of any rental or other amount payable to the Landlord in terms of this lease on due date, the Landlord shall be entitled without prejudice to its rights, to charge interest on such amounts at a rate of 1% above the prime lending rate from time to time of the Standard Bank of South Africa Limited, however the Landlord, undersigned and their respective heirs, executors, administrators successors, transferees, assignees, agents, financial institutions and attorneys will have no right to cancel the lease and/or Head Lease or any parts of this agreement.”



[59] The Poison Pill, the RAPS and Redlex leases were furthermore all not registered in terms of section 2(1) of the Act.

[60] The applicant in addition argued that if the court considered the Poison Pill lease to be valid that the liquidators in terms of Section 37(2) of the Insolvency Act 24 of 1936 read with Section 339 of the Companies Act 61 of 1973, in turn read with item 9(5) of the Companies Act 71 of 2008, deemed to have repudiated the head lease and accordingly the RAPS lease also then has no force or effect.

[61] In terms of section 37(2) of the Insolvency Act it is for the liquidator, to notify the lessor, within three months of its appointment “that [they] desire to continue the lease on behalf of the estate”, otherwise “[they] shall be deemed to have determined the lease at the end of such three months.”

DOCTRINE OF ACTUAL KNOWLEDGE OF A LONG LEASE:

[62] The question to be answered in the absence of registration against the title deeds of the properties, to give validity to the leases, is whether the applicant at the time of purchasing the properties knew of the long leases.

[63] Although reference is made of an apparent head lease, the information pack refers to the sale of individual units with no lease - Units to be sold individually without any leases in place." (my underlining)



[64] Clause 2.6 from the extract from the conditions of sale, "TRANSACTION DETAILS", between the purchasers and the liquidators of Rapirop marked as "FA1"¹⁹ depicts in writing clearly that the properties were sold subject to no lease.

[65] The attorneys, Messrs Van der Meer & Schoonbee, representing the purchaser of another unit, namely unit 5 in Mont Blanc Heights also wrote a letter dated 2 November 2021 to the trustees of LWWS Trust confirming that the sale of the properties took place subject to no lease.²⁰

[66] The aforesaid attorneys also noted that no claim for the Poison Pill lease has ever been formally lodged with the liquidators of Rapirop in accordance with insolvency proceedings despite the effective date of liquidation of Rapirop being 18 June 2018. Furthermore, LWWS Trust did not made any attempt to prove the

¹⁹ 001-61

²⁰ FA 11 001-176

claim of the LWWS lease through due process and have not objected to the draft Liquidation and Distribution Account of Rapirop which disregards this claim. Accordingly, they concluded that the claim had no legal standing.

[67] The letter also states that the claim of the LWWS lease had been orchestrated by Mr. Mario Rocha, the ex-director of Rapirop.

[68] Knowledge of a lease is insufficient. The respondents must prove that the applicant had knowledge of a long lease which would have endured until 2060 with a further option of 30 years of renewal.



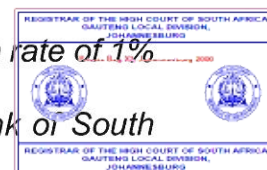
[69] The respondents must prove actual knowledge by the applicant of a long lease. Reference to a head lease in an auction pack and leases in the condition of sale is not sufficient to establish actual knowledge. It does not persuade the court that the respondent had factual knowledge of a purported long lease until 2060. More so even considering:

[69.1] the information pack which indicated that individual units will be sold with no lease and

[69.2] clause 2.6 of Annexure A to the terms of the sale of the properties which specifically inserts in writing that the sale is with no leases and is confirmed by the parties initialing the insert.

[70] Clause 10.2 ²¹ of the Head Lease between Rapiprop and LWWS Trust is indicative of the illogicality of the said lease, where it states that the lessor will have no right to cancel the lease agreement. This clause is clearly designed to procure occupation in perpetuity at the expense of the creditors and *the bona fide* purchaser. The said clause states:

*"Should the Tenant fail make payment of any rental or other amount payable to the Landlord in terms of this lease on due date, the Landlord shall be entitled without prejudice to its rights, to charge interest on such amounts at a rate of 1% above the prime lending rate from time to time of the Standard Bank of South Africa Limited, however the Landlord undersigned and their respective heirs, executors, administrators, successors, transferees, assignees, agents, financial institutions and attorneys **will have no right to cancel the lease and/or Head Lease or any parts of this agreement**"*



[71] The respondents had to establish a real right over the properties. This I find the respondents failed to do as:

- i) a long lease was not registered against the title deeds and
- ii) actual knowledge at the time of acquiring the property was not established.

