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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NUMBER: 131814/2024

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

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SIGNATURE

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DATE

In the matter between:

SPARTAN SME FINANCE (PTY) LTD

Applicant

and

STUART JAMES SCHARNICK

First Respondent

THE REGISTRAR OF DEEDS, PRETORIA

Second Respondent

JUDGMENT

LEECH, AJ:

1 In November 2024 the applicant, Spartan SME Finance (Pty) Ltd (*Spartan*), caused a Notice of Motion to be issued out of this Court in which it sought relief against a principal debtor and a number of guarantors of the principal debt (*original application*). One of those guarantors, who was named as the second respondent in the original application, was Mr Scharnick.

2 Although there is some dispute that has since arisen about the validity of the settlement agreement, applying the evidentiary test applicable to applications for interim relief¹ it can be accepted for purposes of this application that the original application came to be settled between the Parties. On 28 August 2025 Mr Scharnick concluded what is ostensibly a signed *Settlement Agreement*, in terms of which he *inter alia* undertook liability to Spartan—along with the other respondents in the original application—in the sum of R1.2 million (*Settlement Debt*), which had to be paid by no later than 31 October 2025.

3 Mr Scharnick also agreed to provide security for the due payment of the Settlement Debt. This security took the form *inter alia* of a right of recovery against three immoveable properties owned by Mr Scharnick (*Properties*) in respect of which covering mortgage bonds would be registered in favour of Spartan. The Properties are described in the papers before me, for ease of reference, as the *Baillie Park*, *Rietfontein*, and *Potchefstroom* Properties and I refer to them as such in this judgment, appending the singular *Property* as appropriate.

¹ That is the test laid down in *Webster v Mitchell* 1948 (1) SA 1186 (W): I must consider the facts averred by the applicant, together with such facts set out by the respondent that were not or could not be disputed.

4 On 11 June 2026, Spartan caused a further Notice of Motion to be issued forth out of this Court, under the same case number as the original application, seeking urgent interim relief (*urgent application*). The urgent application was set down before me on 17 June 2026. On that day, counsel for the Parties asked that the matter be allowed to stand down for discussions to take place between the Parties, but when those proved fruitless the application was argued in stages across Friday 19 June 2026. At the conclusion of argument, I reserved judgment; this is that judgment.

5 Briefly stated, the relevant facts giving rise to the urgent application and on the strength of which Spartan contended for urgency are as follows:

5.1 The Settlement Debt has not been paid and Mr Scharnick is disputing the validity of or his liability under the Settlement Agreement.

5.2 Separate proceedings have been instituted for purposes of establishing the validity of the Settlement Agreement, Mr Scharnick's liability thereunder, and to have that Agreement made an order of court (*Settlement Application*).

5.3 In the interim, Spartan had come to learn that Mr Scharnick has apparently sold the Potchefstroom Property to an unnamed third party. It sought clarification and some degree of comfort from Mr Scharnick as to the true position and the status of its ongoing security against the Properties as per the Settlement Agreement.

5.4 When Mr Scharnick demurred—making clear that he did not regard himself as bound to the Settlement Agreement or to the security obligations ostensibly

arising from it—Spartan issued out this urgent application seeking an interim interdict against Mr Scharnick, as the first respondent in the urgent application.

- 5.5 The interdict is aimed principally at preserving Spartan's security, in the form of the right to register the covering bonds and execute against the three Properties for purposes of recovering payment on the Settlement Debt. It seeks to prevent Mr Scharnick from further encumbering, alienating, selling, or leasing the Properties without Spartan's prior written consent.
- 5.6 This relief is sought on an interim basis pending the outcome of the Settlement Application. Costs are sought against Mr Scharnick on an attorney and client scale.
- 5.7 Spartan joined the Registrar of Deeds, Pretoria (*Registrar*) as the second respondent to the urgent application. An order is sought that the Registrar be directed to register caveats against the Properties reflecting the interdict applicable in respect of them.
- 5.8 Relief was also sought obliging Mr Scharnick to disclose the identity of the third party purchaser of the Potchefstroom Property and that of the conveyancer appointed to attend to the transfer thereof.
- 6 The Registrar has not opposed the urgent application.

