IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2023-024848

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
DATE	SIGNATURE

In the matter between:-

C[...] H[...] BODY CORPORATE	Applicant
and	
JEANLING LEE	1st Respondent
FAIZA BECK	2nd Respondent
THE OFFICE OF THE REGISTRAR OF DEEDS, JOHANNESBURG	3rd Respondent
DE WET VAN DER WATT INCORPORATED	4th Respondent

JUDGMENT

Mfenyana J:

[1] The applicant seeks an order directing the first and third respondents to transfer Unit 1[…], C[...] H[...] ("the property"), to the applicant and to sign all documents necessary to effect the transfer, failing which the Sheriff of the

Court is to be authorised to sign those documents on behalf of the first respondent.

[2] The applicant seeks costs only against the respondents who oppose the application.

[3] Only the first and fourth respondents oppose the application. The fourth respondent says in its answering affidavit that it filed the affidavit solely to correct factual inaccuracies in the founding affidavit, yet it also ventures into other issues, including an interpretative exercise of the order of Mia J. The affidavit further explains the fourth respondent's role in the correspondence that ensued after Mia J's order. This, the fourth respondent explains, is because the relief sought is directed mainly at the first respondent.

[4] The dispute is rooted in a transfer of the same property, carried out by the fourth applicant as a conveyancer. At the time, the first respondent was the chairperson and the second respondent, as well as other individuals, were trustees of the applicant.

[5] On 29 October 2021, years after the transfer of the property to the first respondent, the applicant notified homeowners of a special general meeting (SGM) to be held on 1 December 2021 to consider and approve the procedure followed in the sale of unit 1[…].

[6] This prompted one Mahomed Cassim (Mr Cassim) to, on 22 November 2021, institute an urgent application seeking to interdict the inclusion of the said item on the SGM agenda, on the basis that the aforementioned sale did not comply with the provisions of the Sectional Titles Schemes Management Act, and was therefore void *ab initio*.

[7] On 1 December 2021, Mia J issued an order in respect of the urgent application. The order "interdicted and restrained" the applicant and

pertaining Solver Enterprises(Pty) Ltd, from including the item on the agenda of the SGM of 1 December 2021, on the basis that the sale and transfer did not comply with the provisions of the Sectional Titles Management Act (STMA)[1] and was thus, void *ab initio.*

[8] The first respondent and De Wet van der Watt Attorneys, the fourth respondent in the present application, were directed to furnish Mr Cassim with the documentation relevant to the "purported sale of the property".

[9] In the founding affidavit, Ms Saheena Sataar Cassim (Ms Cassim), asserts that the Body Corporate is entitled to restitution on the basis that it was the owner of the property before the unit was sold to the first respondent. She adds that the property was sold with a portion of the common property and exclusive-use areas.

[10] The impugned sale agreement was concluded in October 2015. The second respondent represented the Body Corporate, and the first respondent signed as the purchaser in her personal capacity.

[11] In terms of the sale agreement, the seller sold Sectional Title Unit […] in C[...] H[...], measuring 135 square metres, together with Room R[…], Room R[…], and Parking P[…], to the purchaser for R1 000 000.00 (one million rand), payable as set out in the annexure. A deposit of R1 000 000.00 was payable to De Wet Attorneys.

[12] A reconciliation statement provided by the Body Corporate shows that, between 5 November 2015 and 26 January 2016, the first respondent paid a total of R906 700.00 (nine hundred and six thousand seven hundred rand) into the Body Corporate's bank account in several instalments.

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[1] Act 8 of 2011.

[13] A statement of account from the fourth respondent to the applicant, dated 17 December 2015, shows that from the purchase price of R1 000 000.00, amounts totalling R131 343.80 were debited, leaving a credit balance of R868 656.20 in favour of the applicant. This remaining credit amount of R868 656.20 was deposited the same day into the applicant's bank account in two payments of R813 656.20 and R55 000.00.

[14] On 17 August 2022, the applicant, through its attorneys, invited the first respondent to explain the source of the funds used to purchase the property, alleging that the funds were unlawfully obtained. The first respondent did not respond or provide any explanation. The applicant, therefore, avers that this indicates the funds were not lawfully procured.

[15] The applicant avers that, although it seeks restitution, it cannot endorse actual or suspected illegality by returning the purchase price without an explanation from the first respondent. In essence, it argues that the property should be transferred to it, but does not tender the return of the purchase price.

