

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

- | | |
|-----|--|
| (1) | REPORTABLE: NO |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED: ✓ |

Date: **20th APRIL 2023** Signature: _____

A handwritten signature in blue ink, appearing to be "P. H.", is written over the signature line.

CASE NO: 01354/2023

DATE: 20TH April 2023

In the matter between:

TAK, PEARL

First Applicant

VENKATRAMAN, MERVIN

Second Applicant

and

BLUE DART PROPERTIES (PTY) LIMITED

First Respondent

TAK, VISHAL

Second Respondent

Neutral Citation: *Tak and Another v Blue Dart Properties and Another*
(01354/2023) **[2023] ZAGPJHC 368** (20 April 2023)

Coram: Adams J

Heard: 19 April 2023

Delivered: 20 April 2023 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 10:00 on 20 April 2023.

Summary: Anti-dissipation interdict – share of profits due to applicants in terms of joint venture agreement – applicants seeking interim order preserving further payment to be received on behalf of joint venture – applicants entitled to interim interdict.

ORDER

- (1) The first and second applicants' application is urgent.
- (2) The second respondent be and is hereby directed to disclose to the first and second applicants, on or before 13:00 on Friday, 21 April 2023, full particulars and the identity of the bank or the financial institution making payments to the first respondent pursuant to and in terms of clause 6 of the Building Contract between the first respondent and Miantha Roux and Michael Roux, dated 24 January 2022 ('the building contract').
- (3) A *rule nisi* be and is hereby issued calling upon first and second respondents and any other interested party to show cause before this Honourable Court, on Tuesday, 25 April 2023, at 10:00 or so soon thereafter as the matter may be heard, why an order should not be granted in the following terms:
 - (a) The bank or financial institution so identified as per prayer (2) above is joined to these proceedings as the third respondent.
 - (b) Pending an *actio pro socio*, alternatively, an *actio communi dividendo* to be instituted by the applicants against the first and second respondents, the bank or financial institution so identified as per prayer (2) above of this order, be and is hereby interdicted from making any further payments to the first and second respondents in terms of clause 6 of the Building Contract.
 - (c) Any further payments payable to the first and second respondents in terms of clause 6 of the Building Contract are to be paid into an Attorney's trust account, to be held in trust, pending institution and the finalisation

of the *actio pro socio*, alternatively, the *actio communi dividendo* referred to in (b) above.

- (d) The second respondent be and is directed to, within ten days from date of this order, render an account of his management of the joint venture business between the first respondent and the first and second applicants, for the period from 26 April 2021 to 18 April 2023.
- (e) The first and second respondents, jointly and severally, the one paying the other to be absolved, shall pay the first and the second applicants' costs of this application on the scale as between attorney and client.

JUDGMENT

Adams J:

[1]. During or about March 2021, the first and second applicants and the first respondent concluded a joint venture agreement in terms of which they, as a joint venture partnership, were to acquire a property, develop it by the erection thereon of a residence and other outbuildings, and then to resell the property at a profit to be shared and divided equally between them. Each of the three joint venture partners were required to and in fact paid an amount of R450 000 towards the joint venture project. The second respondent, as the controlling mind of the first respondent, was responsible for the day to day running of the project. During the early part of 2022 the property was acquired by the first respondent and subsequently sold and transferred to a Mr and Mrs Roux during May 2022, whereafter the first respondent, on behalf of the joint venture, commenced building on the property pursuant to and in terms of a written Building Contract, which had been concluded between first respondent and the Roux's.

[2]. Despite the fact that the building of the residence has since May 2022 progressed almost to completion, the first and second respondents have to date not accounted to the first and second applicants as they were required to do in terms of the joint venture agreement. The applicants have been kept completely

in the dark as regards the finances of the joint venture, despite the fact that, by all accounts, substantial sums had been received from the Roux's by either the first respondent or the second respondent. The second respondent flatly refuses to account to the applicants for the monies received by the first respondent on behalf of the joint venture. And the first and the second respondents are concerned that they will never receive from the first and second respondents what is due to them, unless they obtain an order preserving any further proceeds due to the joint venture.

[3]. In this urgent application, the applicants apply for interim anti-dissipatory relief to preserve the assets of the joint venture pending an action aimed at recovering their dues pursuant to and in terms of the joint venture agreement. Before that, the applicants seek an order, compelling the first and second respondents to disclose the details of the financial institution or institutions responsible for making payment to the first respondent in terms of the building contract. They obviously need these particulars so as to have preserved whatever is left of the profits of the joint venture.

[4]. It was the first part of the application which served before me in the Urgent Court during the week of 17 April 2023. A decision relating to that part does however require me to also consider whether there is merit in the balance of the application in which the preservation is applied for. The second part of the application, which, according to the applicants, is the main application, relates to the interim anti-dissipatory relief, which claim is based in the main on the principles enunciated in *Knox D'Arcy Ltd and Others v Jamieson and Others*¹, referred to with approval by this Court in *SR v DR*². In *Knox D'Arcy* the Appellate Division explained the nature and effect of an anti-dissipation interdict and held that the applicant is required:

'... to show a certain state of mind of the respondent, ie that the debtor is getting rid of funds or is likely to do so, with the intention of defeating the claims of creditors and that the interdict is sought by "by the petitioners ... to prevent the respondents from concealing their assets. The petitioners do not claim any proprietary or quasi-proprietary right in these assets ... It is not the

¹ *Knox D'Arcy Ltd and Others v Jamieson and Others* 1996 (4) SA 348 (A);

² *SR v DR* (2980/2007) [2022] ZAGPJHC 172 (22 March 2022) at para 10;

usual case where its purpose is to preserve an asset which is in issue between the parties. Here the petitioners lay no claim to the assets in question”.’

