



**HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

**CASE NO: 26037/2021**

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE: 31 MARCH 2022

SIGNATURE

A handwritten signature in black ink, appearing to be "D. Davis", is written over the signature line.

In the matter between:

**GEIGER ENTERPRISE (PTY) LTD**

Applicant

and

**CRESTAR PRINTERS & PUBLISHERS (PTY) LTD**

Respondent

---

**J U D G M E N T**

---

*This matter has been heard in open court and is otherwise disposed of in terms of the Directives of the Judge President of this Division. The judgment and order are accordingly published and distributed electronically.*

**DAVIS, J**

[1] Introduction

This is an application for eviction of a printing business from premises which it had previously rented. There is no dispute about the termination of the lease agreement. The respondent's opposition is based on an alleged confusion about the description and ownership of the premises. The respondent furthermore relies on an alleged lien acquired by the respondent over the premises that it occupies.

[2] Factual background

Both of the aforementioned disputes can more readily be resolved once the undisputed facts are taken into account. They are briefly the following:

- 2.1 Since 3 November 2017 the respondent leased a certain section in a sectional title scheme in Sunderland Ridge (in extent 3730 m<sup>2</sup>) and an exclusive use area described as a "Garden" (measuring 3402 m<sup>2</sup>) and forming part of the common property in the scheme Sunderland Ridge Ext 29 Township, City of Tshwane Metropolitan Municipality (jointly referred to as "the premises") from a company known as Napaj Property Investment and Development (Pty) Ltd ("Napaj") in terms of a written lease agreement.
- 2.2 It is further not in dispute that the lease agreement has been lawfully cancelled by Napaj on 21 February 2020 due to the respondent's non-payment of rental since November 2019.
- 2.3 Due to the respondent's breach of the lease agreement, Napaj has instituted action in the Magistrate's Court for the District of Tshwane Central, held at Pretoria, in case no 4888/2020 for arrears rental, damages and holding-over rental due to the respondent's refusal to vacate the premises.

- 2.4 In an opposing affidavit to the summary judgment application in the Magistrates Court action, the respondent's then Chief Financial officer, Mr Ahmed Hassan Jaffer, declared as follows: *"I admit the description of both parties, and also the address of the applicant. As will appear more fully below, respondents' actual physical address is section 4 of a Section-Title Scheme known as Sunderland Ridge Ext 29"*.
- 2.5 Section 4 and Garden 3 is known in the scheme as constituting buildings 6, 7 and 8. This has been the alternate description referred to by the parties in the various litigation whereby the premises occupied by the respondent have been identified.
- 2.6 Since 25 September 2020, the premises were registered in the name of the applicant, as the current owner thereof. A copy of the title deed has been annexed to the papers together with a cession of the portion constituting Garden 3. The originals of these annexures had been presented to the court at the hearing of the application and after having been perused by the respondent's counsel. It was common cause and also conceded in open court that, since the commencement of the lease of the premises, the respondent has never moved from the premises initially rented.
- 2.7 In fact, the premises, being large in extent, had been refurbished to accommodate the respondent's needs at the commencement of the lease.
- 2.8 The respondent's principal asset, by which it operates its printing business, namely a 1250 mm 9 colour RotoGravure Printing Press (model Solomark 4350 ELS (E) 9 CL 1250) (the "printing Press") was installed at the premises. It has later become apparent that the printing press was in fact rented from the owner thereof, Merchant West (Pty) Ltd. This was in terms of a Master Rental Agreement dated 13 July 2018 and in respect of which some R17 million was still owing.



- 2.9 After the applicant had become owner of the property, it launched the present application on 24 May 2021 for the eviction of the respondent from the premises.
- 2.10 Apart from two payments made by the respondent to Napaj in the meantime, no amount was paid to the applicant. There was also no legal basis for the respondent to have remained in the premises and no lease agreement was ever entered into between the applicant and the respondent.
- 2.11 After the launch of the application, the respondent failed to deliver answering papers in the time period specified by the Rules. In the meantime, the applicant had secured a new tenant who sought to occupy the premises from 1 October 2021. This prompted the applicant to enroll the application for eviction by way of a supplementary set of papers on this court's urgent roll of 14 September 2021.
- 2.12 On 3 September 2021 the respondent, by way of an opposing affidavit deposed to by a Mr Ikraam Jaffer as its Chief Executive Officer, opposed the application on the basis of a lack of urgency, "a lack of title" and the existence of an improvement lien.
- 2.13 Apart from the above defences, with which I shall deal with hereunder, none of the other facts were place in dispute. It was also not seriously disputed that, apart from the claim of Merchant West (Pty) Ltd, the respondent has also faced liquidation applications from two other creditors, Sprint Chemic (Pty) Ltd in case no 82835/2020 and Suprator Investment CC in case no 62 602/2020 in this court and that the respondent was considering business rescue proceedings.
- 2.14 I shall now deal with defences raised, hereunder.

