JUDGMENT

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)

CASE NUMBER: 2014/39212
HEARD: 9 JUNE 2015
DELIVERED: 12 JUNE 2015

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

....
DATE SIGNATURE

In the matter between:-

CHAMBORD INVESTMENTS (PTY) LTD	First Applicant
CHESTNUT HILL INVESTMENTS 6 (PTY) LTD	Second Applicant
QUICK LEAP INVESTMENTS 280 (PTY) LTD	Third Applicant
and	
CITY OF JOHANNESBURG	First Respondent
MPHO PARKS TAU	Second Respondent

In re:

CHAMBORD INVESTMENTS (PTY) LTD	First Applicant
CHESTNUT HILL INVESTMENTS 6 (PTY) LTD	Second Applicant
QUICK LEAP INVESTMENTS 280 (PTY) LTD	Third Applicant
and	
CITY OF JOHANNESBURG	First Respondent

JUDGMENT

HERTENBERGER, AJ:

[1] This matter has a long complex history. The first application to court was launched in June 2012. Two court orders have preceded the application now before court. From the onset I must record that during argument it became apparent that the parties are not proceeding with the contempt application, as there has since been compliance with part of the order by the Honorable Judge Weiner, however the court will nonetheless make an order as to who ought to bear the costs of the contempt application. What the applicant contends is that the matter has boiled down to the determination of a single point in law, namely whether the payment made under protest in order to obtain clearance figures to transfer an immovable property falls to be refunded by the first respondent to the first applicant, as the first respondents claim thereto has become prescribed. The first applicant has in this regard formulated a stated case to assist the court in identifying this crisp issue.

[2] The respondent contends that the matter is not as easily determinable as the applicant wishes the court to believe and that the matter ought to be referred to oral evidence in order for the court to make a finding in the matter.

[3] From the papers before court, it appears that the first respondent has taken a backseat approach throughout the matter. The impression of the court is that the first respondent has to be continually jolted into action by the first applicant. It is telling that only after the application for contempt was launched, the first respondent felt obliged to make an effort to resolve the queries on two other accounts and partly in respect of the one remaining dispute. Meetings where held by the parties and the only remaining

dispute is the account relating to the building known as Hoffman New Yorker, Electricity account number: 206616964. The parties attended meetings in order to debate the aforesaid account, but could not agree. In the course of such discussions a spreadsheet was created by the first respondent, which spreadsheet is not disputed and which is annexed by both parties in the application, except that the respondent's version appears to be an incomplete version of the same document (annexure "COJ1") annexed by the applicants to their replying affidavit as annexure "RA3". Upon examination of the spreadsheet in conjunction with the clearance figures issued by the first respondent and attached to papers in the application dated October 2012 it becomes apparent that the clearance amount of R1 177 292,04 was made up of R875 285.07 (electricity consumed) and R302 006.34 (a future projection of electricity consumption). The first respondent paid the clearance amount with the proviso that it was doing so under protest, as it had sold the building and could not effect transfer thereof without obtaining the required clearance certificate. It is trite that the parties have not resolved the dispute pertaining to the R875 385.07 portion of the payment to date. The payment was made on 27 September 2009. To date hereof the first respondent has not taken any positive action in order to claim payment of this amount. The applicant avers that any claim that the first respondent may have had, has become prescribed and thus the amount ought to be repaid.

[4] As a point of departure in this matter regard must be had to the limitation of the period preceding the date of application for a clearance certificate to two years as set out section 118(1) of Municipal Systems Act. As quite correctly stated in Real People Housing (Pty) Ltd v City of Cape Town 2010 (1) SA 411 at 424 E, this does not mean that "Payment by a property owner in an amount contemplated in s118(1)(b) does not relieve the property owner of any liability of an amount due in respect of an earlier period. The municipality still retains a right to proceed against the previous owner by way of an action to recover the balance outstanding". This view is supported by BOE Bank Ltd v Tshwane Metropolitan Municipality 2005 (4) 336 (SCA), City of Johannesburg v Kaplan NO 2006 (5) SA 10 (SCA) and Geyser and Another v Msunduzi Municipality and Others 2003 (5) SA 18 (N). This implies that the first respondent could at all times have taken steps to recover the amount it claims is due to it and thereby

prevent the amount from prescribing, as it has. I agree with and accept the argument by the respondents that a payment under protest and with the reservation of rights is not at any time capable of being interpreted as anything else than “an express disavowal of such indebtedness”. It lay in the hands of the first respondent to protect its rights, which it failed to do. See City of Tshwane Metropolitan Municipality v Mathabathe and Another 2013 (4) SA 319 (SCA).

[5] The spreadsheet, which sets out the quantum of the claim in this matter was produced by the first respondent. The applicants accept the content thereof. I can find no reason why this matter should be further delayed by referring this matter to trial. I am of the opinion that the documents speak for themselves. The first respondent failed to pursue the claim that it had against the first applicant and as a result such a claim has prescribed. There is a further amount of R237 080.24 which is an existing debt owed by the first applicant to the respondent, thus this amount ought to be subtracted from the amount due to the first respondent by the first applicant. Accordingly the applicant must succeed in its application and the first respondent must refund the amount that has prescribed less the debit, which it acknowledges still exists.

[6] In respect of costs this court has to make a finding in respect of the contempt application and the main application. Having regard to what has already been stated above, there can be no doubt that the first respondent would not have made any attempt to resolve the matter had it not been faced with the possibility of having the second respondent held in contempt. The launching of the contempt application was thus the deciding factor in bringing the first respondent to comply (albeit it in part only) with the previous orders of this court. On this basis, I find that the first respondent is to pay the cost of the contempt application on the scale as between attorney and client. In respect of the main application, I cannot find any reason to make a punitive cost order herein and thus these costs shall be borne by the first respondent on the party party scale.

In the result an order is made in terms of the draft order annexed hereto as “X”

R HERTENBERGER
ACTING JUDGE OF THE HIGH COURT

1. Representation of Applicant : Nochumsohn & Teper
2. Representation of Respondent : Mogaswa Incorporated
3. Date Heard : 09 June 2015
4. Date Judgment Delivered : 12 June 2015