[5]. The point is that in this opposed urgent application, the first and second applicants apply for a preservation order of sorts in respect of the proceeds of the joint venture project, with a view to securing payment of their share of the profits. The second respondent has indicated in no uncertain terms that he has no intention to abide by his obligations in terms of the joint venture agreement. The applicants therefore have, in my view, no option but to approach this court for the interim relief.

[6]. The second respondent disputes the existence of the joint venture agreement. He denies on rather spurious grounds that the said agreement was concluded by the parties. His denial flies in the face of the facts in the matter, notably the fact that payment was made by the first and second applicants pursuant to the said agreement. The respondents do not proffer an explanation for why the applicants made these payments. Moreover, the existence of the joint venture is confirmed by the correspondence between the parties. The first and second respondents’ version in that regard – far-fetched and untenable as it has been demonstrated to be – and their denial, which ring hollow, should therefore be rejected out of hand.

[7]. The applicants also allege that this application is urgent as the completion of the building and the final payments in terms of the building contract are imminent. The applicants fear that, if the last few payments due to the joint venture are paid out to the first respondent and/or the second respondent, they will not utilise any of that money to pay them (the first and second applicants) what is due to them as their shares of the profits of the joint venture. The fears of the applicants are, in my view, well-founded and their application is urgent. The point is that the second respondent is singularly reluctant to make a commitment to the applicants that he will make a payment from the further proceeds to the applicants. What is more is that the second respondent, by his own admission, has a gambling problem, which is a further reason why the applicants should be granted the interim interdictory relief on an urgent basis. There is a real probability

that the applicants will not only lose their share of the profits of the joint venture, but also those fairly substantial sums which they have invested in the JV.

[8]. The applicants, in my judgment, have established a *prima facie* right to the payments to be received from the building operation of the first respondent. These proceeds are probably the only means by which the first and second respondents would be able to effectively settle the joint venture's indebtedness to the applicants. The applicants have a right to an order compelling the respondents to account to them for the finances of the joint venture. Until such time as the exact amount due to them is calculated, the applicants are entitled to an order preserving the funds effectively earned by the joint venture.

[9]. In my view, the applicants have established that they have a *prima facie* case that they are entitled to the proceeds from the building project, which the first respondent executed on behalf of the joint venture. If not, they are likely to suffer irreparable harm since the first respondent does not own any other assets. The applicants also have no other satisfactory remedy against the first respondent, who has made it clear, via the second respondent, that they do not regard as priority payment of the applicants' share of the profits of the joint venture. Without an order interdicting the proceeds from the building operation, the applicants will be left with little tangible options to protect their rights and interests. The balance of convenience therefore favours the applicants.

[10]. In the circumstances I find that the applicants have set out a *prima facie* case that further payments to the first respondent should, in the interim, be interdicted until their claim has been finalised. It therefore follows that the applicants are entitled to an order compelling the first and second respondents to provide particulars of the bank which will be paying out the last building progress payments, coupled with a rule nisi relating to the anti-dissipation order.

Order

[11]. Accordingly, I make the following order: -

- (1) The first and second applicants' application is urgent.

- (2) The second respondent be and is hereby directed to disclose to the first and second applicants, on or before 13:00 on Friday, 21 April 2023, full particulars and the identity of the bank or the financial institution making payments to the first respondent pursuant to and in terms of clause 6 of the Building Contract between the first respondent and Miantha Roux and Michael Roux, dated 24 January 2022 ('the building contract').
- (3) A *rule nisi* be and is hereby issued calling upon first and second respondents and any other interested party to show cause before this Honourable Court, on Tuesday, 25 April 2023, at 10:00 or so soon thereafter as the matter may be heard, why an order should not be granted in the following terms:
- (a) The bank or financial institution so identified as per prayer (2) above is joined to these proceedings as the third respondent.
 - (b) Pending an *actio pro socio*, alternatively, an *actio communi dividendo* to be instituted by the applicants against the first and second respondents, the bank or financial institution so identified as per prayer (2) above of this order, be and is hereby interdicted from making any further payments to the first and second respondents in terms of clause 6 of the Building Contract.
 - (c) Any further payments payable to the first and second respondents in terms of clause 6 of the Building Contract are to be paid into an Attorney's trust account, to be held in trust, pending institution and the finalisation of the *actio pro socio*, alternatively, the *actio communi dividendo* referred to in (b) above.
 - (d) The second respondent be and is directed to, within ten days from date of this order, render an account of his management of the joint venture business between the first respondent and the first and second applicants, for the period from 26 April 2021 to 18 April 2023.
 - (e) The first and second respondents, jointly and severally, the one paying the other to be absolved, shall pay the first and the second applicants' costs of this application on the scale as between attorney and client.



L R ADAMS

*Judge of the High Court of South Africa
Gauteng Division, Johannesburg*

HEARD ON: 19th April 2023

JUDGMENT DATE: 20th April 2023 – handed down electronically

FOR THE FIRST AND
SECOND APPLICANTS: Advocate Tlotlego Tsagae

INSTRUCTED BY: SP Attorneys Incorporated, Rivonia, Sandton

FOR THE FIRST AND
SECOND RESPONDENTS: Advocate I Mureriwa

INSTRUCTED BY: Malherbe Roos Attorneys, Bryanston
