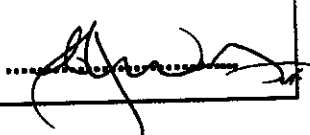


IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NO.: 28796/2015

(1)	REPORTABLE: YES / <del>NO</del>
(2)	OF INTEREST TO OTHER JUDGES: YES / <del>NO</del>
(3)	REVISED.
4/8/2016	
	

4/8/2016

In the matter between:

MODITLO ESTATE HOMEOWNERS'  
ASSOCIATION (NPC)

Applicant

and

PIETER JOHANNES JACOBUS VENTER

Respondent

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*Reasons for* JUDGMENT

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VAN DER WESTHUIZEN, A J

1. This is the extended return day of a provisional sequestration order granted on 23 July 2015 in respect of the respondent.
2. The aforesaid return day was extended a number of times at the behest of the respondent.
3. When the matter was called and heard on 28 July 2016, I granted a final sequestration order and indicated that I shall deliver my reasons in due course. These are my reasons.

4. The applicant is Moditlo Estate Homeowner's Association that attends to the management of an estate type development, known as Moditlo Eco Estate and situated close to the towns of Phalaborwa and Hoedspruit in Limpopo Province.
5. The respondent is the registered owner of Portion 89 of Farm 82, Hoedspruit. The said property is situated within the boundaries of the Moditlo Eco Estate and as such, the respondent is a member of the applicant.
6. As a member of the applicant, the respondent is obliged to make payment of contributions levied by the applicant. The respondent has failed to pay the contributions. The respondent does not deny his obligations in this regard and admits that he has not paid any contributions.
7. Various attempts were made by the parties to come to an arrangement in respect of the unpaid contributions. The respondent reneged on his undertakings and remains in arrears.
8. The applicant on two occasions instituted legal proceedings to recoup contributions owing to it by the respondent. In both instances the applicant obtained judgment against the respondent and attempted to enforce the said judgments, resulted in returns of *nulla bona* in each instance.
9. The respondent unconvincingly attempted to attack those returns of *nulla bona*. In this regard the respondent bears the onus of proving that the returns of *nulla bona* are to be impugned.<sup>1</sup> He has failed to do so. The attempt by the respondent to dispute his indebtedness to the applicant is without merit and of no substance.

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<sup>1</sup> *Van Vuuren v Jansen* 1977(3) SA 1062 (T) at 1062H – 1063C

10. None of the other defences raised by the respondent have any substance. Mr du Toit, who appeared on behalf of the respondent, did not, and wisely so, press any. Mr du Toit faintly attempted to rely on the alleged deposit of an amount of R 170 000.00 into the trust account of the respondent's attorney of record.
11. In this regard Mr Vorster, who appeared on behalf of the applicant, submitted that the defence of the alleged deposit has no substance. In this regard he submitted that
  - (a) no deposit slip in respect of the alleged deposit has been attached to the answering affidavit;
  - (b) no printout of the respondent's attorney's trust account to indicate that the alleged deposit had been made;
  - (c) no affidavit by the respondent's attorney has been supplied to confirm or verify the alleged deposit;
  - (d) no explanation is provided by the respondent why the amount of R170 000.00 is not utilised to defray the amount of R165 000.00 in respect of arrear contributions.
12. There is merit in the submission of Mr Vorster.
13. The respondent is at pains to explain why he did not honour his undertakings and stated emphatically that he did not have the money to make payment of the substantial amount required by the applicant, which was far less than the amount now tendered. That statement by the respondent is further at odds with the allegation of the alleged deposit of the amount of R170 000.00.
14. No explanation is provided from where that amount originates, or why such a large amount is suddenly available, or why that amount cannot

be utilized to defray the arrears due to the applicant. There is furthermore no confirmation that the amount of R170 000.00 is solely earmarked for the payment of any arrear amount due to the applicant.

15. It follows that the respondent has failed to provide adequate reasons why a final sequestration order should not be granted.
16. The applicant has complied with the requirements for the grant of a final sequestration order.

  
C J VAN DER WESTHUIZEN  
ACTING JUDGE OF THE HIGH COURT  
GAUTENG DIVISION

On behalf of Applicants:  
Instructed by:

J Vorster  
E Y Stuart Inc.

On behalf of Respondents:  
Instructed by:

Mr D R du Toit  
Hartzenberg Inc.