[72] No reasonable man and/or reasonable investor would purchase properties at an insolvency auction sale subject to a lease to 2060 with an option to renew until

²¹ 003-206

2090 with an entrenched no-cancellation clause. The version is implausible and any argument of a *prima facie* case on the respondents' behalf cannot be sustained.

[73] The respondents furthermore failed to produce one item of evidence or a corroborating document to show that the LWWS lease ever came into effect. Such evidence could also have strengthened the doctrine of knowledge. To the contrary, the absence of any banking records, rental payments and ~~third-party~~ acknowledgement since 2009 leads to the unavoidable conclusion that the lease was created post-fact to prejudice the creditors of Rapiprop. In addition, the fact that the respondents never lodged a claim against the estate of Rapiprop and that no objection was ever raised against the draft liquidation and distribution account add to the suspicion of a fabricated long lease.



[74] The respondents also make the irrational statement that the applicants are not suffering financial prejudice in the current circumstances, notwithstanding that the applicant has received no rental, levies or consumptions charges from any party since transfer in October 2020. The applicant seeks possession of the properties. If possession is given to the applicant the respondents are not without remedy. Their purported claim will lie against their landlord and not against the *bona fide* purchaser.

[75] I can come to no other finding as that the respondents did not proof actual knowledge of the existence of the LWWS Long lease. It is patently clear that

even though the information pack referred to an apparent head lease the units were sold:

- i) individually without any leases in place and
- ii) with the written inclusion in clause 2.6 in the sales agreement of the words "*subject to no lease*".

[76] I will now discuss the status of the LWWS lease as well as the subsequent ~~RAPS~~ sub-lease.



INVALIDITY OF LWWS LEASE:

[77] The founding deed of trust of the LWWS Holdings Trust dated 2004, the first page of which is attached – "RA15" cited certain Messrs. Wurdeman and Pereira as the first incumbent trustees.²²

[78] The Letters of Authority dated 2004 follows in favour of the first incumbent trustees – Mr. Wurdeman and Mr. Pereira, a copy thereof is Annexure RA16.²³

[79] A "Resolution" of the incumbent trustees of the LWWS Holdings Trust, Mr. Wurdeman and Mr. Pereira, dated 15 September 2009 purportedly gives Ms. Tanya Rocha, the fourth respondent, authority to act as agent for Mr. Wurdeman only. This resolution is annexure "RA18". ("the Wurdeman resolution")²⁴

²² See CaseLines 004-134

²³ 004-135

²⁴ 004-137

[80] The Letters of Authority dated 23 May 2012 appointing Mr. Mario Rocha, the sixth respondent, Ms. Tanya Rocha, the fourth respondent and Ms. Maria Vasconcelos as replacement trustees to Mr. Wurdeman and Mr. Pereira, is annexure "RA17".²⁵

[81] The LWWS Holdings Lease (TAP6) lease was signed on 15 November 2009 by Mr. Mario Rocha – the sixth respondent, as a then director of Rapiprop 149 (Pty) Ltd ("the landlord") and Ms. Tanya Du Preez (now Rocha), the fourth respondent, who then gave herself out as a "trustee" of the LWWS Holdings Trust (the tenant"). However, Ms. Tanya Rocha only became a trustee of the LWWS Holdings Trust in May 2012, some three years after she signed the Poison Pill Lease.



[82] The Trust Property Control Act, Act 57 of 1988 stipulates that a Trustee means any person who acts as Trustee by virtue of an authorization under Section 6 thereof and includes any person whose appointment as Trustee is already of force and effect on the commencement of this Act.

[83] Section 6(1) of the aforesaid act deals with the authorisations of Trustees which stipulates that:

"(1) any person whose appointment as Trustee in terms of a Trust instrument, shall act in that capacity if only authorised thereto on writing by the Master.

