



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

CASE NO: 045487/2025

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES: **NO**
- (3) REVISED: **NO**
- (4) Date: 27 June 2025

Signature: _

In the matter between:

HENNIE'S SPORTS BAR PTY (LTD)

Applicant

And

RYALL TRADING CC

First Respondent

SOUTH AFRICAN CIVIL AVIATION AUTHORITY

Second Respondent

JUDGMENT

NYATHI J

A. INTRODUCTION

- [1] The applicant Hennie's Sports Bar (Pty) Ltd, and the first respondent, Ryall Trading CC concluded a Letter of Intent ("LOI") on 7 March 2025¹ under which Ryall Trading undertook, in good faith and on an exclusive basis, to negotiate the sale of a 2000 Piper Malibu Mirage aircraft to the applicant for R10 500 000 (plus VAT).
- [2] The applicant contends that despite compliance with all agreed timelines, Ryall Trading repudiated the exclusivity and good-faith obligations by selling the aircraft to a third party on 27 March 2025 before expiry of the exclusivity period. The identity of the third party was only disclosed by Ryall Trading on the day of the hearing in its response to applicant's Rule 35(12) Notice.
- [3] The applicant seeks an urgent interim interdict and joinder of the third party to preserve the *status quo* and prevent any further disposition or removal of the aircraft pending final dispute resolution or litigation to resolve the matter.
- [4] The Civil Aviation Authority ("CAA"), which controls and regulates civil aviation safety and security within the Republic and derives its mandate from the Civil Aviation Act, 2009 (Act No. 13 of 2009) and the Civil Aviation Regulations, 2011, is cited as the second respondent. The CAA has undertaken in writing (submitted to the court at the hearing) to "abide by any court order or interdict pertaining to the registration of the said aircraft."
- [5] In its repudiation letter² dated 27 March 2025, the respondent complained that the applicant had not complied with certain requirements pertaining to formal

¹ Accepted by the Respondent (Ryall Trading CC) by countersigning on the 7 March 2025. See Para 2.22 of Annexure FA14.

² Annexure FA13 to applicant's founding affidavit.

guarantees and confirmation of the funds from the bank. The respondent informed the applicant “...*that somebody else has purchased the aircraft today.*”

- [6] It is on this basis that the applicant asserts that the respondent acted in breach of the exclusivity period agreed to, and therefore breached good faith.
- [7] On 28 March 2025 the applicant's attorney sent a letter of demand affording the first respondent until 17:00 on Monday 31 March 2025 to provide the required undertakings, failing which an urgent application would be issued.
- [8] No undertaking was received and on 2 April 2025 this application was issued for hearing in the urgent motion court on 15 April 2025.

B. THE REPUDIATION

- [9] The issue in contention between the parties is the alleged repudiation. On 27 March 2025, Neil Marx of the first respondent notified the applicant that the aircraft had been sold to “somebody else.” The applicant is steadfast in the view that this communication clearly constitutes a flagrant repudiation of the letter of intent and a material breach of the duty to negotiate in good faith.
- [10] The first respondent's premature sale announcement and engagement with a third party represent a clear breach of the good faith negotiating obligation under the letter of intent. The applicant seeks the interim interdict to prevent any further disposition or adverse change concerning the Aircraft until the matter is resolved through litigation or expedited dispute resolution.

Respondent's contentions

- [11] The applicant's assertions are denied by the first respondent who opposes the application on both its urgency and on the merits.

- [12] It was submitted on behalf of the respondent that interdicts regulate future conduct and not historical conduct or wrongs. They aim to maintain the *status quo* and restrain future conduct thereby avoiding irreparable harm. Mr Lüderitz SC stated that in the current application there is no status quo to be preserved because the airplane has already been sold and transferred to the new owner.
- [13] Mr Lüderitz referred the court to the matter of *Titty's Bar and Bottle Store (Pty) Ltd v ABC Garage (Pty) Ltd*³ matter and submitted that the application is a futility since the applicant has not made out its case in the founding affidavit. An applicant's case stands or falls on the averments made in the founding affidavit. An applicant is not allowed to make out a mere skeleton of a case in the founding affidavit and to supplement that case in the replying affidavit.
- [14] The respondent's further contention was that the applicant seeks relief which was moot even at the launch of this application on 02 April 2025. The mootness was foreshadowed by the applicant itself in its founding affidavit.⁴
- [15] The respondent's last contention is that the purchaser of the airplane has not been joined in the application. The applicant seeks relief against a party that is not before court. This will amount to *ex parte* relief against the purchaser, who has not been heard.