[16] The applicant avers that the first respondent is in unlawful possession of the property, prejudicing the Body Corporate. The applicant further contends that this has unjustly enriched the first respondent, while the Body Corporate loses income each day the property remains vacant. In these circumstances, the applicant argues that the first respondent is not entitled to a refund of the purchase price, as this would effectively sanction a suspected illegality.

[17] In the alternative, the applicant argues that any amount that may have been due to the first respondent should be set off against the benefit she derived from her unlawful beneficial occupation of the property, including the common property, from which the applicant has been excluded for approximately seven years.

[18] The applicant contends that the fourth respondent, as a conveyancer, enabled and facilitated the sale and transfer of the property without conducting any due diligence or complying with the applicable legislation and for this reason, the sale was declared void *ab initio*. Moreover, the fourth respondent allowed the transfer to proceed without payment of the full purchase price.

[19] In opposing the application, the first respondent states that the sale was authorised by the then trustees of the applicant, including the second respondent, who instructed the applicant's attorneys to proceed with the transfer, as the Body Corporate needed funds for litigation in which it was involved with Bombela.

[20] The first respondent contends that the property was transferred to her after she paid the full purchase price, but provides no proof, relying instead on legal advice. She further states that the applicant initially agreed to refund her but later withdrew this offer, leading her to file a counterapplication. She alleges that the total amount she paid is R1 001 700.00, with the difference constituting interest, a fact also confirmed by the fourth respondent. Nonetheless, neither respondent explains how this amount was computed, and no supporting documentation has been provided.

[21] The first respondent maintains that insofar as Mia J's order declares the sale void, it is erroneous. She, however, states that she does not intend to place substantial reliance on this alleged error. Importantly, the first respondent does not oppose the return of the property to the applicant and undertakes to cooperate in the transfer, against repayment of the R1 million purchase price.

[22] In the counterapplication, the first respondent seeks a refund of the purchase price.

[23] In his answering affidavit, the fourth respondent contends that the affidavit is filed solely to correct factual inaccuracies in the applicant's founding affidavit, as the applicant's claim is directed predominantly at the first respondent.

[24] The fourth respondent contends that the applicant's claim is predicated on an incorrect reading of Mia J's order. The deponent states that Mia J did not consider the merits of the matter, as the application before her was an urgent interdict against the applicant, not to include the agenda item of ratification of the sale of the property, on the basis that it was void *ab initio*. Thus, no order was made on the merits.

[20] The fourth respondent refers to correspondence with the applicant in 2022, in which the fourth respondent, on behalf of the first respondent, informed the applicant that Mia J had only pronounced on the interdictory relief and that the first respondent would accept restitution of the full amount of R1 000 000.00. The fourth respondent, therefore, avers that, as the applicant offered restitution and the first respondent accepted it, the applicant cannot now seek to acquire the property for nothing, as it has already made its election.

[25] Regarding compliance with applicable legislative provisions, the fourth respondent avers that "at the time of transfer, it was believed that all the formalities required in terms of the Sectional Titles Management Act had been complied with", and the Body Corporate does not state which provisions were not complied with. Importantly, he argues that he transferred the property in terms of the Sectional Titles Act[2].

[26] The fourth respondent avers that the applicant has conceded in the founding affidavit that the full purchase price was paid and references portions of the founding affidavit in which the applicant supposedly conceded this fact. In the said paragraphs, the applicant merely concedes to a "total purchase price" of R906 700.00, as well as the fact that the fourth respondent only provided proof of a lesser amount.

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[2] Act 95 of 1986.

[27] The fourth respondent denies that his conduct was reckless and unprofessional. He further contends that, since the applicant has already received payment for the property, the applicant cannot now insist on retaining it without compensation.

[28] In essence, the fourth respondent contends that the first respondent is entitled to payment of the purchase price, which he states is an amount of R1 001 700.00, representing the purchase price of R1 million and agreed interest due to the late payment of the purchase price.

[29] In the replying affidavit in respect of the counterapplication, the first respondent seeks to challenge the applicant's reliance and interpretation of Mia J's order. This is untenable. A party must make its case in its founding papers. In her founding affidavit, the first respondent expressly states that she does not seek to challenge Mia J's order. Her later attempt to do so is therefore both belated and inconsequential.

[30] The applicant, on the other hand, in its replying affidavit denies that it misconstrued Mia J's order and contends that the status *quo ante* should be restored. It further avers that it made the restitution offer before receiving the documents referred to in that order; that the respondents' response did not constitute acceptance; and that the fourth respondent instead submitted a new offer.