²⁵ 004-136

(2)

[84] The words "*shall only*" are peremptory indicating an unambiguous prohibition on acting as a Trustee until authorised thereto in writing by the Master.²⁶

[85] An act of signing and concluding the TAP6 lease prior to the receipt of the written authority by the Master cannot be resuscitated by subsequent ratification either by the Master or by the Trustee after receipt of the necessary authority as "there can be no ratification of an agreement which a statutory prohibition has rendered *ab initio void* in the sense that it is to be regarded as never having been concluded."



[86] Upon a scrutiny of the Wurdeman resolution it becomes clear that Mr. Roberto Ivano Montano Wurdeman and Mr. Leonardo Araujo Pereira were the duly appointed Trustees of the LWWS HOLDINGS TRUST during 2009. There is no evidence of a Letter of Authority in the name of Ms. Tanya Rocha in 2009. The fourth respondent only became a trustee in 2012.

[87] Upon a further reading of the Wurdeman resolution it is clear that only Mr. Wurdeman, in his personal capacity, nominated constituted and appointed the fourth respondent, as an agent to act on his behalf with the power of attorney to be his lawful agent in his name, place and stead to attend and generally act on his behalf at all meetings, all administrative functions, all contractual agreements on his behalf in respect of such powers as vested in him as a trustee. Mr. Pereira did

²⁶ Simplex (Pty) Ltd v Van der Merwe and others 1996 (1) SA 111 (W) at 112 I-J), also Lupacchini NO v The Minister of Safety and Security 2010 (6) SA 45 SCA.

²⁷ See Simplex at 113E/F-F/G

not grant the fourth respondent any authorization at all. The resolution is accordingly not one that can bind the LWWS Trust.

[88] Furthermore, contrary to Section 6(1), Mr. Wurdeman stipulated that all contractual agreements could only be carried out throughout the period whilst the Letter of Authority in the Master's Office is awaiting issue. This is in clear prohibition of the Act which renders the purported resolution null and void.

[89] The resolution is invalid since the fourth respondent was appointed as Mr.



Wurdeman's agent and not as a Trustee as required by the Trust Property Control Act. Yet, Ms. Tanya Rocha appended her signature as Trustee on the lease. She thereby purported to hold out to the general public that she held the office of Trustee whereas in truth she was not a Trustee of the LWWS HOLDINGS TRUST, but the agent of Mr. Wurdeman at the time in 2009.

[90] Ms. Tanya Rocha does not refer to her agency in her signing of the Poison Lease, nor does she attach a copy of her written authorisation as prescribed in the Alienation of Land Act, 1981. She signs as a "trustee". This is not correct in law.

[91] Mr. Wurdeman, as a trustee appointed in terms of the Trust Property Control Act, could not legally delegate his statutory appointment and function to an agent in general terms.²⁸

²⁸ Hoosen and Others and Others v Deedat 1999 (4) SA 425 SCA at paras 25 and 26 (432 H-I and 433B)

[92] To exacerbate the matter further there is no requisite resolution which authorized signature and the conclusion of the purported LWWS Holdings Trust lease in 2009.

[93] On this basis the LWWS Head Lease is invalid.

[94] Ms. Tanya Rocha accordingly had no authority to bind the LWWS Holdings Trust at that time. The LWWS lease could thus not have been validly concluded in 2009 as the respondents purport to rely on it. It follows that the RAPS lease is nullity leaving the respondents completely stripped of a bona fide defence in law. No one can give rights which he himself does not have.



[95] It is submitted that the purported claim relying on the LWWS Holdings Trust lease was being orchestrated by the fourth and the sixth respondents when the poison pill lease was purportedly concluded without the ostensible or real authority of all the trustees of the LWWS Holding Trust as is required by law.

[96] The respondents' reliance upon the LWWS Head Lease of 2009 and the *huur gaat voor koop* doctrine namely that the LWWS lease of 2009 trumps the real rights of that of the Applicant as the registered owner armed with the title deeds, is therefore without merit.

[97] It follows that there can be no lawful argument to accept any defence based on the LWWS Head Lease or the RAPS lease raised by the respondents in this matter over and above that the properties were purchased subject to no leases.

