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**THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

- (1) REPORTABLE: Yes ☐ / No ☒
(2) OF INTEREST TO OTHER JUDGES: Yes ☐ / No ☒
(3) REVISED: Yes ☒ / No ☐

Case no 2024-060282

Date: 25 June 2026

In the matter between:

**EL-SHADDAI ENTERPRICES PTY
LTD**

Applicant

and

ELSHADDAI AND CO NPC

Respondent

JUDGMENT

DU PLESSIS J

Introduction

[1] The applicant seeks an order compelling the respondent to take all necessary steps to effect the transfer of immovable property in Brakpan to the applicant.

[2] The application is based on a written Offer to Purchase (“OTP”) dated 22 April 2024, which the applicant submits constitutes the agreement to sell the property to it for a purchase price of R500 000. The applicant submits that it has already paid the amount. The respondent disputes this. It denies that any valid sale of the property

was concluded and specifically denies that the directors signed the OTP, alleging that the signatures purporting to be those of its directors are forged.

[3] The central issue in this application is whether the applicant has proven, in motion proceedings, the existence of a valid, binding agreement of sale in respect of the property, thereby entitling it to an order of specific performance compelling the transfer. For reasons that will transpire below, it is not possible to make such a determination on the papers, as there is a material and genuine dispute of fact on the papers that cannot be resolved on affidavit.

Background facts

[4] The applicant is a private company with its sole director, Ms Preneeda Naidoo ("Ms Naidoo"). The respondent is a non-profit company, with three directors: Ms Charlene Toorie ("Ms Toorie"), her husband, Mr Ferrit Toorie and her mother, Ms Nadine Naidoo. The parties are linked by a close family relationship: Ms Naidoo and Ms Toorie's mother, Nadine Naidoo, are sisters.

[5] The respondent acquired the property at auction for approximately R747 050, and it was registered under the respondent's name. Ms Toorie funded the purchase from Road Accident Fund compensation she received following a motor vehicle accident. On the applicant's version, the acquisition took place against the background of a broader arrangement between Ms Naidoo and Ms Toorie in relation to property investments.

[6] There was an initial verbal agreement between Ms Naidoo and Ms Toorie regarding the sale of shares in the respondent, which would result in the respondent's directors resigning and Ms Naidoo being appointed in their place, thereby effectively acquiring control of the respondent and, with it, the property held by the respondent. These arrangements were never formalised as the directors never resigned and Ms Naidoo was never appointed.

[7] Despite there being no formal transfer of the property, the applicant took occupation and made substantial renovations to adapt it for use as an educational

facility. The applicant applied to the Gauteng Department of Basic Education (“GDE”) for registration of the property as a school.

[8] At this stage, the relationship between Ms Naidoo and Ms Toorie deteriorated significantly. Ms Toorie then informed the GDE that she, and not the applicant, was the owner of the property. This resulted in the GDE declining to finalise the school registration, pending a resolution of the dispute between the parties.

[9] On 21 April 2024, Ms Naidoo and Ms Toorie met in the presence of a pastor to reconcile and resolve their differences, particularly regarding the property. The parties apologised, and it was agreed that the applicant and the respondent would enter into a written settlement agreement. This then led to an offer of purchase being drawn up.

[10] The following day, on 22 April 2024, the applicant submits that the parties entered into a written OTP. The applicant pleaded the material terms of the OTP, which need not be repeated here for reasons set out below.

[11] The applicant further submits that Ms Naidoo signed the OTP at the respondent’s chosen conveyancer’s offices. Ms Toorie then took the OTP away, stating that she will get the signatures of the other two directors (her husband and mother). Days later, Ms Toorie handed a copy of the signed OTP to Ms Naidoo’s personal assistant, Mr Hlongwane, who in turn delivered it to the conveyancer.

[12] The applicant further submits that shortly thereafter, Ms Toorie attended at the conveyancer’s offices and sought to cancel the OTP. She alleged that her husband’s and mother’s signatures on the OTP had been forged, and she instructed the conveyancer not to proceed with the transfer. The conveyancer has not proceeded with the transfer.