[3] Ad urgency

The urgency relied on by the applicant was the fact that it had obtained a new tenant with the intention of occupying the premises since October of last year. The premises are large and tenants who wish to occupy such large premises are few. In the meantime the applicant is paying a levy of R9 621.12 per month to the Body Corporate of Sunderland Ridge and R23 934.00 per month as taxes to the City of Tshwane Metropolitan Municipality. In addition, it has lost vast sums of money due to the occupation of the premises by the respondent without paying any rent. The prospective tenant is one intending to rent the property for a period of seven years with the option of buying it. Although all this was being disputed by the respondent without any reasonable grounds, I need not decide the question of urgency as the matter eventually only came before me in the normal opposed motion court roll on 8 March 2022. Mindful of these facts, though, I undertook to deliver this judgment, which was reserved at the time, by month-end.

[4] Ad identity of the property

- 4.1 It is common cause that the respondent has occupied the same premises at all relevant times. These are the premises which it has initially rented from Napaj since 2017. The respondent has not moved from those premises since.
- 4.2 An initial error in the description of the premises in prior litigation, referring to the premises incorrectly as unit 5 and not unit 4 and being situated in extension 28 and not extension 29 has been rectified before the current Notice of Motion and this error is not what the respondent has now latched on.



- 4.3 The respondent concedes that it is occupying premises in Sunderland Ridge “... *but they are most certainly not those to which the applicant lays claim as owner in these proceedings* ...”. The apparent only real basis for this denial is the respondent’s denial that a sectional title scheme as described in the title deed and the notarial cession of the exclusive use of the garden portion, exists. The basis for this denial is a “Windeed Search” conducted by the respondent on 1 September 2021.
- 4.4 The applicant points out that a “Windeed Search” is merely a data capture facility and is susceptible to error. The search document that the respondent relies on is also not as conclusive as it attempts to make out regarding the alleged non-existence of the sectional title scheme. The document, in relation to the search conducted by the respondent reported that “THERE IS NO INFORMATION AVAILABLE THAT MATCHES YOUR SEARCH CRITERIA”.
- 4.5 Contrary to this, and in conformation with the “best evidence” rule, the applicant has produced its original title deed, signed and stamped by the Registrar of Deeds, with title no ST 47106/2020 and the Notarial Cession of Exclusive Use Rights, both referring to the Section Title Scheme “Sunderland Ridge Ext 29”.
- 4.6 In a further confirmation, the applicant has produced a fresh conveyancer’s Certificate, dated 29 April 2021, confirming the property description and the applicant’s registered ownership thereof.
- 4.7 The continued assertion by the respondent that it does not occupy premises belonging to the applicant, without even attempting to describe or to disclose what other premises this would allegedly be, is therefore devoid of any substance. In view of its continued occupation of the same premises which has featured in successive litigation by the previous owner as

landlord and by its current successor in title, being the applicant and in view of the admission referred to in paragraph 2.4 above, this amounts to dishonest litigation.

[5] Ad the lien

- 5.1 The respondent, in its opposition delivered in answer to the matter when the applicant attempted to proceed on an urgent basis, claimed reliance on an improvement lien. This is the first time that this was raised. It was not raised as an defence in Napaj's Magistrates Court action in case no 4888/2020 nor in a subsequent application for eviction in case no 26 145/20 in this court, also launched by Napaj. It surfaced now for the first time. The belated raising of a defence in the magnitude that the respondent alleges it to be, raises serious doubt as to its veracity and the allegations made in support thereof, therefore require meticulous scrutiny.
- 5.2 The respondent claims that it has effected a host of improvements to the premises, ranging from an "ink store" and a ventilated enclosure to electrical cables. The Respondent claims to have spent some R 8 million on these improvements, some of which were, partially at least, paid for by Napaj and some which were paid to Napaj in respect of invoices raised by it. Not all the expenses were substantiated by proof of payment. The respondent claimed that doing so would unduly burden the papers.
- 5.3 The last of these improvements were effected in 2018, that is before the lease was cancelled and more than three years ago, raising the spectre of prescription.
- 5.4 Be the issue of prescription as it may, an improvement lien is only available to a *bona fide* occupier which the respondent, since the admitted date of cancellation of its lease with Napaj on 21 February 2020, was not.



