




IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No: 132163/2025

(1)	REPORTABLE: YES /NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED.
	
	03 JUNE 2026
.....
SIGNATURE	DATE

In the matter between:

SONNHEIM AFTREEOORD (PTY) LTD

(Registration Number: 1982/005190/07)

Applicant

and

HLCV PROPERTIES (PTY) LTD

(Registration Number: 2016/301793/07)

Respondent

JUDGMENT

LABUSCHAGNE J:

[1] The applicant sold a building in which it ran an old age home to the respondent , who bought it in order to renovate it for student housing. The respondent

took occupation in March 2023, but three months later the contract of sale was cancelled. The applicant seeks to enforce its right to the occupational rent payable by the respondent for the period that it was in occupation of the premises.

- [2] The applicant applies for the final winding-up of the respondent, alternatively a provisional order is sought with a return date determined by the Registrar.
- [3] The respondent denies the *locus standi* of the applicant. According to a deed search the owner of the building was R-Beleggings (Proprietary)(Limited). It contended that the whole contract was void as the applicant was not the owner.
- [4] This issue fell away. The respondent failed to check that the applicant is the same entity as R- Beleggings, following a name change. What is more troubling is that the respondent should contend that only the owner of property is entitled to sell it. This is proposition so patently wrong, that the respondent was, by means of a widely shared notice on CaseLines requested to address the court on the basis for this proposition. The respondent abandoned the contention.
- [5] The respondent contended that the Deed of Sale did not come into operation due to non-compliance with suspensive conditions. The suspensive conditions are set out in Clause 5 of the Deed of Sale. The suspensive conditions include the following:

-The shareholders of the Seller must pass a special resolution pertaining to the sale of the property.

-The Board of Directors of the Seller must approve and ratify the entering into the agreement, the sale and all other transactions contemplated in the agreement (Clauses 5.1.1 and 5.1.2).

Clause 5.2 reads as follows:

“Unless all the suspensive conditions have been fulfilled or waived within 60 days after receipt of the deposit provided for in clause 4.2.1 above, the provisions of the agreement will never become of any force or effect of the status quo at the time and they will be restored as near as may be possible and neither the parties will have any claim against the other in terms thereof.”

[6] The applicant’s claim is based on the occupational rent payable in respect of the premises. Occupation was taken on 17 March 2023. In terms of Clause 6.2 of the agreement, dealing with occupation and possession, the following was agreed:

“6.2 Per agreement, the purchasers may take occupation immediately after the deposit is paid from 1 February 2023, or such earlier date as may be agreed to between the parties in writing. The occupation rent of 1% of the purchase price, amounting to R280 000.00 will take effect from 1 March 2023 until date of transfer of the property into the name of the purchaser, with provision for pro rate rental should transfer be effected within any particular month and not at the last day of the

month. Occupational rental is payable monthly in advance on or before the first day each month. Upon occupation of the property by the purchaser, the risk, profit and loss will pass to the purchaser and from which date the purchaser is also responsible for all consumption charges and levies that may be payable in respect of the said property from such date onwards. The purchaser is aware that the electricity supply is interrupted by the local municipality.”

[7] The respondent took occupation under the aforesaid terms. The suspensive conditions in clause 5 of the deed of sale relied upon by the respondent relate to the validity of the underlying sale. The occupational rent was however payable in advance in terms of clause 6.2 and the applicant’s claim accrued on this basis from date of occupation.

[8] The respondent denies that a deposit was paid and contends that the contract never came into force. However, the conduct of both parties in interpreting Clause 6.2 is apparent. Occupation went ahead regardless of the aforesaid and, in terms of Clause 6.2, liability attached to such occupation.

[9] In light of Clause 5.2 quoted above, read with Clause 6.2, there is some ambiguity whether the failure to comply with the suspensive conditions also struck at the root of the agreement to take occupation.

[10] In such circumstances it is permissible for the court to have regard to the conduct of both parties. This finds support in *Kooij v Middleground Trading*:¹ :

¹ *Kooij v Middleground Trading* 251 CC 2020 JDR 0659 (SCA) at para 16:

“It is true that a Court can, when interpreting a contract, have regard to the parties' subsequent conduct in order to determine what they intended. This Court has, however, made it clear that the use of such evidence is circumscribed. It laid down that such evidence may be accepted subject to three provisos. First, the evidence must be indicative of a common understanding of the terms and meaning of the contract. Second, the evidence may be used as an aid to interpretation and not to alter the words used by the parties. Third, that evidence must be used as conservatively as possible.”

[11] In these circumstances there is no ambiguity in the conduct of the parties. They gave effect to the occupation agreement, and the respondent has no defence.

[12] Under these circumstances I am satisfied that the applicant has established a basis for the winding-up of the respondent.

[13] Having considered the papers, I am satisfied that there is compliance with all the requirements for a provisional order. I decline a final order at this stage simply because I don't know the position of other creditors. A provisional order would give them the opportunity, once published, to either oppose or support the winding-up of the respondent on the return date.

[14] In the premises I make the following order:

1. A provisional order of liquidation is granted with a return date of 11 August 2026 on the opposed roll of the Insolvency Court, on which date the respondent and any interested parties should advance reasons why the aforesaid provisional order should not be made final.

2. This order is to be served on the respondent and any trade union at its registered address.
3. This order is to be published in the Government Gazette and in an English language newspaper circulating in Gauteng.
4. A copy of this order is to be served on SARS by email.



LABUSCHAGNE J

JUDGE OF THE HIGH COURT

COUNSEL FOR APPLICANT: ADV VORSTER

INSTRUCTED BY POTGIETER LOUW ATTORNEYS

COUNSEL/ATTORNEY FOR RESPONDENT: MR MATHEBULA

INSTRUCTED BY MATHEBULA INC