[13] Ms Toorie’s version (for the respondent) differs. She denies that the OTP was intended to record a sale of the property. She submits that the arrangement was on in terms of which Ms Naidoo would purchase her mother’s shares in the respondent, and that the parties would enter into a business partnership in respect of the school

to be operated on the property. She denies signing the OTP and denies that her mother and husband did. She says that any signatures purporting to be hers, her husband's, or her mother's are forgeries.

[14] In reply, the applicant submits that the respondent's version is contrived and implausible. In doing so, it relies on Mr Hlongwane's confirmatory affidavit, which attests to having received a fully signed OTP from Ms Toorie and having delivered it to the conveyancer. It also records payments totalling R1 026 835,25 into the attorney's trust account, which the applicant says are payments for the purchase price and related sums. The applicant also attaches a WhatsApp message exchange purportedly between the parties, in which Ms Toorie is alleged to have proposed that the applicant "sell Brakpan back" to her and to have offered to repay "the million and all your renovations". The respondent also finds the absence of a criminal complaint regarding the forgery strange and questions the absence of confirmatory affidavits from the other two directors regarding the dispute regarding their own signatures.

Legal framework

[15] Section 2(1) of the Alienation of Land Act¹ provides that no alienation of land shall be of any force or effect unless it is contained in a deed of alienation and signed by the parties thereto or by their agents acting on their written authority. The requirements are that the agreement be in writing, identify the parties, describe the property, stipulate the purchase prices, and be signed on behalf of the seller. The OTP on which the applicant relies purports to satisfy these requirements. The dispute, however, centres on whether the OTP was in fact signed by or on behalf of the respondent by its duly authorised representatives. There is a dispute of fact regarding this, as set out in the background above.

[16] A dispute of facts in motion proceedings then triggers the so-called *Plascon-Evans* test. In *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*,² it was held that where there is a genuine dispute of fact in motion proceedings and the application cannot properly be decided on the affidavits alone, a court is, as a

¹ 68 of 1981.

² 1984 (3) SA 623 (A) at 634E–635C.

general rule, obliged to accept the version of the respondent, together with such facts in the applicant's affidavits as are common cause or cannot be denied, unless the respondent's version is so far-fetched, clearly untenable or palpably implausible that it can be rejected on the papers.

[17] The test of what is a genuine dispute of fact was refined in *Wightman t/a JW Construction v Headfour (Pty) Ltd*,³ where Heher JA held:

"A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavits seriously and unambiguously addressed the fact said to be disputed. There must be no hint of an attempt to supplement the respondent's case and there must be an honest attempt to canvass the matter in dispute."

[18] A bare denial may suffice if no other response is possible. But where the disputing party necessarily possesses knowledge and the ability to provide detail, the absence of that detail may indicate that the denial is not bona fide.

[19] When an application cannot properly be decided on affidavit, Rule 6(5)(g) of the Uniform Rules of Court provides:

"Where an application cannot properly be decided on affidavit the court may dismiss the application or make such order as it deems fit with a view to ensuring a just and expeditious decision. In particular, but without affecting the generality of the foregoing, it may direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact and to that end may order any deponent to appear personally or grant leave for such deponent or any other person to be subpoenaed to appear and be examined and cross-examined as a witness or it may refer the matter to trial with appropriate directions as to pleadings or definition of issues, or otherwise."

[20] The rule thus provides for dismissal; a referral to oral evidence on defined issues; or a referral to trial.

³ 2008 (3) SA 371 (SCA) at paragraph 13.

