IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG NORTH DIVISION, PRETORIA

CASE NO. 1600/2013

DATE: 18 FEBRUARY 2014

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

In the matter between:

RICHARD DU PLESSIS BARRY	**1st Applicant**
CLEARWATER ESTATES	**2nd Applicant**

and

WAYNE DOLD CHAPMAN	**1st Respondent**
RIVER CHAPMAN PROPERTIES	**2nd Respondent**
RIANA BOTES	**3rd Respondent**

JUDGMENT

1. The first applicant is Richard Du Plessis Barry, an adult pharmacist manager residing at 8[…] B[…] C[…], C[…] E[…], P[…], Ext.3 Township, Boksburg, Gauteng.

2. The second applicant is Clearwater Estates, an association registered as a non-profit organisation and as a company under section 21 of the old Companies Act 61 of 1973, with registered address at 20, Fifth Avenue, Northmead, Benoni, Gauteng.

3. The first respondent is Wayne Dold Chapman, an adult businessman residing at 2[…] B[…] R[…], C[…] E[…], P[…], Ext. 3 Township, Boksburg, Gauteng.

4. The second respondent is River Chapman Properties CC, a close corporation duly registered and incorporated with registered address at 1[…] P[…] R[…], C[…] E[…], P[…], Ext. 8, Boksburg, Gauteng.

5. The third respondent is Riana Botes, resident at the same address as the first respondent, an adult businesswoman holding the full member's interest in the second respondent.

6. This matter is a regrettable example of litigation arising from comparatively minor issues getting out of control and resulting in a

multitude of allegations and counter-allegations, all reflecting rather negatively upon the protagonists.

7. The applicants launched what was called an extremely urgent application for an interdict preventing the first respondent from assaulting or threatening the first applicant; or using condescending language in the presence of certain third parties of and concerning the first applicant. The notice of motion was couched in garbled and prolix language.

8. The supporting affidavit, exceptionally prolix both in its terms and in the annexures attached thereto, disclosed another cause of action, namely an order preventing the second respondent from doing business as an estate agent in the estate of the second applicant, unless duly 'accredited' as such by the second applicant's homeowners' association.

9. The original application was dated in February 2013. A comedy of errors led to the matter being enrolled and heard in two different courts resulting in a provisional interdict being granted in the one and the matter being dismissed in the other. Both orders were subsequently set aside in April 2013. Unfortunately, matters were not left there. Applicant filed an amended notice of motion, clarifying the relief sought as an interdict against first and third respondents preventing them from threatening or assaulting the first applicant or his associate Ruth Campbell ('Campbell'), interfering with the latters' activities and spreading falsehoods about them; and an interdict against all three respondents restraining them from operating as estate agents within the

perimeters of the second applicant's estate without being accredited as aforesaid and/or without being the holder of a valid and current Fidelity Fund Certificate.

10. The matter had its origin in disagreements stemming from the insistence by the second applicant, as represented by the first respondent and Campbell, that the second respondent deduct levies due to the second applicant from the rental paid into its account by owners of properties in the second applicant's estate. Some homeowners let their properties in the estate through the office of the second respondent's office. The respondents refused to pay over levies unless mandated to do so by their clients. The second applicant therefore withheld 'accreditation' from the second applicant to do business in the estate.

11. This dispute led, i.a., to an altercation between the first applicant and the first respondent in a restaurant, ending in an unseemly slanging match that first applicant alleges was accompanied by significant physical aggression. This charge is vigorously disputed by the first and third respondents, who in turn charge the first applicant and Campbell with harassment, invasion of privacy, defamation, undue interference with second respondent's business, exceeding their functions as second applicant's directors and generally abusive behaviour.

12. A serious charge levied at the applicants is an assertion that they procured supporting affidavits attached to the founding affidavit and the original notice of motion, assisted by their attorney, that were sworn to

by the deponents without the latter being informed of the contents of the principal affidavit or of the document they were signing. These serious allegations are supported by the deponents concerned, but are strenuously denied by applicants' attorney. It is, of course, quite impossible to establish the truth of these conflicting versions on paper.

13. The further interdict sought, namely the attempt to prevent the second respondent acting as estate agent unless properly licensed and accredited by the homeowners' association is also problematical. The respondents correctly point out that second respondent's mandate as agent arises from a contract with the landlords and not with the second applicant. Unless authorised by the property owner no levies can therefore be lawfully deducted from the rentals received. Respondents are, in addition, no members of the second applicant and not subject to its internal rules. The applicants' demands are therefore unfounded.

14. As far as the alleged lack of a Fidelity Fund Certificate on the part of the second respondent is concerned, similar considerations apply. It is questionable whether the court can issue an interdict on this ground at the instance of an outsider to the second respondent's relationship with the Estate Agents' Board or its clients. Applicants have no direct interest in this aspect. They are at liberty to lay charges with the relevant authorities, but whether they have the required *locus standi* to obtain an interdict is doubtful. Even if such were possible, it is clear that an order to that effect would be difficult to enforce and to police.

15. The parties have been at loggerheads for a long time. After the conflicting orders were set aside, applicants renewed an urgent application based on similar facts relied upon in the first so-called urgent application. Again, an entirely predictable dispute of fact arose with charges and counter charges, complaints to the police and denials of the allegations made to members of the force. Protection orders were sought and other residents in the estate were drawn into the conflict.

16. The parties should have realised a long time ago that their unbecoming behaviour ought to be resolved by a mediator or should be settled in an appropriate manner. The applications were certainly not urgent. It is, in addition, quite impossible to deal with the conflicting factual averments on paper, particularly those relating to the attorney's alleged abuse of the procedure. The applicants ought to have realised that there was little chance of succeeding with motion procedures after the original conflicting orders were set aside

17. Even if it may be said that the applicants are entitled to an interdict in some form or another, the court retains a discretion to determine whether an interdict should issue or not. Given the above circumstances, the court must clearly exercise its discretion against the applicants. The disputes of fact could only be resolved in trial proceedings, the institution of which would in the court's opinion be in nobody's interest.

18. In the light of the aforegoing, the application is dismissed. Costs must follow the result, even though the first and third respondent acted in

person for the greater part of the proceedings.

ORDER:

The application is dismissed with costs.

Signed at Pretoria on this 18th day of February 2014.

E BERTELSMANN

Judge of the High Court.