IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

14 October 2024
DATE

[redacted]
SIGNATURE

CASE NO: 2023/024848

In the matter between:

JEANLING LEE	**Applicant**
and	
CHELSTON HALL BODY CORPORATE	**Respondent**
In Re	
CHELSTON HALL BODY CORPORATE	**Applicant**
and	
JEANLING LEE	**First Respondent**
FAIZA BECK	**Second Respondent**
OFFICE OF THE REGISTRAR OF DEEDS:	
JOHANNESBURG	**Third Respondent**
DE WET VAN DER WATT (SANDTON) INC	**Fourth Respondent**

REASONS FOR JUDGMENT

1. On the 16th of July 2024 I gave an order dismissing an application with costs by the Applicant, Lee Jeanling, for security for costs pertaining to an application brought by the Respondent, Chelston Hall Body Corporate, compelling Ms. Jeanling and the Registrar of Deeds to transfer Unit 108, Chelston Hall, back to the Respondent by virtue of an earlier court order dated the 1st of December 2021 by her Ladyship Mia J declaring the sale of unit 108 Chelston Hall to Ms. Jeanling void ab initio.

2. I was subsequenly asked for reasons for my judgment, which follow hereunder.

3. It is common cause, or not denied, that on or about the 26th of October 2015 the Applicant entered into an agreement of sale for Unit 108, Chelston Hall, with the Respondent. At the time, the Applicant was a trustee of the Respondent. The second Respondent in the main application, one Faiza Beck, who was also a trustee, signed the agreement of sale on behalf of the Respondent as seller and the Applicant signed as buyer on her own behalf. The total purchase price, according to the deed of sale, was R1 000 000-00. The deposit, which is the same as the purchase price, was to be paid within seven days of signature of the agreement of sale into an account of the

designated conveyancer, the fourth respondent in these proceedings. Transfer was to take place upon payment of transfer costs to the conveyancer.

4. According to the deponent to the Respondent's founding affidavit, Saheena Sattar Cassim, the unit was transferred into the name of the Applicant before the full purchase price was allegedly paid. It is the Respondent's contention that transfer and registration ought not to have taken place before the full price was paid. This is borne out by the terms of the agreement of sale. The Respondent also contends that the provisions of the Sectional Titles Act 95 of 1986 were not followed prior to the transfer of the unit.

5. Prior to the sale agreement ownership and registration of the unit in the Deeds Office, vested with the Respondent.

6. During 2018, at a time when the Applicant was the chairperson of the Respondent, another unit owner referred a dispute to CSOS relating to being overcharged for electricity. An award was granted in his favour. At the time the Applicant was the chairperson of the Respondent and testified at the hearing. According to the CSOS award, other unit holders were similarly overcharged for electricity. However, there is no suggestion or evidence that the Applicant personally benefited from the alleged overcharging.

7. It appears that following this CSOS award management agents, Solvent Property Services (hereafter referred to as Solvent), were appointed to look after the management of the Respondent. As to how this appointment came about is not explained in the papers.

8. On the 29th of October 2021 Solvent sent out a notice of a virtual Special General Meeting to be held on the 1st of December 2021 to unit owners in the Respondent. One of the items on the agenda was "consideration and approval of the procedures followed for the selling of unit 108".

9. On the 22nd of November 2021 one Mohamed Cassim, presumably another unit owner, launched an urgent application to interdict the first and second respondents from including the item in the agenda and declaring the sale of the unit (108) void ab initio. This culminated in an order being granted by her ladyship Mla J in the following terms on the 1st of December 2021:

> "1. The third and fourth Respondents (i.e., Chelston Hall Body Corporate and Solvent Enterprises respectively) are interdicted and restrained from including in their agenda for the special general meeting of Chelston Hall an item requiring the ratification of the sale of unit 108 (section 9) on the basis that the aforementioned sale did not comply with the provisions of the Sectional Titles Management Act and is accordingly void ab initio.
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> 2. The first Respondent (I.e, Jeanling Lee) is to furnish the applicant with the relevant documents regarding the purported sale of the property.

3. The fifth Respondent (I.e., De Wet Van Watt) is to furnish the applicant with the documents related to the purported sale of the property.

4. The first, second (i.e., Faiza Beck), third, fourth and fifth Respondents are to pay the costs of this application, jointly and severally, the one paying the other to be absolved."

10. The deponent to the founding affidavit in the main application on behalf of the Respondent, Saheena Sattar Cassim, alleges in the founding affidavit that the first and second respondents did not comply with the order made by CSOS, and that while they were trustees they took complete control of the Respondent to the exclusion of other members. She further alleges that there was a lack of transparency with regard to the affairs of the Respondent and in the utilization of its bank account. She further alleges that during the sale and transfer of unit 108 to the Applicant, the Applicant and Faiza Beck had unfettered access to the Applicant's bank accounts, and that it is unknown where the Applicant obtained the funds to purchase the unit. It is because of this that the Respondent submits that it should not be ordered to pay back the money in return for the Applicant transferring the property back into its name.