C. LEGAL POSITION AND DISCUSSION

- [16] The LOI from its content is clearly "an agreement to agree", a *pactum de contrahendo*, which is generally unenforceable in law, save for a few specific instances. The Supreme Court of Appeal in the matter of *Van Zyl v Government*

³ 1974 (4) SA 362 (T) at 369A-B.

⁴ Founding affidavit para 52.

of the Republic of South Africa⁵ reiterated the position that a promise to contract is not a contract by itself.

[17] This is so because, as was held in *ABSA Bank Bpk v Janse van Rensburg*⁶, the parties retain an absolute discretion to agree.

[18] In *Seale v Minister of Public Works*⁷ the Supreme Court of Appeal stated that:

"I accept that there was implicit obligation on the parties to negotiate in good faith, but subject thereto, the further agreement was entirely dependent on the will of the parties".

[19] In *Makate v Vodacom Ltd*⁸ the Constitutional Court held that:

"Therefore, currently the position in our common law is that an agreement to negotiate in good faith is enforceable if it provides for a **deadlock-breaking mechanism** in the event of the negotiating parties not reaching consensus. This position was reaffirmed by the Supreme Court of Appeal in *Southernport Developments*.⁹ In that case parties to a lease agreed to enter into good faith negotiations in respect of certain specified properties. The agreement provided that if the parties were unable to agree on any of the terms of the yet-to-be negotiated lease, the dispute would be referred to an arbitrator whose decision would be final and binding." *[Emphasis supplied]*.

[20] Since the above sentiments in the earlier decisions were made, the pendulum may yet swing much wider towards the recognition of principles of *ubuntu* being infused into contractual disputes. The learned Justice *Jafta* writing for the majority remarked at para [100] that: "Whether an agreement to negotiate in good faith is enforceable where there is no deadlock-breaking mechanism remains a grey

⁵ 2008 (3) SA 294 (SCA).

⁶ 2002 (3) SA 701 (SCA) at 708-9.

⁷ [2020] JDR 2131 (SCA)

⁸ 2016 (4) SA 121 (CC) at para 97.

⁹ *Southernport Developments (Pty) Ltd v Transnet Ltd* [2004] ZASCA 94; 2005 (2) SA 202 (SCA)

area of our law...". He referred to *Everfresh Market Virginia (Pty) Ltd v Shoprite Checkers (Pty) Ltd*¹⁰ where Moseneke DCJ, recognizing that the issue of developing the common law was raised by the appellant only at the Constitutional Court appeal, said:

"Were a court to entertain Everfresh's argument, the underlying notion of good faith in contract law, the maxim of contractual doctrine that agreements seriously entered into should be enforced, and the value of ubuntu, which inspires much of our constitutional compact, may tilt the argument in its favour. Contracting parties certainly need to relate to each other in good faith. Where there is a contractual obligation to negotiate, it would be hardly imaginable that our constitutional values would not require that the negotiation must be done reasonably, with a view to reaching an agreement and in good faith."

C. CONCLUSION

[21] In the current matter the applicant has suffered substantial prejudice by the respondent's repudiation of the LOI, the parties came before court because they have deadlocked, and there is no deadlock-breaking mechanism built into the agreed Letter of Intent. This has the consequence that the applicant is deprived of a prima facie right or clear right on which to pin its entitlement to the interdictory relief that it seeks.

[22] In consideration of the aforementioned legal position, the application cannot succeed. The costs in this matter will follow the cause.

¹⁰ [2011] ZACC 30; 2012 (1) SA 256 (CC); 2012 (3) BCLR 219 (CC).

[23] The following order is made:

The application is dismissed with costs including costs of two counsel to be taxed at scale B.



J.S. NYATHI
Judge of the High Court
Gauteng Division, Pretoria

Date of hearing: 15/04/2025.
Date of Reasons: 27 June 2025

On behalf of the Applicant: CHJ Badenhorst SC
EG Malherbe
Applicant's attorneys: Ulrich Roux and Associates, Illovo, Jhb.
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On behalf of the Respondents: KW Lüderitz SC
CAC Korf
Respondent's attorneys: Bernhard Van der Hoven Attorneys, Pretoria

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 27 June 2025.