



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

Case 2023 – 120525

- (1) REPORTABLE: Yes ☐ / No ☒
(2) OF INTEREST TO OTHER JUDGES: Yes ☐ / No ☒
(3) REVISED: Yes

Date: 26 March 2025

In the matter between:

**VAN DEN HEEVER, THEODOR
WILHELM NO**

First Applicant

**DU PLESSIS, JOHANNES
HENDRIKUS NO**

Second Applicant

KHAN, DEBORAH LYNN NO

Third Applicant

and

EVOLV OUTDOOR (PTY) LTD

First Respondent

THE MED OFFICE PARK (PTY) LTD

Second Respondent

JUDGMENT

DU PLESSIS J

Introduction

[1] This is an opposed motion for the eviction of the first respondent, Evolv Outdoor (Pty) Ltd ("Evolv") from premises owned by Bedford Conference Centre CC (in liquidation) ("the CC").

[2] The application is brought by the applicants, being the duly appointed liquidators of the CC ("the liquidators"). They seek an order directing the first respondent to vacate the premises on the grounds that its continued occupation is unlawful and that they require vacant possession to fulfil a sale agreement concluded with a third-party purchaser.

[3] Evolv opposes the relief sought, contending that it occupies the property under a valid lease agreement concluded with the second respondent, The Med Office Park (Pty) Ltd ("Med Office"), and that the lease agreement was either ratified by the applicants or remains binding under the doctrine of *huur gaat voor koop*.

[4] The CC was placed into liquidation on 3 August 2020, and the applicants were appointed liquidators. On 2 November 2020, while the liquidation process was ongoing, the immovable property, including the premises occupied by the first respondent, was unlawfully transferred to Med Office since it did not comply with the requirements of the Insolvency Act¹ and /or the common law.

[5] Shortly after the unlawful transfer, Med Office entered into a lease agreement with Evolv, permitting the latter to conduct its advertising business from the property. At the time of concluding the lease agreement, Evolv was under the impression that Med Office was the lawful owner of the property.

¹ 61 of 1973.

[6] The liquidators soon after launched an application to have the transfer of the property be declared void and set aside and to direct the registrar of deeds in terms of section 6 of the Deeds Registry Act² to cancel the deed of transfer and to correct the records of the deeds registry.

[7] A consent order was granted on 17 January 2023, directing that title deed be corrected to indicate the CC and not Med Office as the owner. This was completed on 17 March 2023.

[8] On 16 March 2023, the liquidators (through their attorneys) informed all tenants, including Evolv, that the "retransfer" would take place the next day and that they were reviewing existing leases. They stated that until a new agreement is concluded, the existing lease agreements remain in force and that rent should be paid into their trust account. The liquidators also emphasised that the lease agreement with Med Office was concluded at a time when it was unlawfully registered as the owner. As they were not a party to that agreement, they were not bound by it.

[9] Evolv consistently maintained that the lease agreement remained valid and binding. It asserts that it has made all necessary payments to secure its occupancy and cannot be lawfully evicted. Any payment that was withheld was because of a breach of the contract. They maintained that they did not have to pay the rent into the trust account until they had seen the court order and proof that Med Office (presumably based on an erroneous understanding) was in liquidation. They also made certain demands regarding the electricity and other terms in the contract. The liquidators kept reiterating that they were not party to the contract and that there was no obligation on them to perform in terms of it. The correspondence did not solve the dispute, and the liquidators launched this application to evict Evolv.

[10] It is common cause that the CC is the owner of the property and that Evolv is in occupation of the property. It is also undisputed that the property was unlawfully transferred to Med Office and subsequently "retransferred" to the CC. It is further not in dispute that when Med Office was reflected as the owner on the title deed, it entered

² 47 of 1937,

into a lease with Evolv. What is in dispute is whether that agreement is still in force and whether the CC is bound by it.

The law

[11] The general principle in eviction matters is that the applicant must prove ownership of the property and that the respondent is in unlawful occupation. The onus then shifts to the respondent to establish any lawful basis for continued possession.³ As stated above, the only issue in dispute is whether Evolv's continued possession is lawful. The onus rests on them to prove that it is.

[12] Evolv state firstly, that at the time of concluding the contract, they were not aware that Med Office was not the lawful owner, secondly, that the contract binds the CC based on the principle of *huur gaat voor koop*, and thirdly, that the CC is in any case bound by the agreement because they ratified it.

Negative system

[13] Evolv's submits that the lease agreement they concluded with Med Office was valid because they were unaware that Med Office was not the lawful owner of the property. It was only at the launching of the application to "retransfer" the property to the applicants that they became aware of any possible unlawfulness.

[14] However, the transfer from the CC to Med Office was unlawful and invalid since the CC did not have the necessary capacity to effect a valid and enforceable transfer in terms of insolvency laws. This means that Med Office did not have the authority to conclude a valid lease agreement with Evolv, as it was not the lawful owner. It also did not have the authority from the lawful owner to conclude lease agreements with third parties.

[15] Evolv's reliance on the deed also does not assist. In South Africa we have a negative system of deeds (a registration of deeds and not title). This means that a title deed may be incorrect or defective and not reflect the correct legal position with regard

³ *Chetty v Naidoo* 1974 (3) SA 13 (A).

to a property. While fairly accurate due to the system of registration, the information on the title deed is not guaranteed. If a party, such as Evolv, acts in good faith upon the incorrect data existing in the registry, they will normally not enjoy protection. Their remedies lies in estoppel or delict.⁴

[16] As soon as the liquidators became aware of the unlawful transfer, they approached the court to correct the deed in terms of section 6(2) of the Deeds Registries Act⁵ which states:

"Upon the cancellation of any deed conferring or conveying title to land or any real right in land other than a mortgage bond as provided for in subsection (1), the deed under which the land or such real right in land was held immediately prior to the registration of the deed which is cancelled, shall be revived to the extent of such cancellation, and the registrar shall cancel the relevant endorsement thereon evidencing the registration of the cancelled deed." (my emphasis)

[17] In other words, the deed relating to the unlawful transfer to Med Office is cancelled as a matter of law, and the deed that existed before is revived to reflect the correct legal position. "Retransfer" is thus not the correct term to use in this instance, as there is no (re)transfer from Med Office to the CC. Med Office did not become the owner of the property, the CC remained the true owner. No rights were transferred between Med Office and the CC. Which raises the question: Is the CC is bound in this instance to the lease agreement concluded by Med Office and Evolv, through the principle of *huur gaat voor koop*?