- 5.5 In addition to this and before dealing with the validity of the alleged lien as it may exist in terms of the common law, the applicant pointed out that clause 10.7 of the respondent's lease agreement with Napaj, precluded the respondent from claiming payment in respect of improvements effected, lastmentioned which became the property of Napaj as lessor upon termination of the lease. The lease agreement expressly provided that "*The lessee shall in no circumstances have any claim for compensation for any such alternations or additions whether or not they are removed or the leased premises reinstated*". Contractually therefore, the respondent had no claim in respect of the alleged improvements effected. Where there is no claim, there can be no lien to be exercised as security for payment of such a (non-existent) claim. See also *Palabora Mining Compny Ltd v Coetzer* 1993 (3) SA 306 (T) at 309 F – H.
- 5.6 Even insofar as a claim for the improvements may notionally exist, the applicant has tendered that the respondent may remove all the improvements, negating any claim to a lien over the premises.
- 5.7 Insofar as the alleged improvements cannot be removed, they fall into two categories. The first is an upgrade to the power supply and hardware installed in April 2018 (the "power upgrade") and the second category consists of a host of alleged alterations effected for the respondent's own benefit.
- 5.8 In respect of the second category, the applicant's conveyancers have tendered an irrevocable undertaking for the payment of some R4 million on condition that the respondent institutes action for payment of the improvements within 14 days from the hearing of this application (presumably meaning the delivery of the judgment). Insofar as there may be a valid lien, this substituted security would in my view and in the



exercise of the court's discretion, on the facts of this case, be sufficient. See: *Hochmetal Africa (Pty) Ltd v Otavi Mining Co (Pty) Ltd* 1968 (1) SA 571 (A) at 582 C – F and the cases quoted there.

- 5.9 In respect of the first category, being the power upgrade (alleged to have cost R4, 1 million), the respondent alleges “*that it is in lawful possession of whatever premises it occupies in Sunderland Ridge because it has effected useful improvements ... and the applicant has been enriched by those improvements*”.
- 5.10 Leaving aside the fact that the respondent was, since cancellation of the lease no longer in lawful occupation of the premises, a lien for recovery of useful improvements is “*limited to the amount by which the value of the property has been increased or the amount of the of the expenses incurred ... whichever is the less and the court has a wide discretion*”. See *Rhooode v De Kock* 2013 (3) SA 123 (SCA) and the cases quoted at paragraph [15].
- 5.11 The respondent has not even attempted to establish a case for what the increase in value of the property the power upgrade had caused. Insofar as the respondent relied on the alternate basis, namely the amount expended, the applicant denies that the upgrade is useful to it at all. It was effected for the respondent's own peculiar needs and not for the applicant's prospective new tenant. This denial of the upgrade being a useful improvement was also the issue between Napaj and the respondent at the time when the upgrade was effect, hence the applicant's repeated tender that it may be removed by the respondent. On these papers, there is therefore such a serious dispute of fact as to whether the “improvement” was useful or only a luxury for the respondent's use, that I find the respondent has not established a common law right to a lien which may

have survived the contractual term of the applicant's predecessor's lease agreement, entitling it to remain in the premises.

- [6] Regarding the pending or prospective business rescue proceedings, the respondent has (correctly) conceded that once it has been established, as it has in this case, that the respondent is in unlawful occupation of the premises, the pending proceedings are no bar to an eviction order. See *Kythera Court v Rendez-vous Cafe* CC 2016 (6) SA 63 (GJ).

[7] Relief

Adv Beaton SC, who appeared for the respondent, conceded that, in the circumstances, should the court find against the respondent, it would have to vacate the premises immediately and there would be no justification for a further extension of occupation. In view of the history of this case, the dilatoriness in delivering answering papers and the manner in which the dispute regarding identification of the premises has been waged, I am of the view that a punitive costs order is justified.


[8] Order

1. The Respondent and all persons and/or entities, whether it be with or without legal personality and/or with or without the permission of Respondent, whether holding occupation through respondent or not, are forthwith evicted from the following properties and must, upon service of this order at the address where the premises are situated, vacate same:

- 1.1 Section no. 4 as shown and more fully described in sectional Plan no: SS331/2020 in the Scheme known as Sunderland Ridge, Ext 29, situated at Sunderland Extension 29 Township, Local

Authority: City of Tshwane Metropolitan Municipality (“Section 4”).

- 1.2 The exclusive use area described as Garden G3 measuring 3402 (Three Thousand Four Hundred and Two) square meters, comprising the land and the scheme known as Sunderland Ridge, Ext 29, situated at Sunderland Extension 29 Township, Local Authority: City of Tshwane Metropolitan Municipality forming part of the common property (“Garden G3”).
  - 1.3 Section 4 and Garden G3 are both situated at 592 Baralong Street, Icon Industrial Park, Sunderland Ridge, Centurion and constitute “the premises”.
2. The Respondent is ordered to pay the costs of the whole application on the scale as between attorney and client.



---

N DAVIS  
Judge of the High Court  
Gauteng Division, Pretoria

Date of Hearing: 8 March 2022

Judgment delivered: 31 March 2022



## APPEARANCES:

For Applicant:

Adv H F Geyer

Attorney for Applicant:

DP du Plessis Inc., Pretoria

For Respondent:

Adv R G Beaton SC

Attorneys for Respondent:

Jaffer Inc., Attorney, Pretoria