

REPUBLIC OF SOUTH AFRICA

X

14/2/2025

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

- (1) REPORTABLE: **NO**
 (2) OF INTEREST TO OTHER JUDGES: **NO**
 (3) REVISED: **NO**

Date: **14 February 2025** Signature:**CASE NO:** 2024-019086

In the matter between:

NEW MODEL PROJECTS**APPLICANT**

and

LEVENBRO CENTRE PTY (LTD)**FIRST RESPONDENT****REGISTRAR OF DEEDS****SECOND RESPONDENT**

JUDGMENT

Manoim J**INTRODUCTION**

- [1] This is an application for leave to appeal. The applicant had applied for an interim interdict before me on 29 February 2024. The application was brought urgently and was opposed by the respondent. I dismissed the application. This application for leave to appeal relates to that decision.
- [2] Before I consider the merits of the application for leave, I would note the following. The application was brought late, and its further prosecution was never pursued thereafter. It was only after enquiries as to its fate from the respondent's attorneys that this was brought to the attention of my registrar, and I instructed him to have the matter set down.
- [3] I gave my original decision on 8 March 2024. I heard the application for leave only on 10 February 2025. This delay in what was ostensibly a matter of urgency, is solely attributable to the applicant and no one else. Even when the leave to appeal was set down, irregularities continued. The notice of appeal was sent to me by email but was never downloaded on to Case Lines. Counsel for the applicant said he had prepared heads of argument. I indicated at the hearing for leave that I had not received them. Counsel undertook to have them filed that same day, but it was agreed that the application would continue. Since then, the notice of appeal has now been uploaded to Case Lines, three days later, on 13 February 2025. The promised heads of argument were not downloaded at the time of me writing of this decision.
- [4] Fortunately for the applicant, the respondent took a constructive approach. Appreciating that condonation should have been applied for, the respondent nevertheless did not take this point, and indicated a preference for having the matter heard on the merits and disposed of. This is what I decided to do, and I

heard argument from both counsel. Nevertheless, this background is indicative of the cavalier approach the applicant has taken to this litigation and is relevant to the issue of costs I discuss below.

Merits of the leave to appeal

- [5] In brief, the applicant claims that it entered into a contract with the first respondent, Levenbro Centre (Pty) Ltd (*Levenbro*) to buy three of four adjacent properties that Levenbro owns in central Johannesburg in 2018. At that time, Levenbro had different shareholders – it was a family company owned by the investment vehicles of two brothers, hence its eponymous name. The one brother who allegedly signed the contested contract of sale in 2018, is now deceased. Since he had passed away prior to the urgent application, neither party was able to confirm or deny whether he had signed the contract. The other family member disavows any knowledge of the sale.
- [6] According to the contested contract, the sale price was to be paid in instalments after which the conveyancer, who is named in the contract, was to pass title to the applicant. This, it is common cause, never happened. The property remains registered in the name of Levenbro. The applicant was unable to show that it had paid all the instalments. It produced some receipts but not all of them. Since the contract was conditional on full payment being made, the applicant did not have supporting documentation for this fact.
- [7] In December 2023, the shareholders of Levenbro sold all their shares in the company to a new shareholder, New Phoenix Investments Pty Ltd. New Phoenix was able to furnish proof of the sale from the sellers. Levenbro is now

owned by this new shareholder which has since developed the property which had fallen into disrepair.

- [8] This case does not finally decide who the proper owner of the erfs is. That is the subject of pending litigation, which was then proceeding, when I heard the urgent application. I mention it in my judgment.
- [9] Given that this litigation was pending, the applicant had to find some other hook to make it urgent. So, the applicant made its case over the then ongoing alterations that Levenbro, now under the new shareholder, was making to a building that extends over two of the adjoining erfs.
- [10] Most unusually, and this is common cause, whilst the building is a single structure, it extends over two erfs. The one erf is the subject of the dispute between the applicant and Levenbro. But the applicant does not claim to have taken ownership of the other erf, which means the building extends to a property he makes no claim over. How this happened is not clear. But that is a mystery I do not have to determine.
- [11] The debate before me then was whether the new owner of Levenbro was destroying the property – as contended by the applicant, or performing urgent and vital alterations that were improving the property – as contended for the by the new owner.
- [12] I found that although a weak prima facie case for ownership might have been established by the applicant, none of the other elements of an interim interdict had been established. In particular the applicant's case for ongoing harm and the balance of convenience was demonstrably weak. The new owner was saving the derelict structure not destroying it. I found that the remaining

