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

CASE NUMBER: 62061/2020

Reportable: NO

Circulate to Judges: NO

Circulate to Magistrates: NO

Circulate to Regional Magistrates NO

In the matter between:-

M[...] J[...] H[...]

Applicant

and

THOMAS HAYLETT SIEBRITS

1st Respondent

W[...] H[...]

2nd Respondent

JUDGMENT

Reid J

Introduction

[1] The applicant and the 2nd respondent were divorced during February 2017. The 1st respondent was appointed by this Court as liquidator in 2017 in terms of the divorce order, to attend to the division of the universal partnership between the applicant and the 2nd respondent.

- [2] The applicant seeks to terminate the 1st respondent's mandate as liquidator, alternatively to order the 1st respondent to attend to finalise his mandate as liquidator. The 1st respondent contends that the relief sought is moot, as the universal partnership has been divided between the parties.
- [3] The 1st respondent's determination of the division of the universal partnership in essence entails that the applicant must pay the amount of R985,425.16 (Nine Hundred and Eighty Five Thousand Four Hundred and Twenty Five Rand and Sixteen Cents) to the 2nd respondent and that the applicant should sign the necessary documentation for the transfer of a property owned by the parties, situated in Parys ("the Parys property") to take place into the name of the Second Respondent.
- [4] The 1st respondent conveyed this division in correspondence dated 22 October 2022 and holds that this is the final division of the universal partnership.

Material factual background

- [5] The assets in the universal partnership of the 1st applicant and the 2nd respondent are substantial. It includes two fixed properties as well as a business. The 1st respondent prepared a list of assets and debt which was sent to the parties on 23 June 2022, for their inputs.
- [6] On 13 October 2022 the 1st respondent directed correspondence to both the applicant and the 2nd respondent. Although the correspondence is lengthy, it is important to quote in this judgment, to place the division of the universal partnership in context. The correspondence reads as follows:

"DIVISION OF UNIVERSAL PARTNERSHIP: MR H[...] & MRS H[...]

- 1. Find attached hereto the final list of assets and liabilities together with calculations and division of the universal partnership.*
- 2. The parties agreed that a universal partnership was formed during their marriage and that each party has a 50% interest in the partnership relating to the immovable property at Parys and Hazyview as well as the business that was conducted as Monkeybirds at Hazyview.*
- 3. Calculations of the assets and liabilities was made on the available documentation and although separate calculations was done for the above mentioned assets that formed part of the universal partnership the list of assets and liabilities with values was calculated jointly to draft a final reconciliation report that indicate the amount of R985 425.16 to be payable by Mr H[...] to Mrs H[...] on the assumption that the property at Parys be transferred from the name of Mr H[...] to Mrs H[...] and that she take over responsibility for payment of the outstanding bond amount and that Mr H[...] retain ownership of all the apes and birds previously valued by Dr Otto at Monkeybirds together with all the other movable property with the exception of the dismantled poles, wires and gages that must be sold by the parties whereafter the proceeds must be equally shared. The above amount is calculated as follows:*

Due to Mrs H[...] — Monkeybirds: R2,860,724.30

Less due to Mr H[...] — Parys property: R1,612,855.79

Less due to Mr H[...] — Hazyview property: R262,443.35

Balance amount due to Mrs H[...]: R 985,425.16

- 4. The costs payable to transfer the property situated at Parys from Mr H[...] to Mrs H[...] must be paid in equal shares and the nominated firm to take care of the transfer must be an*

independent firm not familiar to either Mr and/or Mrs H[...].

- 5. The division of the universal partnership was a tremendous tedious exercise and rather difficult, specifically as sufficient and substantial proof of all allegations made by both Mr and Mrs H[...] was not received. The writer hereof was thus limited to the available information received on a peace meal basis over a period of time and the bank statements received from the parties.*
- 6. Neither Mr or Mrs H[...] will be completely satisfied with the division of the universal partnership. It normally happens in contested divorce matters that neither party is satisfied with the final outcome. In this matter various attorneys and advocates was involved in the past in an attempt to reach a settlement between the parties, unfortunately to no avail. The parties then decided not to proceed with the matter on trial but to rather appoint the writer hereof as referee.*
- 7. The report was drafted to be fair and reasonable towards both parties. Various attempts (were) made by both parties to convince the writer hereof to take certain alleged assets and liabilities into consideration. The writer hereof will not advance reasons herein for not including certain alleged assets and liabilities in the calculations but must state that all submissions made by both Mr and Mrs H[...] was duly considered before the final report was drafted.*
- 8. After the first list of assets and liabilities was presented to the parties submissions was received from both Mr and Mrs H[...] and based thereon this report vary in some instances from the previous report. We refer in this regard to inter alia the R800000.00 deposit paid towards the Parys property, inputs by Mr and Mrs H[...], Staalstad payment and the dismantle of the park amongst other items.*
- 9. The content of paragraph 4.3.3.2 of the settlement agreement concluded between the parties provide inter alia for the*

following:

“Nadat Mnr Siebrits die lys van bates en laste opgestel het soos vermeld, sal beide partye weer 'n geleentheid gegun word om voorleggings aan Mnr Siebrits te maak, waarna Mnr Siebrits 'n finale lys van bates en laste sal opstel, wat dan deur albei partye aanvaar sal word as synde die bates en laste van hierdie besigheid”.

