IN THE NORTH GAUTENG HIGH COURT, PRETORIA

(REPUBLIC OF SOUTH AFRICA)

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES/~~NO~~.
(2) OF INTEREST TO OTHER JUDGES: YES/~~NO~~.
(3) REVISED.

15/8/14 DATE

SIGNATURE

CASE NO. 4772/2013

Date: ~~13~~ AUGUST 2014
15

In the matter between:

WINDOR TRADE AND INVEST 129 CC	**APPLICANT**
and	
UNIT 14 DIJON CC	**FIRST RESPONDENT**
DAVIDOWITZ, GARRY MARK	**SECOND RESPONDENT**
SIEBERT, THEODORUS CORNELIUS, NO	
THE SHERIFF OF THE HIGH COURT,	
SANDTON SOUTH	**THIRD RESPONDENT**

JUDGMENT

BREDENKAMP AJ:

INTRODUCTION.

In this matter the Applicants seeks payment of the sum of R115, 173 .37 from the first alternative the second respondent alternatively both of them as well as interest at the rate of 15,5 % per annum ***a tempore morae*** together with costs.

No relief is sought against the third respondent. He has been cited as both applicant and the first and second respondent have agreed that he should retain certain funds in his trust account pending the outcome of the dispute between them.

[1] The history of this matter is briefly as follows:

[1.1] First Rand Bank LTD took judgment against the first and second Respondents for moneys lend in advance to the first respondent.

[1.2] The first respondent caused a mortgage bond to be registered over unit 14 Dijon CC, Erf 419 and 420, Hide Park Ext HYDE Park Ext 73 D Township in Unit 14 Dijon Hyde Close Hyde Park Ext 17

[1.3] On 25 September 2012 the applicant purchased the said property at a sale in execution conducted by the third respondent. Prior to the sale in execution the property was solely owned by the first respondent.

[1.4] In terms of Clause 4.7 of the conditions of sale, the applicant was obliged to make payment of all costs and charges necessary to effect transfer including all conveyancing costs, transfer duties, Vat and Deeds Registration Office levies. In addition thereto, He was obligated to make payment of all outstanding rates, taxes and other amounts due to Municipality in respect of the property or levies due to the body

corporate in terms of the Sectional Titles Act 95 of 1986 or the Home Owner Association.

[1.5] The applicant paid the rates, taxes and levies due to the Municipality in the amount of R15,129.07 and in addition paid the amount of R100,44.30 being the amount due to the Body Corporate of the sectional scheme of which the property forms part.

[1.6] The applicants stated that it made these payments and conceded that he did so in terms of the conditions of sale.

[1.7] The applicant's claim is for repayment of the aforesaid amount of R115,173.37, on the basis that the first and second respondents were unduly enriched by this amount.

[2] It is the contention of the applicant,

(i) He fulfilled the obligations of the first and second respondents,

(ii) There is no legal nexus between the applicant, the local authority and the Body Corporate Home owners Association as the amounts were due and payable by the first and second respondents in terms of a contractual relationship alternatively in terms of the statutory obligation,

[2.1] It is further argued that the first and second respondents were enriched at the applicant's expense as their estates increased through being released from liability as a consequence of the applicant's impoverishment.

[3] It is further argued on behalf of the applicant, that he acted without a mandate

and not in the interest of the first and second respondents when paying the debts due to the local authority and the body corporate\ home owners association. He therefore acted for his own benefit.

[4] Reference is made in applicant's heads to the Publication of J Du Plessis: The South African Law of Unjustified Enrichment page 311.

[5] The Applicant's claim can be labeled as the extended action based on management of another's affairs ***quasi negotiorum gestio***. See in this regard Du Plessis at page 311. It appears that the SCA is amenable to the implementation of such an action. In the matter of ***B Com and BeH Engineering v First National Bank of SA LTD 1995 (2) (SA) 279 AD at 295 C-D***, it was stated that:

> "It is not necessary to consider whether the principles of ***quasi negotiorum gestio*** is strictly and literally applicable to facts such as the present. Even if they are not, this case is so closely analogous, and the need for equitable relief so clamant, that an action on the grounds of unjustified enrichment should lie.

[6] In this case, reference is made to the matter of K***ommissaris van Binnelandse Sake van inkomste en 'n Ander VS Willers en Andere 1994 (3) SA 283(A) op 333 C -E.*** In the Kommissaris case, it was stated;

> "So 'n beskouing kan egter nie beteken dat die Hof daarvan weerhou word om in "n bepaalde geval verrykingsaanspreeklikheid te aanvaar bloot op omdat dit nog nie vantevore in dieselfde, of soort gelyke omstandighede erkenning gevind het nie."

However, it seems as if the SCA has decided in BeH Engineering matter, that a claim based on ***quasi negotiorum gestio*** can certainly be applied, should the facts of a particular case justify such an application.

[7] The claim based on ***quasi negotiorum gestio*** can find application, when a person performed against the wishes of the debtor or for his own benefit, or with a combination of these motivations, when this claim is instituted on the basis of having managed another's affairs.

[8] It was further argued on behalf of the applicant that the amount of R115,173.73 was paid in order to obtain a clearance certificate and effect transfer. This amount still remain, a debt to the Municipality although it was paid on behalf of the first respondents and although the payment was effected via a contractual obligation as contained in the conditions of sale.

[9] In order for an enrichment action to be applicable, four general requirements have to be met:

(1) the respondents must be enriched

(2) the applicant must be in impoverished;

(3) the respondents enrichment must be at the expense of the applicant;

(4) the enrichment must be unjustified, that is without cause (***sine causa***).

[10] It is appropriate to deal firstly with the requirement that an enrichment must be unjustified ***sine causa***. This means that there must be no sufficient ground (***causa***) recognized by law to justify the transfer or retention of the value which has passed from the applicant's estate to that of the first or the second respondent. See in this regard of ***Mc Carthy MC retail LTD vs Shortdistance Carriers CC 2001(3) SA 482 SCA*** **at paragraphs 2 -4.**

[12] In the present matter the applicant bought the property, subject to the conditions of sale, which is incorporated in the purchase agreements and more specifically clause 4. 7 thereof. In clause 4.7 he was obligated to make the payment of R115,173.37.

[13] It appears that the applicant was obligated to make payment of the sum in question. Consequently, it cannot be said the payment was made ***sine causa***. Furthermore, in the present matter it cannot be said that the first and second applicant was impoverished and that the respondents was enriched at the expense of the applicant. When the applicant made the payment in question, the respondents cannot be held to have been unjustified enrichment, as this payment, is balanced by the fact that applicant received a transfer of the property in question. Applicant's performance was matched by a counter-performance. See ***Govender v Standard Bank of SA LTD***

1984(2) 392 CPD at 406F_G.

[14] In view of the above, it is clear that the applicant has not made out a case for the relief sought in the Notice of Motion and consequently,

the application is dismissed with costs.

BREDENKAMP IM
ACTING JUDGE OF THE HIGH COURT.