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

CASE NO: 41533/2020 AND 2020/41969

REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO
REVISED: NO
02 June 2021

In the matter between:

RELIANCE DISTRIBUTORS (PTY) LTD
(Registration number: [...])

Applicant

and

GROWTRADE INVEST 16 CC
(Registration number: [...])

Respondent

IN RE:

RELIANCE DISTRIBUTORS (PTY) LTD
(Registration number: [...])

Applicant

And

GROWTRADE INVEST 16 CC

First Respondent

(Registration number: [...])

WATPROP (PTY) LTD

Second Respondent

(Registration number: [...])

TLT ATTORNEYS

Third Respondent

(Registration number: [...])

JUDGMENT

Mdalana-Mayisela J

1. The applicant has instituted the application for the consolidation of the two related applications between the parties in terms of Rule 11 of the Uniform Rules of Court. The applicant seeks an order in the following terms:

*“1. That the Main Application for a Declaratory Order under Case Number: **2020/41533** be consolidated with the Eviction Application under Case Number: **2020/41969** and that both the Applications be heard together at the same time;*

*2. In the event that the Consolidation Relief sought in paragraph 1 above is not granted, then in that event, that the Eviction Application under Case Number: **2020/41969** be stayed pending the final determination of the Main Application for a Declaratory Order, under Case Number: **2020/41533**;*

*3. That the hearing of the Eviction Application under Case Number: **2020/41969** set down for **15 March 2021** be postponed sine die;*

*4. That the Costs of this Application be paid by **GROWTRADE INVEST 16 CC** (the first Respondent), alternatively, by the Respondents opposing it, jointly and severally, the one paying the others to be absolved, on Attorney and Client scale;*

5. That the applicant be granted such further alternative relief as the Court may deem appropriate.”

2. During the hearing of this application Counsel for the applicant informed me that the applicant is not pursuing prayer 3 of its Notice of Motion. The respondent is opposing this application and has prayed that the application be dismissed with costs on an attorney and client scale.

3. Rule 11 of the Uniform Rules of Court provides that:

“Where separate actions have been instituted and it appears to the court convenient to do so, it may upon the application of any party thereto and after notice to all interested parties, make an order consolidating such actions, whereupon-

(a) the said actions shall proceed as one action;

(b) the provisions of rule 10 shall mutatis mutandis apply with regard to the action so consolidated; and

(c) the court may make any order which to it seems meet with regard to the further procedure, and may give one judgment disposing of all matters in dispute in the said actions.”

4. The provisions of rule 11 are applicable to applications by virtue of the provisions of rule 6(14). Under rule 11, the court has a discretionary power to order a consolidation of actions. The paramount test in regard to consolidation of actions is convenience. In *Mpotsha v Road Accident Fund 2000 (4) SA 696 C at 700I-J* the Court held that the word ‘convenient’ connotes not only facility or expedience or ease, but also appropriateness in the sense that procedure would be convenient if, in all the circumstances of the case, it appears to be fitting and fair to the parties concerned.

5. The applicant avers that it would be convenient to consolidate the two related applications because they arise out of the same written Sale Agreement (“the Sale Agreement”) and are based on substantially the same facts in that the applicant in the Main application seeks to enforce the terms of Sale Agreement and two Addenda thereto, entered into by and between the applicant and the respondent on 24 February 2020.

6. The applicant in the Main application avers that, by virtue of the exercising of its rights to waive the suspensive condition as set out in Clause 14 of the Agreement and Fulfilment of the obligations imposed upon it in terms of the Sale Agreement, the Sale Agreement is extant and enforceable, with the result that the property is to be transferred and until such time as transfer has taken place, the applicant is and remains permitted to exercise the rights afforded to it by the Sale Agreement in respect of the property, including, *inter alia*, access and occupation thereof for purposes of giving effect to Clause 15 and 29.9, that is for the purposes of the alterations and repairs to the property.

7. The respondent in the Main application contends that the applicant has failed to fulfil the terms of the suspensive condition and disputes the applicant's right to waive said condition, as contained in Clause 14 of the Sale Agreement, with the effect that the respondent contends that the Sale Agreement is of no force and effect.

8. The respondent in the Eviction application seeks an order that the applicant be evicted from the property, based on the alleged unlawful occupation of the property by the applicant, in the circumstances where the Sale Agreement never came into existence, due to the alleged non-fulfilment of the suspensive condition contained in Clause 14 of the Sale Agreement.