[98] In case number 50235/2021²⁹ a matter between the said liquidators and Mr. Mario Rocha and the occupier of unit 55 of Mont Blanc Heights, being Mr. Jorge Martin, the following orders were made:

6. *"It is declared that allegations of theft, fraud, racketeering, collusion, corruption, racism and fronting and/or conduct associated therewith, of and concerning the applicants (the liquidators) and/or their attorneys are defamatory of the applicants and/or their attorneys, and unlawful."*



7.

7.1 *The first respondent (Mario Rocha) and any other party acting on his instruction or on his behalf, is interdicted and restrained from the following conduct: writing or distributing any correspondence, of any nature whatsoever, and to the recipient whatsoever, in which the applicants are either directly or indirectly accused of, inter alia, theft, fraud, racketeering, collusion, corruption, racism and fronting and/or any conduct associated therewith."*

[99] It is further alleged by the respondents that the so-called untoward conduct of the liquidators has been reported by Mr. Mario Rocha to the Masters Office Court, Pretoria to appoint an investigation in terms of Section 381 of the Companies Act.

²⁹ RA14 004--126

[100] Mr. Mario Rocha is not a creditor of Rapiprop and has no standing to request a Section 381 enquiry. Five years have elapsed since the appointment of the liquidators and over four years since the sale of Rapiprop's units by the liquidators. The First and Final Liquidation, Distribution and Contribution Account of Rapiprop was published in 2021 and no objection thereto was filed of record.

[101] The email from the late liquidator Mr. Murray Cloete confirms that no Section 381 proceedings exist.³⁰



EVICTIONS IN TERMS OF PIE:

[102] It is abundantly clear that the Applicant seeks eviction based upon the rei vindication.

[103] The question for consideration is whether the respondents are unlawful occupiers in terms of section 4(1) of PIE in other words, persons "*who occup[y] land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land, ...*"

[104] In *Wormald NO and others v Kambule* **2006 (3) SA 563** (SCA) the Supreme Court of Appeal held at para [11] that an "*owner is in law entitled to possession of his or her property and to an ejectment order against a person who unlawfully occupies the property except if that right is limited by the Constitution,*

³⁰ 004-125

another statute, a contract or on some or other legal basis. *Brisley v Drotzky* 2002 (4) SA 1 (SCA) In terms of s 26(3) of the Constitution, from which PIE partly derives (*Cape Killarney Property Investments (Pty) Ltd v Mahamba and Others* 2001 (4) SA 1222 (SCA) ... at 1229E ..), 'no one may be evicted from their home without an order of court made after consideration of all the relevant circumstances'. PIE therefore requires a party seeking to evict another from land to prove not only that he or she owns such land and that the other party occupies it unlawfully, but also that he or she has complied with the procedural provisions and that on a consideration of all the relevant circumstances (and, according to the *Brisley* case, to qualify as relevant the circumstances must be legally relevant), an eviction order is 'just and equitable'."



RESPONDENTS RIGHT TO OCCUPY PROPERTIES:

[105] By its nature, an eviction application is, at its core, a vindicatory one. In this regard the approach in such matters is well stated in *Chetty v Naidoo* 1974 (3) SA 13 (A) at 208 - D by Jansen JA as follows:

"It is inherent in the nature of ownership that possession of the res should normally be with the owner, and it follows that no other person may withhold it from the owner unless he is vested with some right enforceable against the owner (e.g. a right of retention or a contractual right). The owner in instituting a rei vindicatio, need, therefore, to no more than allege and prove that he is the owner, and that the defendant is holding the res - the onus being on the defendant to allege and establish any right to continue to hold against the owner

(*cf Geena v Minister of Lands 1955(2) SA 380 (A) at 382 E, 383*).” [My underlining]

[106] The principles of evictions are best set out in the matter of *City of Johannesburg v Changing Tides 74 (Pty) Ltd 2012 (6) SA 294 (SCA)*. In considering an eviction order a court is essentially faced with two enquiries:

- i) the first relates to the determination whether an eviction order should be granted and
- ii) the second relating to the determination of the date and other conditions



In both instances the court's decision must be just and equitable.