- 7 Mr Scharnick opposes the urgent application both on its merits and in relation to the question of urgency.² He also denies that the interdictory relief can be granted in respect of the Potchefstroom Property in the absence of the joinder of the third party purchaser and that purchaser being afforded an opportunity to make representations as to why the interim relief should not be granted. He points to an apprehension of harm being caused to the purchaser in the event that the interim interdict operates against him, such that the purchaser has a legal interest in the outcome of the application. He says that these issues also weigh heavily, in the balance of convenience, against the grant of interim relief.
- 8 These allegations are directed principally at and pertain in respect of the Potchefstroom Property. Insofar as concerns the Baillie Park and Rietfontein Properties, the answering affidavit says very little. This extends to saying little about the balance of convenience or irreparable harm in respect of these two remaining Properties.
- 9 I am satisfied that Spartan has made out a case for urgency and that the application should be entertained by me in terms of Rule 6(12) of the Uniform Rules of Court. In coming to this conclusion, I have taken into account the fact that, on the strength of the allegations contained in the founding affidavit, Mr Scharnick has, at best for him, been less than forthcoming in his responses to Spartan regarding the third party purchaser and, at worst, has actively concealed aspects of the sale of the Potchefstroom Property.
- 10 I am also satisfied that, applying the test in *Webster v Mitchell*, Spartan has demonstrated a *prima facie* right albeit one open to some doubt in relation to the existence of the Settlement Agreement and its rights to security arising from that Agreement. If an interim

² He is also opposing the Settlement Application.

interdict is not granted, then there is a real apprehension that the security will be lost and that Spartan will suffer irreparable harm as a result.

11 In concluding as such, I am mindful of the fact that the validity and enforceability of the Settlement Agreement is the subject matter of different proceedings that will play out before a different court hearing that Settlement Application and at which a different test will apply. For purposes of this interim application, I cannot finally find in favour of Mr Scharnick that there is no valid and enforceable Settlement Agreement, with the result that *prima facie* at least the rights relied on are extant. The arguments by Mr Scharnick to the contrary are unpersuasive.

12 I am also of the view that the allegations in the founding affidavit regarding the absence of an alternative remedy and balance of convenience are well made out in respect of the Baillie Park and Rietfontein Properties. In this regard, I would reiterate an observation I have made in passing above: namely, that the answering affidavit doesn't really address these topics—or, for that matter—irreparable harm in respect of these two Properties.

13 I am therefore satisfied that Spartan is entitled to an interim interdict in respect of the Baillie Park and Rietfontein Properties and make an order to that effect below.

14 The position insofar as concerns the Potchefstroom Property is, however, of a different order. In the course of argument, I indicated that the balance of convenience in respect of the Potchefstroom Property was more evenly weighted. That is because Mr Scharnick has drawn attention *inter alia* to the prejudice that he might suffer if the purchase of the Property is cancelled and he nonetheless succeeds in the Settlement Application. He also alluded to prejudice that the third party purchaser might suffer if the sale and transfer of

the Potchefstroom Property is interdicted pending the final determination of the Settlement Application. This in circumstances where, first, the purchaser is alleged to be innocent of any wrongdoing or knowledge that might cloud his entitlement to preserve his contractual right to insist on the purchase going ahead; and, secondly, Spartan itself enjoys no more than a contractual right, which arises from the Settlement Agreement and in respect of which Mr Scharnick has deposed to allegations questioning Spartan's entitlement to continue to assert that alleged right.

15 On reflection, of all of the considerations at play, it seems to me that it is the position of the third party purchaser that must be determinative of the application insofar as it relates to the Potchefstroom Property. That is not because I find that it tips the balance of convenience significantly in favour of Mr Scharnick, but precisely because the debate reveals the extent of the legal interest that the purchaser has in the outcome of the application. This interest is especially acute in circumstances where

15.1 the third party purchaser is not joined to these proceedings and it is not clear to me if he is even aware of them,

15.2 he has therefore had no opportunity to make submissions on or to advance any allegations relevant to either his legal rights or liabilities or the impact (if any) that an interim interdict might have on those rights or interests, and

15.3 I am not able to understand what the impact of an interim order would be on him if it were to endure for any period of time—whether that is an extended or significant period or a relatively short period.

