

REPUBLIC OF SOUTH AFRICA



**SOUTH GAUTENG HIGH COURT
JOHANNESBURG**

CASE NO: 21843/11

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

.....
DATE

.....
SIGNATURE

In the matter between:

STT SALES (PTY) LTD

Applicant

and

BAND: DARRELL

First Respondent

FIRSTRAND BANK LTD

Second Respondent

JUDGEMENT

CARSTENSEN AJ:

1. The Applicant seeks a declaration that the First Respondent's immovable property being Section No. 3 as shown and described on

Section Plan No. SS239/198 in the Scheme known as Belvedere in respect of the land and building or buildings situated on the remaining extent of portion 34 (a portion of portion 8) of the Farm Zandfontein 585, registration division IQ in the Province of Gauteng, local authority Emfuleni Local Municipality, together with the undivided share in the common property and the exclusive use area garden G3, be declared specially executable.

2. The First Respondent is indebted to the Applicant as the joint and several judgement debtor in the amount of R230 802.52, together with interest and costs.
3. The judgement was granted on the 7th of December 2010.
4. The First Respondent and SA Waterproofing CC, the other judgement debtor, have made payment in reduction of the judgement debt totalling R6 000.00, but no further payments have been made since April 2012.
5. At the commencement of the application, the First Respondent appeared in person and sought advice as to what he should do. After considering his position, he launched an application for postponement on the basis that his attorney was no longer practising. It transpired that his attorney had ceased practising during February 2014 and that he was repeatedly coaxed and advised by the Applicant's attorneys in respect of the process and procedure in regard to the hearing of the matter.

6. However, he did nothing to obtain a new set of attorneys and after hearing the application for postponement, I refused the postponement and ordered that costs be in the cause.
7. The main application was then argued during which he made two submissions:
 - 7.1. that he did not owe the money;
 - 7.2. that the property which the Applicant sought to execute against was one of his primary residence.
8. In the affidavits filed of record by the First Respondent, however he admits the judgement debt and the moneys which have been paid in reduction thereof. There is in fact no dispute of fact in the affidavits and in any event, I am faced with a judgement of the court which has not been varied, overruled or set aside.
9. There is consequently no dispute in respect of the First Respondent's indebtedness.
10. This leaves the only question of whether the Applicant should be precluded from executing against the immovable property in question as a consequence of Section 26 of the Constitution, Act 108 of 1996 insofar as the execution would infringe the First Respondent's right to adequate housing.
11. The First Respondent states in his affidavit that he purchased the

property to facilitate his business activities in Vanderbijlpark, lives there for three to four days a week and on occasion, has family and friends who stay there as well.

12. Although the First Respondent submitted in argument that it was one of his two primary residences, I find this to be a contradiction in terms.

12.1. In my view, a person cannot have two “primary” residences.

12.2. In any event, the First Respondent has another property where he also resides, being 130 Avondale Street, Sydenham, Johannesburg and consequently, the execution against the property in question would not affect his right to adequate housing.

13. I find that the facts in question are consequently distinguishable from the decision of Mkhize v Umvoti Municipality & Others, 2012 (1) SA 1 (SCA) at 14 B – C. This is, in addition, not an abuse of the execution process, the Applicant having been frustrated in the execution since receiving the judgement in 2010.

14. I also do not find it necessary to deal with the position of the Second Respondent and the Applicant must content itself with the ranking of its security in the event of an execution sale behind the bond of the Second Respondent.

15. Consequently, the Applicant has satisfied all the requirements in terms of Rule 46(1)(a)(i) and is entitled to the relief which it seeks.

16. In the premises, I grant the following order:

16.1. The immovable property identified as:

16.1.1. section No. 3 as shown and more fully described on sectional plan number SS239/198 in the Scheme known as Belvedere in respect of the land and building or buildings situated on the remaining extent of portion 34 (a portion of portion 8) of the Farm Zandfontein 585, registration division IQ in the Province of Gauteng, local authority Emfuleni Local Municipality, of which section the floor area, according to the said sectional plan, is 93m² in extent;

16.1.2. an undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan, held by deed of transfer number ST7170/2004; and

16.1.3. an exclusive use area described as Garden G3 measuring 645m² being part of the common

property comprising the land and the scheme known as Belvedere as described in paragraph 1.1 above,

is declared specifically executable in execution of the judgement of this court under case number 46734/10 granted on the 7th of December 2010.

- 16.2. The First Respondent is ordered to pay the costs of this application on the scale as between attorney and client.

**P L CARSTENSEN
ACTING JUDGE OF THE
HIGH COURT**

HEARD: 13 OCTOBER 2014
DELIVERED: 16 OCTOBER 2014

COUNSEL FOR APPLICANT:
INSTRUCTED BY:

ADV. R GOSLETT
GERINGS INC.

COUNSEL FOR FIRST RESPONDENT:
ATTORNEYS FOR FIRST RESPONDENT:

IN PERSON

COUNSEL FOR SECOND RESPONDENT:
INSTRUCTED BY:

NO APPEARANCE

(jmt.14.10.14)