11. The Applicant, while disputing the allegations made in the main founding affidavit by Ms. Saheena Sattar Cassim, is not opposed to transferring the property back to the Respondent, but only on condition that she be paid back the money she paid for the property. She launched the present application for

security for costs on the 20th of May 2023. She disputes the allegations made in the founding affidavit regarding how she financed the purchase of the unit and also draws attention to other litigation the Respondent is involved in and costs orders made against it and claims that it is unable to pay including the costs of its own legal teams related to such litigation. She alleges that the Respondent will not be able to make payment of any costs order against it in the main application, and hence seeks security for costs in the sum of R250 000.

12. There are numerous disputes which the court hearing the main application will have to deal with and decide upon. This court only had to deal with the application for security for costs.

13. In his heads of argument, counsel for the Applicant refers to the case of Boost Sports Africa (Pty) Ltd v SA Breweries Ltd 2014 (4) SA 343 (GP) where at paragraph [51] her ladyship Hassim AJ (as she then was) held as follows:

> "If I were to summarise the approach of courts to applications for security for costs, it would be that even if a defendant demonstrates that the plaintiff company would not be able pay an adverse costs order, the court has to in the exercise of its discretion carry out a balancing exercise, weighing on the one hand the injustice to the plaintiff if it is prevented from pursuing a proper claim by an order for security, and on the other hand the injustice to the defendant if no security is ordered. Questions going to the merits of the claim and defence are some of the factors that a court may have regard to when deciding an application for security."

14. The decision in Boost was subsequently upheld by the SCA in Boost Sports Africa (Pty) Ltd v South African Breweries (Pty) Ltd 2015 (5) SA 38 (SCA)

15. The veracity of the allegations made by the Applicant and Respondent and other issues will have to be dealt with by the court dealing with the main application. All that I had to deal with is whether the first Respondent has made out a case for security for costs.

16. In my view, even on the Applicant's own version, she is not entitled to an order for security for costs. The Respondent's claim against the Applicant is for retransfer of unit 108 into its name. The claim for restitution of the money she paid for the unit is essentially a counterclaim by the Applicant against the Respondent. The onus is on her to establish the veracity of this counterclaim, which would be one for unjustified enrichment. In my view, it cannot be the basis of a an application for security for costs against the Respondent.

17. In launching the main application, all that the Respondent has done is to give effect to the order of her ladyship Mia J, a finding which is not challenged by the parties for the purposes of this application.

18. If I were to order the Applicant to give security for costs, and if it were unable to do so, this would mean that the Applicant would be entitled to retain registration

of the unit in her name despite not being the lawful owner of the unit. This would have the effect of defeating the purpose of the order granted by her ladyship Mia. J and legalizing the illegal. This is clearly untenable.

19. In my opinion, the court hearing the main matter may hold that the Respondent's claim for retransfer is essentially vindicatory in nature. See in this regard the case of Quartermark Inv (Pty) Ltd v Mkhwanazi 2014 (3) SA 96 (SCA) ([2013] ZASCA 150) at paragraphs [26] and [27] which read as follows:

> "[26] A party that proceeds by way of the rei vindicatio need not tender restitution of what has been received pursuant to a contract sought to be set aside, because the cause of action is complete without such tender. Restoration of the benefit received may be the subject of a separate claim for unjust enrichment. In Rhoode v De Kock and Another Cloete JA contrasted this with a situation where the rei vindicatio was not available. In the latter instance the party is obliged to sue for restitution and tender restitution of the benefit received under the impugned contract.
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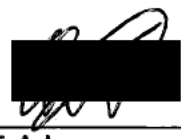
> [27] For these reasons Ms Mkhwanazi is entitled to vindicatory relief — the reregistration of the property in her name, and a declaration that the agreements she entered into with Quartermark are null and void. This was the relief granted by the high court. As was stated by the high court, Quartermark, if so advised, may pursue a claim against Ms Mkhwanazi for the return of any benefit she may have received under the agreements."

20. I thus exercised my discretion not to grant the application for security for costs as requested for by the first Respondent.



CAJEE AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION
JOHANNESBURG

DATE OF HEARING:	20th February 2024
DATE OF HEARING:	16th July 2024
DATE REASONS HANDED DOWN:	14th October 2024

REPRESENTATIVES OF THE PARTIES

For the Applicant:	Adv. Andrews 082 414 7455
For the 1st Respondent:	Mr. Friedland 082 603 9640