9. The applicant's contention in the Eviction application is that its continued occupation is, in light of the lawful waiver of the suspensive condition and its compliance with the terms of the Sale Agreement, lawful, in that pending transfer, the applicant is entitled to exercise the rights afforded to it in terms of the Sale Agreement, more specifically, the right to access/occupation of the property for purposes of the alterations and repairs, as in accordance with Clauses 15 and 29.9 thereof.

10. The second respondent in the Main application has launched a Counter-application wherein it also seeks a Declaratory Order that the Sale Agreement is valid and binding on the parties thereto. The applicant submits that there exists a material connection between the issues raised in the Main application, the Eviction

application and the Counter-application, as well as the relief sought in each of the applications.

11. The applicant further submits that the consolidation of the applications is in the interests of all the litigants, more particularly, in that: it is convenient and appropriate; the parties seeking substantial relief in each of the applications are substantially the same, if not identical; the determination of the Main application will have a substantial effect on the determination of the Eviction application; if the consolidation application is not granted, there exist a risk of conflicting judgments which could be prejudicial to the litigants; the substantial legal costs associated with litigation will be substantially curtailed; and the Eviction application is set down to be heard on 7 June 2021 and therefore the outcome and determination of various disputes will be expedited.

12. The respondent is opposing the relief sought by the applicant in this application on the grounds that the issues in the two applications are not substantially similar; it is not convenient nor appropriate for the two cases to be consolidated; it will be materially unfair for the respondent if the consolidation application is granted; there will be no disadvantage to either party if the two applications proceed separately of each other; the applicant has not fairly and correctly set out the relevant facts to support the relief which it seeks in its notice of motion; there is no risk of conflicting judgments; and the respondent will be substantially prejudiced if such relief were to be granted; and the real purpose of this application is to delay the hearing of the Eviction application and the applicant to remain in unlawful occupation of the property.

13. I have considered the submissions made by both parties. I agree with the applicant's submissions that the Sale Agreement is relevant to the Eviction application as it sets out the contractual nexus between the applicant and the respondent; and further that the determination of each of the two applications and the Counter-application is substantially dependant on the interpretation of the Sale Agreement, which primarily constitutes a determination of the waiver provisions and therefore, the status of the Sale Agreement.

14. In my view the consolidation of the aforementioned applications would reduce the legal costs and expedite the proceedings; the parties' various disputes arising from the same Sale Agreement would be heard in one application; and there would be one finding concerning the status of the Sale Agreement.

15. During the hearing of this application I asked the parties to address me on the substantial prejudice, if any, to be suffered by the respondent if the consolidation application were to be granted. Counsel for the respondent submitted that the Eviction application will not take more than 2 hours to argue. However, he submitted there is a risk that the Eviction application may be postponed on 7 June 2021 if the applications are consolidated because there may be a need to apply for a special allocation of the hearing date; that it may be necessary to refer the Main application to trial and that will delay the finalization of the Eviction application; and that the respondent does not have access to the property as the applicant is still in occupation of the property.

16. Counsel for the applicant submitted that there will be no need to apply for a special allocation of the hearing date because the duration of the hearing of both applications will not take more than a day; that there will be no need to refer the Main application to trial because the issue for determination of the Main application is the interpretation of the Sale Agreement; and that the respondent has been provided with a spare key in order to access the property. He submitted that the respondent will not suffer a substantial prejudice if the Consolidation application were to be granted. Counsel for the respondent conceded that the respondent has been provided with a spare key of the property.

17. It is common cause between the parties that both the applications are ready for hearing. The papers in both applications have been uploaded on Caselines. Both parties have filed their heads of argument, chronology and list of authorities. It is unlikely that the Eviction application will be postponed on the hearing date on 7 June 2021. Therefore, I find that the respondent will not suffer a substantial prejudice if the Consolidation application is granted. It appears to me that it will be convenient to consolidate the aforementioned applications and that they shall proceed as one application.

18. As to costs, I find no reason why costs should not follow the result. However, I find no justification that the costs should be awarded on an attorney and client scale.

19. Accordingly, I make the following order:

19.1 The Main application for a Declaratory Order under Case number: 2020/41533 is consolidated with the Eviction application under Case number: 2020/41969 and the said applications shall proceed as one application;

19.2 The respondent (GROWTRADE INVEST 16 CC) is ordered to pay the costs of this application on a party and party scale.

MMP Mdalana-Mayisela
Judge of the High Court
Gauteng Division

(Digitally submitted by uploading on Caselines and emailing to the parties)

Date of delivery: 2 June 2021

Appearances:

On behalf of the Applicant: Adv M Nowitz

Instructed by: Glynnis Cohen Attorneys

On behalf of the Respondent: Adv R G Cohen

Instructed by: Hirschowitz Flionis Attorneys