requirements for an interim interdict had not been met. Put differently the weakness of the evidence of the prima facie right could not pull the applicant over the threshold for relief given the weakness of its evidence in respect of the other elements. (See the approach in *Olympic Passenger Service (Pty) Ltd v Ramlagan 1957 (2) SA 382*.)

[13] But now, a year later, the applicant has had to make out a case for leave to appeal. It is common cause that a year later, the alterations to the building have been completed. But when I heard the matter as an urgent application, they were the focus of the applicant's case. The building it was alleged was being destroyed. Apart from the fact that there was no basis for this contention it is now academic. So, the applicant's argument on appeal now changed focus. The criticism was that I did not focus on other aspects of the relief it sought. These were an interim interdict to prevent Levenbro from the burdening or disposing of the property. It also included a concern that Levenbro was disposing of its items on the property, but this seemed to be related to the removal of parts of the property in the course of the alteration. It is correct that these prayers did not get mentioned in the judgment.

[14] But these were not the focus of the interdict because no case was made out for them on the papers - only in the prayers. In its heads of argument during the interdict hearing applicant's counsel made the briefest mention of the two concerns which he now highlights as the basis for his leave to appeal:

"Unless interdicted, there is nothing stopping the First Respondent from disposing or burdening the property. They have the propensity to do so given

their decision to commence demolition of the property they have sold to another.”

[15] But this is an argument based entirely on inference. The argument is that because the shares were sold once there could be another sale; that because the shares were sold the new owner of the shares could burden the property. But apprehension must be premised on facts, not surmise. But no facts were put up for these two propositions to demonstrate any basis for this apprehension and hence they did not get consideration in my judgment. There was no lis between the parties on these aspects which I had to determine.

[16] Nor, even if I have underemphasised them, is any case made out for them being the subject matter of an appeal. As I observed there is nothing in the papers to suggest that the new owner of Levenbro is disposing of the property nor burdening it in some way. The ownership issue is still to be determined so the applicant is not without a remedy in future.

[17] This leaves me to ponder why the applicant is prolonging what is futile litigation. The applicant was using the premises to park its buses on for its transport company. At the time of the interdict, it was still doing so. The uncontested evidence of Levenbro's security guard was that:

“I have personally witnessed that as at date hereof, Applicant unlawfully retains possession and control of Erven 1404 and 1405 Johannesburg in the absence of First Respondent's [Levenbro] consent, by using the yard to store damaged and unused vehicles, and by employing security guards to restrict access to such erven.

[18] Without the interdict it could no longer do so. That is the real basis of its complaint, but it must wait till the ownership case is decided.

[19] There is no merit then in the appeal against the dismissal of the interim interdict. No court would decide otherwise.

[20] The application for leave to appeal is dismissed.

Costs

[21] The respondent has sought attorney client costs. I consider that the request is justified for the reasons I outlined above about the way this leave to appeal has been prosecuted by the applicant.

ORDER:-

[22] The application for leave to appeal is dismissed.

[23] The applicant is liable for the first respondent's costs on an attorney-client scale, including the costs of counsel on Scale B.

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N. MANOIM

JUDGE OF THE HIGH COURT

GAUTENG DIVISION

JOHANNESBURG

Date of hearing: 10 February 2025

Date of Reasons: 14 February 2023

Appearances:

Counsel for the Applicant: I Murewiwa

Instructed by: Koena Mpshe Attorneys Inc

Counsel for the First Respondent: C. Gordon

Instructed by: MDT Attorneys Inc.

Counsel for the Second Respondent: No appearance

Instructed by: