



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case no: 247658/2025

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
<u>30 March 2026</u>	
DATE	SIGNATURE

In the matter between:

ROELOF HENDRIK PETRUS GROBLER N.O.

First Applicant

JOHANNA SUSANNA GROBLER N.O.

Second Applicant

(Trustees for the time being of the LSG Familie
Trust T3485/2003)

And

PIETER FREDERICK LIEBENBERG

First Respondent

HANNES GOUWS & PARTNERS INC.

Second Respondent

NEUKIRCHER J:

1] Part B of the present application was originally launched and set down for hearing on 20 January 2026 where it was struck from the roll for a lack of urgency with costs.¹ The present notice of set down in the urgent court on Friday 27 March 2026, was accompanied by a supplementary affidavit. It was set down as a matter of such great urgency that the respondents were only afforded three days within which to oppose it and file any further papers. It is only Part B with which this court is concerned and, in that respect, the relief sought is *inter alia* the following:

- “2. That the second respondent be interdicted and restrained from paying R1,300,000.00 (One million Three Hundred Thousand Rand) of the total proceeds of the sale of the immovable property, to the first respondent, pending the final adjudication of an action to be instituted against the first respondent.
3. That in the event that the action contemplated in paragraph 2 (Two) above is not instituted within 10 (Ten) days of the date of the order, that the order shall lapse.”

2] Unsurprisingly, the first respondent filed its opposing supplementary affidavit, and no replying affidavit was filed – which is hardly surprising given the severely truncated time periods within which the applicants² insisted that the matter be adjudicated.

¹ There is thus a full set of affidavits before the court filed by the applicants and the first respondent

² Referred to in this judgment as either the first applicant or the Trust in this judgment

Background

3] The two applicants are the trustees of the LSG Familie Trust (the Trust). The first respondent is the owner of the immovable property, Farm Rietfontein 395, Registration Division JR, Pretoria (the Property), around which the dispute revolves. It is common cause that he resides in New Zealand. The second respondent is the conveyancer tasked with the transfer of the property from the first respondent to the new purchaser of the property and the third respondent is the bondholder. Relief is only sought against the first respondent.

4] According to the applicants, during approximately April 2024, the first applicant (on behalf of the Trust) and the first respondent entered into an oral agreement in terms of which the Trust would purchase the Property on the following terms:

- a) the Trust would make payment of all arrears to Standard Bank in respect of the bond held over the Property;
- b) the Trust would pay the monthly bond payments until the Property was transferred;
- c) the Trust would pay to the first respondent an amount of R250 000 at a future date to be determined.

5] The applicants also allege that it was an implied term of the above agreement that:

- a) the Trust would have “free rein” to effect improvements on the Property.
- b) the Trust would have possession of the Property, which would be handed over upon conclusion of the agreement;
- c) the Trust would be entitled to all proceeds derived from the Property.

6] It bears mentioning that the first respondent denies that there was any implied term that the Trust would be entitled to effect any improvements on the Property.

7] It appears to be common cause that the Trust then paid an amount of R419 145-11 to the third respondent in respect of the arrear bond payments, and it also effected the monthly bond instalments. It then effected what it terms “necessary and useful improvements” to the Property. It is not controversial that the Property consists of a main dwelling, two apartments, a storage unit and a double garage. According to the first applicant, the Property was in a state of disrepair and the improvements were necessary. It is common cause that there are two tenants in the Property: one occupies and pays rental for the main dwelling and the other for one of the apartments – the rental amounts are paid to the Trust.

8] According to the first applicant, between 10 April 2024 and 17 November 2025 the Trust expended an amount of R440 150-23 in “necessary and useful improvements” to the Property and collected rental of approximately R323 730.³

9] But, of course, the oral agreement of sale referred to in paragraph 4 was invalid for want of compliance with the provisions of the Alienation of Land Act 68 of 1991. The applicants’ argument is that this notwithstanding, it possessed the property as a *bona fide* possessor or occupier.

10] In any event, on 10 April 2025 the first respondent informed the applicants that he had put the property on the market. After negotiations between them, and on

³ This according to the first respondent

approximately 16 July 2025, the parties concluded a formal, written Purchase Agreement in terms of which, inter alia:

- a) the Trust purchased the Property for an amount of R1 888 838-63;
- b) the purchase price was payable in two parts: an amount of R250 000 within five days of registration and an amount equal to the outstanding amount on the bond within forty-five (45) days of date of signature.

11] It was a suspensive condition of the agreement that the Trust would obtain a loan, secured by a mortgage bond, within forty-five (45) days of signature of the agreement, failing which the Purchase Agreement would lapse. It is common cause that the Trust struggled to secure its loan and thus the suspensive condition was extended (in writing) with another 21 days in September 2025.

12] What is revealing about the written Purchase Agreement is the following:

- a) it was recorded that the Trust was already in possession of the property by virtue of the prior oral agreement between the parties;
- b) the Trust was not entitled to effect any improvements on the property without the written consent of the first respondent.

13] Despite the extension of the suspensive condition time period, the Trust was unable to secure a loan and the purchase agreement thus lapsed.

14] Although the Trust was still desirous of purchasing the Property, it found out that the first respondent had informed the tenants that he was now in possession of

the Property, that he would be selling the Property, and that until it was sold, the monthly rental income was to be paid to him.

15] Despite the applicants attempts to enter into a purchase agreement with the first respondent, he refused to sell the Property to them and on 19 November 2025 the applicants found out that the Property had been sold to an unknown purchaser and that the tenants had been informed that the rental payments were to be made to the first respondent “as the Trust seemingly no longer exercises control over the Property.”

16] Instead of launching an application to interdict the transfer of the Property, the Trust sought an undertaking from the first respondent that the payment from the sale of the Property - an amount of R1,3 million - would be held in trust by the second respondent pending the adjudication of its enrichment lien claim. It alleges, and it has maintained this position throughout these proceedings, that it exercised an enrichment lien over the property by virtue of the R859 295-34 expended in respect of necessary and useful improvements to the Property.

17] Before the court, it was argued that with the first respondent residing overseas, once payment of the R1,3 million was paid to the first respondent, its enrichment claim would be frustrated, and it would not achieve redress as it would not be able to enforce its judgment. It also conceded that when the matter was struck from the roll on 20 January 2026, it had been enrolled on the ordinary opposed motion roll for 18 May 2026. The argument was that by this time, the proceeds would have been paid out and its claim rendered nugatory as it had been notified by the second respondent that the transfer document had been lodged at the Deeds Office on 24 March 2026 and thus

the transfer was imminent. It therefore argued that were this urgent court not to come to its assistance, it would not achieve substantial redress in due course.

18] I was also informed that the Trust had already issued the action proceedings but had yet to serve them on the first respondent.

19] Thus, the argument before me was that the Trust was, at all times, either the *bona fide* possessor or the *bona fide* occupier of the Property and that, as it was an implied term of the original agreement that it could effect improvements on the Property, which it had done, it exercised an enrichment lien over the Property.

20] But therein lies the issue with the Trust's case as pleaded before me, and this from its own founding and supplementary affidavit. Liens are dilatory defences against a *rei vindicatio* which, if successfully raised, will result in the owner being unable recover possession of the property from the person who is lawfully in possession and who has an underlying valid enrichment claim, unless and until the defendant has been compensated.⁴ A lien does not ground a cause of action.⁵

Requirements for a lien

21] The requirements for a lien are the following: the defendant must allege and prove:

- a) lawful possession of the object;

⁴ *Singh v Santam Insurance Co Ltd* 1997 (1) SA 291 (SCA); *Brooklyn House Furnishers (Pty) Ltd v Knoetze & Sons* 1970 (3) SA 264 (A)

⁵ *Brooklyn House Furnishers* (supra); *Amler's Precedents of Pleadings*; Harms 7th ed; page 261-263

- b) that the expenses were necessary for the salvation of the thing or useful for its improvement;
- c) the actual expenses and the extent of the enrichment of the plaintiff;
- d) that the plaintiff's enrichment is unjustified; and
- e) that there was no contractual arrangement between the parties (or a third person) in respect of the expenses.⁶

22] In my view, the applicant's case fails on several bases:

- a) firstly, it cannot institute a cause of action based on a lien – it is a defence to a *rei vindicatio*. Where it argues that this is what it intends to do, it appears that (at least *prima facie*), the claim in respect of a lien is bad in law;
- b) in any event, at this stage it is doubtful on these papers that the Trust has retained control of the Property: the Property has been sold without its consent, it has not interdicted the sale, the applicants do not appear on the papers before me to occupy any part of the Property and therefore (at the very least) it is in doubt whether it has retained possession, which is an essential element. Once possession is lost, the lien is lost.⁷;
- c) on its own version it was an implied term of contract that it would be entitled to effect improvements on the Property. And the Trust has continued throughout to assert this claim and the validity of this implied contractual term. This is fatal to its claim in respect of a lien.

⁶ Amler's (supra) at page 262 and the authorities quoted therein

⁷ *Rand Bank Bpk v Regering van die RSA* 1975 (3) SA 726 (A); *Rondalia Bank Bpk v Pieter Nel Motors (Edms) Bpk* 1979 (4) SA 467 (T)

Requirements for an interdict

23] The Trust argues that in order to succeed, it must prove the elements of an interdict as laid out in *Setlogelo v Setlogelo*⁸ and *Webster v Mitchell*⁹ which are that the applicant had a *prima facie* right even if open to some doubt, an injury suffered or reasonably apprehended, that the balance of convenience favours granting the interim interdict and the absence of similar protection by another satisfactory remedy. It argues that in all respects, it has made out a proper case, has satisfied all these requirements and that it is therefore entitled to the relief sought.

24] It is trite that a court possesses a general and overriding discretion whether or not to grant the remedy sought and even were an applicant to establish the requisites for its remedy, a court may still exercise its discretion and refuse the relief.¹⁰

Conclusion

25] But in this case, I am of the view that the applicant has failed at the first hurdle. It has failed to prove a *prima facie* case even if open to some doubt as, on its own version, it relies on a contract. Perhaps, had the applicants accepted the respondent's version that there was no such contractual arrangement, its relief may have been better founded but as this was not the case pleaded or argued, I make no further comment. I also make no comment on whether or not the Trust has a valid general enrichment claim (as opposed to an enrichment lien) as this was also not the case pleaded or argued.

⁸ 1914 AD 221 at 223

⁹ 1948 (1) SA 1186 (W)

¹⁰ *Riza International BV v Suzman Distributors (Pty) Ltd* 1996 (2) SA 527 (C) at 536C-D

26] Given this, I am of the view that the relief sought cannot be granted and the application must fail. Costs must follow the result.

ORDER

1. The application (Part B) is dismissed with costs.
2. The costs are to be taxed in accordance with Scale B.



B NEUKIRCHER
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

This judgment was prepared and authored by the judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 30 March 2026.

For the applicant	:	Mr van Schalkwyk
Instructed by	:	Boshoff Smuts Inc
For the first respondent	:	Ms Dreyer
Instructed by	:	Marion Clark Attorneys
Matter heard on	:	27 March 2026
Judgment date	:	30 March 2026