[31] If one cuts to the bone of this matter, it is clear that the key issue in dispute is whether the applicant is entitled to the restoration of the property without tendering the restoration of the purchase price paid by the first respondent. Linked to that is whether the first is entitled to the restitution of the purchase price and, if so, in what amount.

[32] While the parties agree on restitution, they do not agree on how that restitution should take place. The applicant's stance is that while it is entitled to restoration of ownership of the property, the first respondent is not entitled

to the purchase price she paid, as the funds used to acquire the property were possibly acquired unlawfully. On the other hand, the first respondent avers that she is entitled to restoration of the purchase price because at the time the transaction was concluded, she believed that it was above board and for the benefit of the applicant.

[33] The primary purpose of the remedy of *restitutio in integrum* is to restore parties to the exact positions they held immediately before the contract was concluded. In *Strydom v Blue Owl CC*[3], the court confirmed that the rule (of *restitutio in integrum*) is founded on the principle of equity and justice, and that "our courts have departed from the strict application of the rule and, where necessary, have adjusted the deficiency by monetary compensation." In transactions tainted by error or fraud, the aim is to afford the innocent party fair relief by reversing the transaction.

[34] In *Quartermark Investments (Pty) Ltd v Mkhwanazi and another*[4], where fraudulent misrepresentations induced the appellant to conclude the contract, the Supreme Court of Appeal (SCA) noted that, in those circumstances, the innocent party was entitled to restitution despite not tendering to restore the benefits she received under the contract. The SCA reasoned that "a court will not set aside a contract and grant consequential relief for fraudulent misrepresentation unless the innocent party is able and willing to restore what he or she received under the contract."[5]

[35] In the present case, the applicant does not rely on fraudulent misrepresentation. The applicant's gripe has nothing to do with the conclusion of the contract, *per se*. All it says is that it suspects that the funds used to acquire the property were obtained through unlawful means. This

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[3] [2002] ZAWCHC 42, para 38.
[4] [2013] ZASCA 150.
[5] Para 15; see also in this regard: *Feinstein v Niggli & another* 1981 (2) SA 684 (A) at 700G – H; *North West Provincial Government & another v Tswaing Consulting CC & others* 2007 (4) SA 452 (SCA) para 17.

does not establish fraud. In my view, this is dispositive of the applicant's contentions in this regard.

[36] The first respondent has tendered the return of the property for retransfer to the applicant. The first respondent contends that, in return, it is entitled to repayment of an amount of R1 001 700, whereas the applicant avers that the first respondent did not pay the full purchase price and only paid R906 700.00, as evidenced by the reconciliation statement. The respondents have provided no evidence that the full purchase price of R1 000 000.00 was ever paid to the applicant. They have also not provided any evidence that the amount of R1 001 700 was paid. At best, the first respondent has provided a tabulation of the amounts allegedly paid in respect of the purchase price.

[37] Curiously, these amounts sum up to a different amount of R1 000 656.20 and not R1 001 700. They also do not align with the very documents relied on by both the first and fourth respondents. In addition, the documents referred to by the first respondent as proof of payment of such amounts do not form part of the record.

[38] The second leg of the applicant's claim is related to the first; that if this court finds that the first respondent is entitled to restitution, the damages that the applicant suffered due to the benefit the first respondent enjoyed during her possession of the property, including the common property from which the applicant was excluded, should be set off against any amount she receives. The quantum of these damages has not been computed or agreed on. What the applicant says is that it would have rented the unit out for R12 000 per month.

[39] It was argued on behalf of the respondents that the applicant has already instituted separate proceedings on 17 December 2024 for damages in the amount of R989 032.68, in respect of the first respondent's possession of the property under case number: 2024/148406. As such, the applicant's claim for compensation for the first respondent's possession of the property following the agreement is unsustainable, the respondents further aver.

[40] In essence, what the respondent is saying is that the matter is pending before another court. This constitutes a defence of *lis alibi pendens*. Noting that this occurred only at the end of 2024, the applicant has not disputed this averment. As the first respondent states in the replying affidavit in the counterapplication, this action is at an advanced stage, as the applicant has already delivered its plea to the counterclaim.

[41] Accordingly, I conclude that the applicant is entitled to restitution of the ownership of the property against payment of the purchase price to the first respondent.

