



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

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

SIGNATURE

DATE: 22 May 2023

Case No. 2023/046703

In the matter between:

NELMAR COURT (PTY) LTD

Applicant

and

THE CITY OF JOHANNESBURG

First Respondent

BRINK NO, FLOYD

Second Respondent

BRINK, FLOYD

Third Respondent

JOHANNESBURG WATER (SOC) PTY LTD

Fourth Respondent

Neutral citation: Nelmar Court (Pty) Ltd v City of Johannesburg (2023/046703) [2023]
ZAGPJHC 531 (22 May 2023)

JUDGMENT

WILSON J:

- 1 On 19 May 2023, I granted two orders on urgent applications brought in this case. The first order directed that the respondents reconnect the water supply

to a series of properties comprising a sectional title scheme at ERF 411 Lorentzville, Johannesburg, and interdicting further disconnections pending the outcome of an application for final relief amounting to the debatement and correction of the applicant's water account. I also granted an order declaring the first respondent, the City, to be in contempt of an interim reconnection order I had made on 18 May 2023. I indicated that my reasons for making these orders would be given in due course. These are my reasons.

The reconnection order

- 2 There were two bases on which I granted the reconnection order.
- 3 The first basis was that inadequate notice of the disconnection of the properties had been given. It was common cause that two statutory pre-termination notices had been delivered to the property. The first was delivered on 24 April 2023. The second was dated 5 May 2023, but delivered on 10 May 2023. The properties' water supply was disconnected on 18 May 2023. The 10 May 2023 notice alleged that the applicant, Nelmar Court, was in arrears with its water bills, and that the water supply to the properties would be disconnected if acceptable arrangements to clear these arrears were not made within 14 days.
- 4 The disconnection of the water supply 8 days later was, accordingly, plainly unlawful, since it failed to afford Nelmar Court the time promised in the notice to rectify its alleged default. The disconnection would have been premature even if the clock had started ticking from the day the notice was produced rather than the day it was actually delivered to the property.

- 5 Mr. Sithole, who appeared for the respondents, argued that the disconnection was carried out on the authority of the 24 April 2023 notice. But this submission was plainly without merit. The 10 May notice clearly novated the 24 April notice. Nelmar Court was entitled to assume that the second notice evinced an intention to extend the period of time initially afforded to it in the first notice, and that the respondents had waived their right to act on the first notice. That is indeed the legal effect of the second notice, whatever its true intent.
- 6 The second basis was that the disconnection was in breach of section 102 (2) of the Municipal Systems Act 32 of 2002. That provision prevents disconnection of services over an amount that is disputed. The dispute about the nature and extent of Nelmar Court's liability for water service charges has a very long history. The papers in this matter tell a sorry tale of the City's ineptitude in addressing what, on the face of it, appears to be plainly inaccurate billing of the properties' water supply. Having lodged and then escalated a series of disputes with the City, only to have had its supply summarily terminated despite its clear and consistent record of payment for the consumption it believes it owes, Nelmar Court asked for an interdict restraining disconnection pending the outcome of an application for a full debatement of the water account. On the papers, Nelmar had plainly established a *prima facie* case for the debatement relief, and a reasonable apprehension that it would face disconnection on the basis of disputed amounts until the debatement was finalised.
- 7 The City's answering papers did not, in my view, throw much doubt on Nelmar's *prima facie* right to the reconnection order or the interdict. At any

rate, they did not create doubt sufficient to refuse interim relief. That is of course not the same as saying that the City will not succeed in resisting a final interdict. In the morass of confused allegations that characterised the City's answer on the merits, there may be the germs of a case capable of resisting the application for final relief. But that is an issue for another day.

8 It is, though, necessary to deal briefly with the City's assertion that the matter lost its urgency because the City had agreed to a reconnection order shortly before the matter was called before me on 18 May 2023.

9 That is plainly not what happened. What Mr. Boshomane, who appeared for Nelmar Court, in fact reported was that the terms and conditions the City sought to attach to a reconnection order were not acceptable to Nelmar Court, and so no agreement had been reached. During the hearing that took place on 19 May 2023, Mr. Boshomane repeated that there had been no settlement of the matter the day before. He contended that, even if I granted a bare reconnection order, Nelmar Court retained a reasonable apprehension that it would be disconnected again on the basis of amounts in respect of which it had declared a specific and *bona fide* dispute.

10 In all of those circumstances, the interim relief had to be granted.

The contempt order

11 The assertion that the matter had been resolved by agreement on 18 May 2023 was all the more incredible in light of the circumstances which gave rise to my being forced to declare the City in contempt of court.

- 12 The contempt order arose out of the circumstances in which the reconnection application was brought. The urgent application for the reconnection order was first brought before me on the afternoon of 18 May 2023. At that stage the respondents had yet to file an answering affidavit. Mr. Sithole asked that the respondents be afforded until 10am on 19 May 2023 to file their answering affidavit. Mr. Boshomane was happy to oblige, provided that water be reconnected to the properties in the interim.
- 13 Mr. Sithole resisted such an interim order. He appeared to do so on the misguided basis that it would constitute a prejudgment of the merits of the application. However, it plainly represented no more than a determination that Nelmar Court had set up a *prima facie* case for reconnection in its founding papers, the respondents' answer to which had not yet reached me. If the respondent had ultimately demonstrated that a reconnection order could not be granted, the interim order would have been discharged, and the respondents would have been free to disconnect again.
- 14 Accordingly, I ordered that the properties be reconnected pending the outcome of the urgent application. That did not happen. At 13h00 on 19 May 2023, Nelmar Court brought an application to declare the respondents in contempt of my interim order.
- 15 That application went unanswered. At the hearing of the matter, Mr. Sithole argued that the application was not, in truth, before me. I was unable to understand that submission in circumstances where the application had been properly served and filed.

- 16 Mr. Sithole nonetheless conceded that Nelmar Court's water supply had not been reconnected. He offered no justification for this apparent breach of my order, save to submit that he had been instructed that no direction to reconnect the water supply had reached the fourth respondent, Johannesburg Water. However, there was no evidence before me that such a direction had been issued, and no explanation at all of whether or when the respondents would reconnect the supply.
- 17 In these circumstances, I was bound to conclude at least that the City had been given notice of my order, and that it had taken no action to obey it. Nor had it placed any information before me capable of rebutting the legal presumption that applies in these circumstances: viz. that the City's breach of my order was wilful and *mala fide* (see *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA) (at paragraph 42 (4))). An order declaring the City to be in contempt was the least that had to follow.
- 18 I decided not to make a similar order against the second, third and fourth respondents. There was no evidence before me that the order had come to the attention of Mr. Brink, who had been cited separately in his official and personal capacities as the second and third respondent. I decided to credit Mr. Sithole's assertion that Johannesburg Water had not been given a direction to reconnect.
- 19 However, in the absence of any evidence that the City had issued that direction, there was no basis on which I could avoid the conclusion that the City was in contempt of my order.

20 It was for these reasons that I granted the reconnection order, and declared the City to be in contempt of the interim order I made on the afternoon of 18 May 2023.



S D J WILSON
Judge of the High Court

HEARD ON: 18 and 19 May 2023

DECIDED ON: 19 May 2023

REASONS: 22 May 2023

For the Applicant: KM Boshomane
Instructed by Vermaak Marshall Wellbeloved Inc

For the Respondents: E Sithole
Instructed by Madhlopha & Tenga Inc