[21] In *Mamadi v Premier of Limpopo Province*,⁴ the Constitutional Court confirmed that Rule 6(5)(g) vests the court with a wide discretion, and that the power of dismissal is one that "serves to punish litigants for the improper use of motion proceedings." The court also confirmed that in application proceedings, where a genuine and far-reaching dispute of fact has arisen and the probabilities are sufficiently evenly balanced, referral to oral evidence or trial, as the case may be, will generally be appropriate.⁵

On the facts

[22] The respondent's version, as per Ms Toorie, sets out a coherent and particularised competing narrative: the RAF compensation, the investment in property, the arrangement for a share acquisition and school partnership, the denial that the OTP was signed and the allegation of forgery. This is not a bare denial. It is a version which, if established, would constitute a complete defence to the applicant's claim. The respondent thus has seriously and unambiguously addressed the facts in dispute, and the dispute is real and bona fide.

[23] There are some concerning features of the respondent's case. The WhatsApp message cannot easily be reconciled with the respondent's version that the sale of the property never occurred; there would be nothing to "sell back". The absence of the confirmatory affidavits of Mr Toorie and Ms Nadine Naidoo weighs against that version. Ms Toorie's affidavit also does not make clear whether she believes her mother signed. Still, despite these concerns, I am not persuaded that the respondent's version is so implausible, far-fetched or clearly untenable that it can be rejected on the papers. The issue regarding the signatures needs to be determined in a setting where the credibility of the signatures and the surrounding circumstances can be assessed with the benefit of oral evidence and cross-examination.

[24] The dispute regarding the signatures is material as it goes to the question of whether there is a written deed of alienation, and also to explain the character of the

⁴ [2022] ZACC 26.

⁵ At para 37.

payments made by the applicant, whether it was for the purchase of the property or the shares.

[25] Taking this into account in light of the *Plascon-Evans* rule, the applicant is not entitled to specific performance in these motion proceedings.

[26] The question then remains: what is the appropriate remedy? The issue in dispute is narrow and discrete. The witnesses are identified on the papers. The probabilities, as alluded to above, are not so unfavourable to the applicant as to make a referral inappropriate. A dismissal would serve no purpose other than to compel the parties to bring fresh action proceedings in a matter where the issues are already crystallised. The referral to oral evidence on defined issues is accordingly just and would expedite the finalisation of the matter,⁶ and I exercise my discretion in terms of Rule 6(5)(g) in this regard.

Costs

[27] In light of the decision to refer the matter to oral evidence, the appropriate order is that the costs of the application be reserved for determination by the court that hears the oral evidence.

Order

[28] The following order is made:

1. The following issues are referred to oral evidence on a date to be arranged with the Registrar:
 - a. Whether the Offer to Purchase dated 22 April 2024 in respect of Erf 1[...] of Portion [...] B[...], also known as 3[...] P[...] Street, B[...] Central, was signed by or on behalf of the respondent by its duly authorised representatives;
 - b. Whether the payments relied upon by the applicant were made and were intended as payment of the purchase price of R500 000 under the Offer to Purchase.

⁶ *Repas v Repas* [2023] ZAWCHC 24 para 33.

2. The parties are granted leave to call such witnesses as may be necessary for the determination of the issues referred.
3. Save in the case of the deponents to the founding, answering and replying affidavits, whose evidence in chief is contained in those affidavits, neither party shall be entitled to call any witness unless:
 - a. that party has served on the other party, not less than 15 (fifteen) days before the date of the hearing (in the case of the applicant's witnesses) or not less than 10 (ten) days before such date (in the case of the respondent's witnesses), a statement setting out the evidence to be given in chief by that witness; or
 - b. The court, hearing the oral evidence, grants leave for such a person to be called notwithstanding that no such statement has been served.
4. The provisions of Rules 35, 36, 37 and 37A of the Uniform Rules of Court shall apply to the hearing of oral evidence.
5. The costs of this application are reserved for determination by the court hearing the oral evidence.

WJ du Plessis

Judge of the High Court, Gauteng Division,
Johannesburg

Date of hearing: 15 April 2026

Date of judgment: 25 June 2026

For the applicant: E Mokoena from Elsie Mokoena law

For the respondent: IG Magagula from Magagula Attorneys
Inc