

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO:80178/15

7/11/2016

Date of hearing: 31 October 2016

In the matter between:

SHERIFF OF THE SUPREME COURT, PRETORIA EAST

Applicant

and

PIERRE PIENAAR N.O. JANARE TRUST

First Claimant/Plaintiff

PIERRE PIENAAR N.O.

Second Claimant/Plaintiff

AFRICAN THATCH DEVELOPMENT CONSTRUCTION CC

PIERRE PIENAAR N.O. PIENAAR FAMILY TRUST

Third Claimant/Plaintiff

In re: CASE NO: 76672/2014

SILVERLAKES HOME OWNERS ASSOCIATION

Execution Creditor/Defendant

and

PIERRE PIENAAR

Execution Debtor

JUDGMENT

BRENNER AJ

1. This case involves interpleader proceedings under Rule 58 of the Uniform Rules of Court.
2. The matter finds its genesis in two costs orders, granted in this Court, against Pierre Pienaar ("Pienaar"), in favour of the Silver Lakes Home Owners Association, ("Silver Lakes"). The costs were taxed, respectively, both on 7 August 2015, for R25 534,76 and, R44 673,13 under case no 76672/2014.
3. Two warrants of execution against movable property were duly issued on 21 August 2015, and this culminated in the attachment of goods by the sheriff on 25 August 2015, at the residence of Pienaar, at [...] S. Avenue, Silverlakes, Pretoria.
4. On 4 September 2015, Pienaar deposed to an affidavit (referred to below as "the interpleader affidavit"), in which he alleged that all of the assets under attachment, identified in a detailed inventory, belonged to third parties. These third parties were the Janare Trust, African Thatch Development Construction CC ("ATD") and the Pienaar Family Trust. Pienaar produced letters of authority to prove that he was a trustee of the Janare Trust, together with one Johann Jordaan, and letters of authority to prove he was the sole trustee of the Pienaar Family Trust. A copy of a Searchworks report revealed that he was the sole member of ATD.
5. Pienaar proceeded to attach supporting vouchers in the form of invoices and the like, to prove ownership of certain of the attached items in favour of the Janare Trust, ATD and the Pienaar Family Trust, the objective being to prove ownership in their favour. It merits mention that no documents were produced to establish the identity of the party or parties who paid for the goods.
6. In his affidavit, Pienaar concludes:

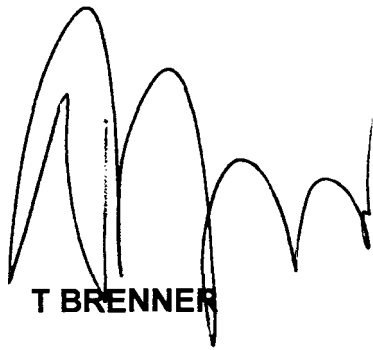
"Accordingly I submit that all the assets as contained in the sheriff's notice of attachment were all purchased and are accordingly owned by the abovementioned entities and that

none of the attached assets are owned by myself in my personal capacity as cited in the Plaintiff's Writ of Execution. "

7. On 5 October 2015, the sheriff issued an interpleader notice under Rule 58, supported by the affidavit of Magda Scheuer as deputy sheriff in the office of the sheriff Pretoria East. The notice quoted the Janare Trust, ATD and the Pienaar Family Trust as the three claimants.
8. On 27 October 2015, Silver Lakes as execution creditor served particulars of claim, supported by the affidavit of Andri du Toit, attorney employed by the execution creditor's attorney, Christo Bekker Inc.
9. Succinctly summarised, allegations are raised that, at least nine of the invoices relied upon by Pienaar in his interpleader affidavit are false, and/or forged. Andri du Toit challenges the invoice of Turca House Deco produced by Pienaar (PP3), following personal enquiries with the owner of Turca House Deco, Veysi Gune. An affidavit is produced by Manuel dos Santos, employee of La Rochelle Furnishers, to confirm the alleged forgery of annexure PP5 to Pienaar's affidavit. Melissa Sanderson, an employee of Galata Eksport Chain refers to annexures PP17, PP18, PP19, PP20 and PP21 of Pienaar's affidavit, and confirms that it is not the practice of Galata to complete the details of its clients on its invoices.
10. Moreover, it is contended that the invoices of Solwil Prop Investments CC ("Solwil") (PP6 and PP11) are also allegedly false, as suggested by a Searchworks report which indicates that it is a property investment company. It is disputed that Solwil sells household goods and kitchen appliances, as suggested by PP6 and PP11.
11. The disputes raised by the execution creditor concerning ownership of the items described in nine invoices relied on by Pienaar are factually material and not capable of adjudication on the papers before Court. The issues involve serious allegations of fraud and forgery and warrant referral to trial.
12. The provisions of Rule 58(6)(a) cannot apply in practice and are anomalous. In this Rule, the Court may at the hearing "then and there" adjudicate upon such claim after hearing such evidence as it deems fit. The Court is accorded no powers under Rule 58 to determine the procedural steps to be taken in advance, and precursory to the hearing of evidence. Moreover, the Rule fails to specify whether interpleader proceedings should be decided by action, not motion. Owing to the paradoxical terms of Rule 58(6)(a), the

execution creditor was justifying in its belief that it could enrol this case on the opposed motion roll, for a summary hearing. There is no basis for penalising it for doing so.

13. In casu, there is no pragmatic avenue available other than to refer the case to trial for the hearing of evidence by all interested parties, certain of whom may have to be joined to the proceedings. By the very nature of interpleader proceedings, one may irresistibly infer that material disputes of fact will indeed arise which are incapable of being adjudicated upon by a motion court on "there and then" basis.
14. In terms of Rule 58(6)(b), I direct that the three claimants shall be made the plaintiffs, as the goods were found in the judgment debtor's possession. The execution creditor is the defendant. The citation of the other parties remains, that is, the sheriff, as interpleader applicant, and Pierre Pienaar as the execution debtor. The headings to this judgment have been adjusted to conform with this direction.
15. Since the quantum of the claims falls squarely within the jurisdiction of the Magistrates Court, all costs associated with this litigation should be confined to the Magistrate's Court scale. The parties would be well advised to agree to the transfer of this case to the Magistrates Court having jurisdiction, in terms of Rule 39(22) of the Uniform Rules, so as to contain legal costs, considering the low quantum of the execution creditors claims.
16. The following order is made:
 - 14.1. the issues in this case are referred to trial;
 - 14.2. the above claimants are declared to be the first, second and third plaintiffs;
 - 14.3. the execution creditor is declared to be the defendant;
 - 14.4. the interpleader affidavit of Pierre Pienaar on behalf of the claimants/plaintiffs is declared to be a simple summons;
 - 14.5. within 15 days from the date of this order, the claimants/plaintiffs shall serve a declaration on all parties to the action;
 - 14.6. the Uniform Rules of this Court shall apply to all further process thereafter;
 - 14.7. the costs of this application shall be costs in the cause of the action, subject expressly to all such costs being confined to costs taxable on the Magistrates Court scale.



T BRENNER

ACTING JUDGE OF THE HIGH COURT

Counsel for Applicant:

Adv. FF Muller

Instructed by:

Hack Stupel & Ross

Counsel Respondent:

Adv JA Venter

Instructed by:

EW Serfontein & Associates Inc

Counsel for Plaintiff/Execution Creditor:

Adv S. Mentz

Instructed by:

Christo Bekker Inc.

Date of Judgment:

2 November 2016