- 16 This last difficulty is compounded by the fact that there is presently no timetable applicable to the Settlement Application, which means it is not possible to ascertain how long an interim interdict would continue to endure. This is especially so in circumstances where an exhaustion of that Application might entail appeals, potentially extending it from months into years. The same applies to any revisiting of the original application.
- 17 This must be seen in light of the fact that there is as of yet no joinder application. I appreciate that, until the answering affidavit was filed, Spartan was not aware of the identity of the third party purchaser. But on the papers before me that is no fault of the latter and no reason to non-suit it in relation to its rights under section 34 of the Constitution of the Republic of South Africa, 1996.
- 18 As I understand the submissions made on behalf of Spartan, it was denied that the third party's interest was of a legal nature such as would necessitate his joinder. It follows from what I have said above, that I disagree.
- 19 I also understood that I was asked to protect the demonstrated rights of Spartan by at least affording it interim relief pending the joinder of the third party purchaser or his coming later to displace that interim relief. In effect, I was asked to proceed in a manner akin to interim interim relief (my wording, not counsel's).
- 20 Leaving aside the doubtful jurisprudential authority for such an order in this division, I would still be granting interim relief effective and binding against an individual not party to this litigation and without first affording him an opportunity to be heard. The principled difficulty with that approach remains, but I would add that I am not persuaded that the rights that Spartan seeks to protect warrant that intrusion into the third party's rights.

21 In the circumstances, the application brought in respect of the Potchefstroom Property falls to be postponed so as to afford Spartan the opportunity, should it be so minded, to seek the joinder of the third party purchaser or such other alternative relief as may be available to it to pursue—whether that alternative relief be in respect of the Property, or the proceeds of the sale, or both or something else.

22 What remains is the question of costs, which are claimed on an attorney and client scale.

23 The usual practise in adjudicating urgent applications in this division is that costs are not urgent, especially where the Parties are going to come back in the fullness of time to finally determine the disputes between them. In this instance, that is especially so given that the interim relief will operate pending the outcome of the Settlement Application or the original application. Mr Scharnick might well be vindicated in the Settlement Application,³ with the result that his opposition to this urgent application—premised as it is, in the first place, upon the invalidity and unenforceability of the Settlement Agreement—would also have been justified. In those circumstances, it seems to me, the better order would be to reserve the question of costs for determination, in the first instance, by the Court hearing the Settlement Application.

24 I accordingly make the following order:

- 1 The application is enrolled as one of urgency under Rule 6(12).
- 2 Pending the finalization of the application by the Applicant ("Spartan") to have the Settlement Agreement dated 28 August 2025 made an order of

³ I am not in a position to comment on his prospects of success in the original application.

Court (*Settlement Application*), alternatively the finalization of the original application between Spartan instituted in November 2024 under the above case number (*Original Application*), the First Respondent in this application, Stuart James Scharnick, is interdicted and restrained from further encumbering, alienating, selling, leasing (without Spartan's prior written consent), subjecting to any lien, notarial bond, or servitude, or otherwise dealing in any manner with the following properties or any rights attached thereto, or entering into any transaction that would prejudice Spartan:

- a. Portion 44 of Erf 1[...] Baillie Park Extension 25 Township, Registration Division I.Q, Province of North West, Measuring 147 square metres, held by Deed of Transfer number T[...] ("the Baillie Park property"); and
- b. Portion 4 (a portion of Portion 2) of Erf 3[...] Rietfontein Township, Registration Division J.R, Province of Gauteng, Measuring 584 square metres, held by Deed of Transfer number T[...] ("the Rietfontein property").

3 The Second Respondent in this application, being the Registrar of Deeds, Pretoria, is directed to register the necessary caveats over the Baillie Park and the Rietfontein Properties, reflecting the aforesaid interdict.

4 This application, insofar as it pertains to a prayer for orders as aforesaid in relation to Portion 7 of Erf 2[...] Potchefstroom Township, Registration Division I.Q, Province of North West, Measuring 701 square metres, held by Deed of Transfer Number T[...] ("the Potchefstroom property"), is postponed *sine die*.

- 5 The First Respondent in this application, Stuart James Scharnick, is directed to disclose to Spartan, within 24 hours of the granting of this order, the details of both the purchaser of the Potchefstroom property as well as the conveyancer appointed to attend to the transfer thereof, if any.
- 6 The costs consequent upon this urgent application are reserved for determination by the Court hearing the Settlement Application.

B.E. LEECH
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

For the applicant:

Mr M Reineke

Instructed by:

Phuti Manamela Inc. Attorneys

For the 1st respondent (Mr Scharnick):

Mr M Booysen

Instructed by:

Pagel Schulenburg Attorneys

Date of hearing:

19 June 2026

Date of judgment:

24 June 2026