[107] In considering the first leg of the enquiry the respondents bore the onus to proof their right to occupy.

[108] The respondents rely on the existence of the LWWS Head Lease which they say give them the right to occupy the properties. This lease was not registered in terms of section 1(2) of the Act as a long lease against the title deeds of the properties. The question to be answered is then whether the applicant had actual knowledge of the long lease at the time of acquiring the properties.

[109] The respondents alleged that the liquidators and auctioneers knew of the lease and state that because the information pack at the auction contained a reference to an apparent head lease the applicant had knowledge. I am as stated earlier not satisfied that the applicant knew of the LWWS long lease having regard to

the information pack that also referred to the selling of individual units without a lease and more specifically to clause 2.6 of the agreement between the parties. The lease also provides for a non-cancellation clause in respect of breach which will prejudice creditors. It is also noteworthy that the information pack does not make any reference to the LWWS lease but only to the Redlex lease.³¹

[110] The applicant also, as was referred to here-in-before, indicated that Ms Tanya da Rocha did not have the authority to sign the LWWS Lease as a trustee of the trust as she was clearly not a trustee at the time. The fact that she was an agent of Mr. Wurdeman does not assist her as she did not act on behalf of the other trustee Mr. Pereira.



[111] Mr. Dunn stated in the respondents' heads of argument that:

*"It must be noted, firstly, that this point is raised in circumstances where Ms Du Preez was duly authorized to do so **by both duly appointed trustees** in terms of a resolution signed **by both** duly appointed trustees on 15 September 2009 and certified at the police station."*

[112] This is not factually correct as the resolution states at paragraph 1.1 the following:

*"I, the undersigned, Robert Wurdeman, in my personal capacity, do hereby nominate, constitute and appoint Tanya du Preez as an Agent to act **on my behalf with Power of Attorney to be my lawful Agent in my name, place and***

³¹ 004-169

stead to attend and generally act on my behalf at all meetings, all administrative functions, all contractual agreements on my behalf and power in respect of such powers vested in me as a Trustee which my interests are In the general interests of the Trust and the Beneficiaries, hereby promising to confirm whatsoever the said Agent may do and or perform by virtue of these presents..."
 (my underlining and emphasize)

[113] It is accordingly abundantly clear that Ms. Tanya Rocha only acted as the agent of Mr. Wurdeman and not on behalf of both the trustees namely Mr. Wurdeman and Mr. Pereira as was suggested by Mr. Dunn.



[114] Ms. Tanya Rocha could therefore not have concluded the LWWS Lease without the consent of the other trustee Mr. Pereira. It is not alleged that Mr. Pereira also consented to the conclusion of the LWWS lease. Ms. Tanya Rocha placing reliance on the resolution which gave her authority did clearly not act on both the trustee's behalf.

[115] I accordingly find that the LWWS Lease is invalid. Ms. Tanya Rocha could not act on behalf of the LWWS Trust as she lacked authority to bind the LWWS Trust as she had no authority to act on behalf of Mr. Pereira.

[116] The result of the invalidity of the LWWS Lease is that the respondents therefore do not have a right of occupation to the properties in question.

[117] Without a right of occupation the respondents have no legal basis to challenge the applicant's ownership of the properties.

[118] In the absence of the LWWS lease there is also no Redlex lease.

[119] Mr. Dunn argued that the LWWS Lease was never cancelled. The LWWS Lease is however invalid, and the cancellation of the said lease is superfluous.

[120] The respondents accordingly have no contractual right to continue to occupy the property.



IS THE EVICTION JUST AND EQUITABLE?

[121] PIE enjoins the Court to order an eviction only if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances as contemplated in section 4(6) and (7), and section 6(1).

[122] In terms of section 4(7) of PIE (which applies because the respondents have been in unlawful occupation for more than 6 months) the Court has to have regard to a number of factors including, but not limited to, whether the occupants include vulnerable categories of persons such as the elderly, children and female-headed households, the duration of occupation; and the availability of alternative accommodation by a municipality or other organ of State instances where occupiers are able to obtain accommodation for themselves. The aspect

of vulnerability of the categories of persons as set out here in above does not come into play in the matter before me. The applicant is also a private entity.