10. *The above refer(s) to the Monkeybirds business. From the content thereof it is evident that the parties will receive a further opportunity to make submissions in regard to the business that was known as Monkeybirds and conducted in Hazyview. Both parties will receive the opportunity to provide further submissions for consideration, limited to when they started to build the park in Hazyview and until the park was closed as liabilities incurred prior to the conducting of Monkeybirds in Hazyview and also after the business operated in Hazyview was closed is according to the writer hereof irrelevant for purposes of division of the universal partnership.*

11. *Kindly note that clause 4.5 of the settlement agreement indicate that after a final list of assets and liabilities together with their values is drafted the parties will receive a final opportunity to reach a settlement on the final division. We thus afford both parties the opportunity in terms of clause 4.3.3.2 of the settlement agreement to make final submissions, if any, regarding the business Monkeybirds that was conducted in Hazyview on/before 19 October 2022. The writer hereof will then consider the submissions and make a final finding on 21 October 2022. The parties must then make themselves available for a roundtable meeting at the offices of the writer hereof on 25 October 2022 at 10h00 to discuss the conclusion of the matter in terms of clause 4.5 of the*

settlement agreement.

12. Your urgent response and confirmation of the proposed date must be sent to our offices to bring this matter to finality.”

(own emphasis)

- [7] This letter forms the basis of the 1st respondent's contention that the universal partnership has been divided. The applicant, however, holds the view that the fact the content of paragraph 11 indicates that the division is not final, as it indicates:

“The writer hereof will then consider the submissions and make a final finding on 21 October 2022. The parties must then make themselves available for a roundtable meeting at the offices of the writer hereof on 25 October 2022 at 10h00 to discuss the conclusion of the matter in terms of clause 4.5 of the settlement agreement.” (own emphasis)

- [8] The applicant attended the roundtable meeting whilst the 2nd respondent elected to not attend. The applicant was not satisfied with the division and held a different view, which division will be more favourable to the applicant.

- [9] The 1st respondent considered the inputs of the applicant and informed the applicant in January 2023 that he could not find any merit to vary the final division. The 1st respondent again directed correspondence on 6 April 2023 to confirm the division of universal partnership as set out in his correspondence dated 13 October 2022.

- [10] The attorneys on record for the 2nd respondent confirmed in correspondence to the attorneys on record for the applicant on 5 May 2023 that the final division was already made.

- [11] The applicant issued an application in 2023 in the Free State High

Court under case number 1690/2023, in relation to the property in Parys. The outcome of that application was not in favour of the applicant. The result of that application was that all the rights and obligations in the Parys property vest with the 2nd respondent in terms of the 1st respondent's final division of the universal partnership.

- [12] The factual dispute in this matter is whether the universal partnership has been finally divided or not. The applicant avers that it has not been done, whilst the 1st respondent avers that the universal partnership has been divided.

Legal position

- [13] The applicant seeks an interdict.
- [14] It is trite law and established firmly in our law in **Setlogelo v Setlogelo** 1914 AD 221 that the requirements for an interdict are (a) a clear right (b) an injury actually committed or reasonably apprehended (c) no alternative remedy.
- [15] The applicant has a clear right that the universal partnership be divided. He does not have a clear right that the universal partnership be divided in accordance with his calculations and his view. The applicant does not comply with the first requirement of an interdict, and as such is not entitled to the relief sought.
- [16] The determination of factual disputes has been set out in the well-known matter *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A). It was determined that, in the event of a true factual dispute, an interdict could only be granted in motion proceedings where the facts stated by the respondent, together with

the facts admitted by the applicant, would justify such an order.

[17] The 1st respondents' version of the facts indicated that the universal partnership was finally divided. This does not support the version of the applicant that the universal partnership was not finally divided. In application of the "Plascon Evans" Rule, the applicant would not be entitled to the relief sought.

[18] In the result, the application is bound to be dismissed.

Costs

[19] The general principle is that the successful party is entitled to its costs. I find no reason to deviate from the general principle and the applicant should pay the costs of the 1st respondent.

[20] The 2nd respondent did not oppose the application and was cited on the basis that she has an interest in the outcome of the application. No relief was sought against the 2nd respondent.

[21] The normal scale of costs is party and party costs, as described in Rule 67A as Scale B. I find no reason to deviate from the normal scale of costs.

[22] The applicant should thus pay the cost of the 1st respondent on a party and party basis Scale B.

Order

[23] In the premise, the following order is made:

- (i) The application is dismissed.
- (ii) The applicant is to pay the costs of the 1st respondent on Scale B

being party and party costs.

FMM REID
JUDGE OF THE HIGH COURT
GAUGENG DIVISION PRETORIA

DATE OF ARGUMENT: 4 AUGUST 2025

DATE OF JUDGMENT: 3 NOVEMBER 2025

APPEARANCES:

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