

Sneller Verbatim/lks

IN THE HIGH COURT OF SOUTH AFRICA

(WITWATERSRAND LOCAL DIVISION)

JOHANNESBURG

CASE NO: 19881/03

2003-11-26

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**DELETE WHICHEVER IS NOT APPLICABLE**

(1) REPORTED ☒ YES ☐ NO

(2) OF ☒ YES ☐ NO

(3) REMOVED ☒ YES ☐ NO

DATE 6/2/2009 [Signature]

SIGNATURE

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In the matter between

**MARAIS AND OTHERS**

Applicants

and

**MICHEL AHRENS AND OTHERS**

Respondents

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

WILLIS, J: The applicants seek the following relief:

- "1. An order declaring that the sale of members' interest and 20  
members' claims on loan account entered into on 10 April  
2002 between fourth to fourth applicants and first  
respondent in respect of Pearl Properties and Financial  
Services CC, No. CK1992/000222/23 (a copy of which  
is annexed to the founding affidavit marked "GM6" - 25  
hereinafter referred to as "second sale agreement") has  
been validly cancelled by first to fourth applicants.

Alternatively, that the second sale agreement has lapsed and is of no further force or effect.

2. Directing the first respondent to pay the first to fourth applicants the sum of R160 000, together with interest at the rate of 15,5% per annum *a tempore morae* as set out in the attached schedule. 5
3. Interdicting and restraining the first and third respondents from carrying on the business of manufacturing signs on Portion 127 at the farm Rietfontein 189 ("Portion 127").1
4. Evicting respondents from portion 127. 10
5. Determining the date by which the respondents must vacate Portion 127.
6. Determining the date upon which the eviction order prayed for in paragraph 4 may be carried.
7. Directing the first respondent to pay the applicants' costs of suit. 15
8. Granting the applicant such further and/or alternative relief as the above honourable court may deem just and equitable."

The applicants do not seek at this stage the alternative relief referred to in paragraph 1 of the notice of motion and obviously paragraph 3 falls away if I do in fact grant the eviction of the respondents from Portion 127. 20

It is common cause that in terms of the agreement referred to, the respondents were liable to pay occupational interest or rent to the applicants. There is no dispute that they have not done so and it is 25

also common cause that they remain in occupation of Portion 127. The relevant agreement entered into between the parties in writing provides precisely that the applicants may cancel the agreement if the respondents are in breach of its terms. The relevant agreement also contains the standard non-variation clause requiring any variation to be recorded in writing. It also contains a standard clause relating to any waiver of rights being recorded in writing. 5

It seems to me that the respondents are classically between a rock and a hard place. The agreement that they entered into is express. It is clear that they are in breach of the terms of that agreement and accordingly that the applicants were entitled to cancel the agreement and evict them. 10

Ms Bailey for the respondents has raised a novel argument that there is a *lis pendens* between the parties that should prevent this matter being determined. The *lis*, it is common cause, was entered into after the service of this application and therefore I do not see how it can properly be considered to be a *lis pendens* at the time when these proceedings were instituted. 15

Furthermore, the issue that appears to be raised in that lease in my view cannot take the issues in this particular matter any further. One cannot concoct to create disputes of fact. The real issues in this matter have already been outlined by me and I wish to emphasise them, that there was a written agreement the parties; that it was a term of that agreement that occupational interest and/or rental be paid; that occupational interest has not been paid; that the applicants purported to cancel the agreement and that 20 25

notwithstanding their having done so, the respondents remain in occupation of the premises. Furthermore, as I have already indicated, the terms of the agreement were recorded in writing and require any variation or waiver to be recorded in writing.

In my view the applicants accordingly succeed in their application. It seems to be reasonable that they should be given until 15 December 2003 to vacate Portion 127. 5

1. An order is accordingly made in terms of prayer 1 of the notice of motion (not including the alternative relief sought in that prayer) as well as prayers 2 and 4 thereof. 10
2. It is furthermore ordered that the respondents must vacate Portion 127 by no later than 15 December 2003.
3. In the event that respondents do not vacate Portion 127 on the date provided for in this order, they may be evicted forthwith.
4. The first respondent is to pay the applicant's costs of suit. 15