[42] Whilst it is alleged in the papers (something that is not in dispute) that the purchase price was a sum of R1000 000.00, it appears from the papers that only a sum of R868 565.20 was paid to the seller. There is no clear account as to how the balance was disbursed, save for some debits relating to some or other charges levied by the deeds office, clearance figures and the like. An amount of R130 000.00, allegedly paid to the applicant, remains in dispute as the respondents have provided no proof of payment of the said amount to the applicant. In the absence of proof of payment of the said amount, logic dictates that the first respondent is entitled to reimbursement of the sum of R868 565.20 paid by the fourth respondent to the applicant.

Costs

[43] The applicant seeks attorney and client costs against the first respondent and costs *de bonis propriis* against the fourth respondent. It further seeks an order referring the conduct of the attorney involved to the Legal Practice Council. The bases for this relief are, first, that the fourth respondent's conduct, in failing to conduct due diligence as to whether the power of attorney signed by the second respondent, authorising the sale and transfer of the property, was valid, was reckless and unprofessional. Second, the fourth respondent failed to ensure compliance with the provisions of the

Sectional Titles Schemes Management Act relating to the alienation of common property. Third, the full purchase price had not been paid.

[44] The general rule is that costs follow the result. The applicant has been substantially successful in this matter, while the first respondent has succeeded only in relation to her claim for payment of the purchase price. Furthermore, the need for this application arose from the respondents' non-compliance with the applicable provisions of the Sectional Titles Schemes Management Act, as held by Mia J. That non-compliance stemmed from the conduct of both the first and fourth respondents.

[45] The fourth respondent is not the first respondent's attorney in these proceedings. There was therefore no need for it to oppose the application in the manner that it did. As previously noted, although the fourth respondent claims it filed the answering affidavit merely to correct factual inaccuracies, the contents of that affidavit go beyond this stated purpose and, in effect, constitute an opposition to the applicant's claim, including in relation to the first respondent.

[46] Both the first and fourth respondents seem to suggest that they believed that all the necessary legal prescripts were complied with. As a conveyancer, the fourth respondent had a duty to ensure that all formalities were complied with. Section 5(1)(a) of the Sectional Titles Schemes Management Act, which requires a unanimous resolution for the alienation of common property, was not complied with. Similarly, the first respondent, who was the chairperson of the Body Corporate at the time, had a fiduciary duty to act in the interests of the applicant.

[47] In those circumstances, a punitive costs order is warranted.

Order

[48] Accordingly, I make the following order:

a. The first respondent is ordered to sign all the necessary documents required for the purposes of registering the transfer of the property described as Unit 9 in the building known as C[...] H[...], the floor area of which section according to the sectional plan No. SS /1994 is 135 square metres, together with Room R[…], Room R[…] and Parking P[…] C[...] H[...], situated in Killarney Township, to the applicant within 10 days of receipt of such documents from the applicant or its conveyancers.

b. Should the first respondent fail to sign the documents necessary to effect transfer of the property to the applicant, the Sheriff of this court is authorised to sign the documents on behalf of the first respondent.

c. The applicant is directed to pay to the first respondent an amount of R868 565.20 (eight hundred and sixty-eight thousand, five hundred and sixty-five rand and twenty cents) in respect of the purchase price.

d. The first respondent is liable for all costs associated with the registration of transfer of the property described as Unit […] in the building known as C[...] H[...], the floor area of which section according to the sectional plan No. SS /1994 is 135 square metres, together with Room R[…], Room R[…] and Parking P[…] C[...] H[...], situated in Killarney Township, in the name of the applicant.

e. The first and fourth respondents are ordered to pay the costs of this application, inclusive of costs of counsel on an attorney-and-client scale, jointly and severally, the one paying, the other to be absolved, with the fourth respondent liable for such costs *de bonis propriis*.

f. This order shall be forwarded to the LPC for an investigation into the fourth respondent’s conduct in transferring the property without complying with the requisite provisions of the Sectional Titles Schemes Management Act.

S MFENYANA

Judge of the High Court

Date heard: 4 November 2025

Date of judgment: 25 February 2026

This judgment was handed down electronically by circulation to the parties' representatives by email and by uploading the judgment on Caselines. The date of handing down the judgment is deemed to be **25 February 2026**.

Appearances:

For the applicant:

Counsel: R Andrews

Instructed by: Hajibey Bhyat Mayet & Stein Inc

For the first and fourth respondents:

Counsel: R Bosman

Instructed by: Fairbridges Wertheim Becker Attorneys