[123] Section 4(8) of PIE provides further that if *“the court is satisfied that all the requirements of this section have been complied with and that no valid defence has been raised by the unlawful occupier, it must grant an order for the eviction of the unlawful occupier, and determine-*

(a) *a just and equitable date on which the unlawful occupier must vacate the land under the circumstances; and*

(b) *the date on which an eviction order may be carried out if the unlawful occupier has not vacated the land on the date contemplated in paragraph (a)”. (my underlining)*



[124] In *City of Johannesburg v Changing Tides 74 (Pty) Ltd* 2012 (6) SA 294 (SCA) at paragraph [18] the following is stated:

“The position is otherwise when the party seeking the eviction is a private person or entity bearing no constitutional obligation to provide housing. The Constitutional Court has said that private entities are not obliged to provide free housing for other members of the community indefinitely, but their rights of occupation may be restricted, and they can be expected to submit to some delay in exercising, or some suspension of, their right to possession of their property in order to accommodate the immediate needs of the occupiers.”

[125] The Supreme Court of Appeal in *Changing Tides* 74 specified, at paragraph [16], that only in what could be deemed exceptional circumstances would a court interfere with a party's proprietary rights.

[126] The respondents to date remain in unlawful occupation of the property as defined in PIE, and as there are no factors justifying their ongoing occupation, it is just an equitable for the Court to order the eviction from the property. No circumstances have been alleged that would render an eviction order inequitable, and none appear from the affidavits filed of record or from what was stated in the respondents' oral submissions in Court.



[127] I have been informed that the sixth respondent is not in occupation of the properties and that the eight respondent has been liquidated.

CONCLUSION:

[128] In all of these circumstances, the procedural and substantive provisions of section 4 of PIE have been complied with, and there is no reason why the eviction of the respondents should not be ordered.

COSTS:

[129] It is clear from what is set out above that the respondents have not made out any case that would justify the refusal of the relief sought or that should delay the applicant's vindication of its property. In my view costs should follow the event.

UPLOADING OF JUDGMENT:

[130] The judgment in this matter was already finalised, signed by me and forwarded via electronic mail to the registrar to be uploaded on 22 May 2024. At the time, the said registrar was however on study leave and provided another registrar's email address in the event of urgency. I did not forward the judgment to the latter's email address as I did not believe that the judgment had to be uploaded on an urgent basis. I wrongly believed that the said judgment would be attended to and uploaded on the return of the initial registrar. This week I was alerted to and it had come to my attention that the judgment was never uploaded on Caselines and handed down. I accordingly, because the judgment was not handed down yet will adjust the time frame for vacating the properties.

ORDER:

[131] I accordingly grant an order in the following terms:

[131.1] That the first, second, third, fourth, fifth and seventh respondents and any persons claiming right and/or all those that occupy the properties, including their family servants and/or employees, are ordered to vacate from the immovable properties being UNIT 9 AND UNIT 60 MONT BLANC HEIGHTS physically situated at 23 SOVEREIGN STREET, BEDFORD GARDENS, GERMISTON ("the property") by no later than the **7th of OCTOBER 2024**.

[131.2] Should the first, second, third, fourth, fifth and seventh respondents fail to vacate the property on the **7th of OCTOBER 2024**, the eviction order may be carried out, in which event the Sheriff of this Court ("the Sheriff") is authorised and directed to forthwith evict the first to eighth respondent and all those that occupy the property by virtue of, through or under their occupation thereof, including their family, servants and/or employees, or short term stay residents from the property.



[131.3] The Sheriff is authorised and directed to take all legal steps to enforce this Court order including the use of a Locksmith.

[131.4] The first, second, third, fourth, fifth and seventh respondents pay the costs of this application, jointly and severally, the one paying the other to be absolved.

Delivered: This judgment was prepared and authored by the Judge whose name is reflected on 7 August 2024 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 h00 on 7 August 2024

S van Aswegen

Acting Judge of the High Court,

Johannesburg

APPEARANCES:

For the Applicant: Adv CJC Nel

Instructed by: Kaveer Guinness Inc

For the Respondent: Mr T Dunn

Instructed by: TJC Dunn Attorneys