Huur gaat voor koop

[18] The doctrine of *huur gaat voor koop* dictates that where a property is transferred pursuant to a sale, an existing lease agreement remains in force and binds the new owner. The previous owner in such instances is ex lege replaced by the purchaser.⁶ This principle is, however, only applicable where there is a transfer of ownership in

⁴ Muller G, Brits R, Boggenpoel ZT, Pienaar JM. *Silberberg and Schoeman's the Law of Property*. Sixth edition. LexisNexis; 2019 257.

⁵ Act 47 of 1937.

⁶ *Mignoel Properties (Pty) Ltd v Kneebone* 1989 4 SA 1042 (A).

terms of a contract. In *Stellenbosch Divisional Council v Shapiro*⁷ the court stated that there is no “room for the application of the doctrine in the circumstances where there is no question of a transfer of rights by the erstwhile owner”.

[19] As alluded to above, there was no transfer in this instance. It is thus not an instance where a purchaser (new owner) by operation of law steps into the shoes of the original lessor. The deed was cancelled and the previous deed revived, not in terms of contract, but in terms of a court order. The doctrine of *Huur gaat voor koop* equally does not apply in this instance.

Can the CC be bound by a contract it was not party to?

[20] Evolv submits that the CC ratified the agreement that was in place (or concluded a new agreement) when its title was revived. Both parties accept that a landlord need not be the owner of the property at the time of the conclusion of an agreement.⁸ That contract, however, can only bind the parties to that contract – the non-owner lessor and the lessee. This principle does not bind the true owner and the lessor in a case where the person concluding the lease agreement (as lessor) was not the true owner.⁹ The agreement is only valid between the parties, and the lessee has no right to occupation against the true owner.¹⁰

[21] Cooper¹¹ sets out the position as follows: an owner is not bound by a lease of his property that was made without his consent. The true owner is entitled to reject the lease. If the true owner consents to the lease, they will be bound by it, provided that the lessee accepted them as lessor.¹² This accords with what was said in *Glatthaar v Hussan*¹³ namely that if a lease is concluded by a party that is not the owner, it is not

⁷ 1953 (3) SA 418 (C) at 426 D.

⁸ *Frye's (Pty) Ltd v Ries* 1957 (3) SA 575 (AD).

⁹ *Benati v Morelli* 1968 (4) SA 111 (N) 116E.

¹⁰ *Mount Hargo Investments (Pty) Ltd v Peersons Extension* 1976 (3) SA 343 (D) at 345H-346A, *Blair Atholl Homeowners Association (NPC) v Meyer* [2023] ZAGPPHC 2055.

¹¹ *Cooper Landlord and Tenant*, 2nd Ed

¹² At p 27-29.

¹³ (1912 TPD 322).

binding on the rightful owner unless the owner ratifies it. And this in turn is in line with Voet¹⁴ who stated

"Firstly, then whenever a person has knowing let out another's property as his own, it is allowed indeed to the true owner to withdraw the property from the lease at any time under his right of ownership. But the lessor will be held liable to the lessee for damages."

[22] The CC was not party to the lease agreement concluded between Med Office and Evolv. Med Office lacked the legal authority to bind the true owner, thus the agreement cannot be enforced against the CC. Once the unlawful transfer was set aside and the title restored to the CC, any right Evolv may have had to occupy the premises fell away. A lease concluded by a party without title does not, without more, impose obligations on the true owner. Evolv bore the onus to demonstrate that the CC either ratified the agreement or concluded a new lease.¹⁵ It failed to do so.

[23] The applicants made it clear in correspondence that any continued occupation by tenants was provisional and by way of indulgence, pending a review of the lease arrangements. There is no evidence of consensus on the terms of a new agreement. On the contrary, the parties' communications reveal a lack of agreement on material terms such as rental payments and utilities. In the absence of proof of ratification or the conclusion of a new lease, Evolv's continued occupation is unlawful, and the liquidator's application should succeed.

Conclusion and Order

[24] The applicants are accordingly entitled to the relief sought in the notice of motion. They requested costs on scale C, relying on the complexity and significance of the matter. While the issues raised, particularly concerning the operation of section 6 the Deeds Registries Act and the interplay with the *huur gaat voor koop* principle, are not without importance, the matter does not, in my view, warrant the higher cost scale. Costs on the scale B is appropriate.

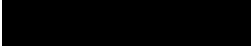
¹⁴ 19.2.17.

¹⁵ See *Booyssens v Cyrus* (1909) 26 SC 74 at p 77.

Order

[25] The following order is made:

1. The first respondent must vacate the remainder of Erf 2209 Bedfordview forthwith.
2. The first respondent is to pay the costs of this application on scale B.


WJ du Plessis
Judge of the High Court
Gauteng Division, Johannesburg

Date of hearing: 11 February 2025

Date of judgment: 26 March 2025

For the Applicants: Van der Berg SC instructed by Van
Veijeren Inc

For the Respondents: Desai instructed by Vanessa Fernihough
& Associates