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IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

Case No: 9219/2023P

In the matter between:

LANGLAAGTE TRUCK AND CAR CC **APPLICANT**

and

ETHEKWINI MUNICIPALITY **RESPONDENT**

JUDGMENT

Delivered on: 31 October 2024

POYO DLWATI JP

[1] The question to be answered in this application is whether the applicant is liable for the historic municipal debt that was older than two years when it bought the property at a sale in execution.

[2] The brief background to the matter is that Langlaagte Truck and Car CC, the applicant, successfully bid for and accepted the conditions of sale for a property sold in execution described as a Unit consisting of:

(a) Section No 48, as shown and more fully described on Sectional Plan SS372/2011 in the scheme known as 1[...] on P[...] B[...] in respect of the land and

building or buildings situated at Umhlanga Rocks, in the eThekwini Municipality, of which section the floor area according to the said Sectional Plan is 302 square metres in extent; and

(b) An undivided share in the common property in the scheme, apportioned to the said section in accordance with the participation quota, as endorsed on the said sectional plan;

Held by Deed of Transfer No ST16660/2015 and subject to such conditions as set out in the deed (the property).

[3] The property was sold to the applicant on 18 July 2022 for the sum of R2 763 950.90. This was the reserve price set by the court when the property was declared executable in terms of rule 46A of the Uniform Rules. Clause 6 of the conditions of sale of the property is relevant for the purposes of determining this application and it reads:

'6. Further costs and charges

6.1 The purchaser shall be liable for and pay within 10 days of being requested to do so by the appointed conveyancer, the following:

6.1.1 All amounts due to the municipality servicing the property in terms of s 118(1) of the Local Government Municipal Systems Act, 2000 (Act No.32 of 2000) for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties that may be due to the municipality.

6.1.2 where applicable, all levies due to a body corporate in terms of the Sectional Titles Act, 1986 (Act No.95 of 1986) or amounts due to a homeowner or other association which renders services to the property; and

6.1.3 The costs of transfer, including conveyancing fees, transfer duty or Vat, Deeds Office levies and any other amount necessary for the passing of transfer to the purchaser.

6.2 The purchaser is hereby informed of the following charges:

6.2.1 Arrear rates and taxes, estimated at R351 093.75

6.2.1 Arrear levies: R530 498.90

6.3 The purchaser notes that the amounts indicated by the Sheriff as owing in respect of clause 6.2 are estimates only. Neither the Sheriff nor the execution creditor warrants the accuracy of these estimates. The purchaser shall not be able to avoid his/her/its obligations hereunder, nor will the purchaser have any claims against the fact that the amounts actually owing in terms of clause 6.2 are greater than the estimated charges as stated by the Sheriff. The actual amounts owing in respect thereof must be paid by the purchaser in terms of clause 6.2.'

[4] The applicant's contention was that it complied with all the conditions of sale. Thereafter, the nominated conveyancers, Ramdass and Associates (the conveyancers) applied for the rates clearance figures on or about 5 August 2022. On 21 November 2022, the eThekwini Municipality, the respondent, issued the rates clearance figures. The rates clearance figures set out an indebtedness to the respondent by the judgment debtor (Yateen Bhupandra Natvarlal Bhagwan) in the sum of R473 110 (the first figures). The other amount of R29 080 was for forward projections for various charges. An amount of R240 340 was for indebtedness of the judgment debtor to the respondent for the period of two years preceding the date of the application for the rates clearance figures in compliance withs 118(1)*(b)*[1] of the Local Government: Municipal Systems Act 32 of 2000 (the Act). An amount of R203

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[1] Section 118(1)*(b)* of the Act provides as follows:
'(1) A registrar of deeds may not register the transfer of property except on production to that registrar of deeds of a prescribed certificate-
(b) which certifies that all amounts that became due in connection with that property for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties during the two years preceding the date of application for the certificate have been fully paid.'

690 was the judgment debtor's indebtedness for historical debt in terms of s 118(3) of the Act.[2] It was recorded that the period for which the figures would remain valid would be from 1 December 2022 to 28 February 2023 (the validity period).

[5] In a letter addressed to the conveyancers dated 21 November 2022, the respondent advised that 'we record that the latter amount is the debt of the property which is secured under s 1 18(3) of the Act, and we cannot allow transfer of the property to proceed unless this amount is paid or secured by means of an irrevocable bank guarantee made payable to the municipality on date of registration'. The applicant sought to clarify the issue with the respondent and advised that it was not responsible to pay the historic debt as this, in its view, was the judgment debtor's responsibility and obligation. It then paid to the respondent what it believed was the correct amount, consisting of the sums of R240 340.00 and R29 080.22.

[6] Despite payment, the respondent did not furnish the conveyancers with a rates clearance certificate. This resulted in the lapse of the validity period of the initial figures. The applicant had to and did apply for new figures (the revised figures). The revised figures were received on 20 February 2023 (the second figures) and amounted to R230 695. The payment made by the applicant was offset against the historical indebtedness of the judgment debtor. According to the applicant, it was not obliged but forced to pay the historic debt. This, according to the applicant, was in violation of the Act.

[7] The applicant caused the conveyancers to advise the respondent that it would be paying the second figures in full under protest. The respondent did not respond to this letter, but instead, after payment was received, issued a rates clearance certificate. As a result, after registration of the property into the applicant's name, the applicant instructed its attorneys to address a letter of demand to the respondent for the payment of R230 695.80, which it had paid under protest. This it did as it believed it was forced to pay for the previous owner's debt and this it believed was unlawful.

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[2] Section 118(3) of the Act provides as follows:
'(3) An amount due for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties is a charge upon the property in connection with which the amount is owing and enjoys preference over any mortgage bond registered against the property.'

[8] The respondent opposed the application. It stated that the applicant was obliged to pay the actual arrears in respect of the property. This, according to the respondent, was apparent from clause 6.3 of the conditions of sale. It further contended that the applicant was obliged to pay the arrear rates and taxes due on the property, even if they were greater than the estimated charges contained in clause 6.2 of the conditions of sale. According to the respondent, there was a lawful reason for the demand and payment thereof, hence the payment.

[9] The respondent further stated that it had advised the conveyancers that should a guarantee not be provided for the payment of the historic debt, it would have no option but to interdict the transfer in order to secure its rights and would hold the conveyancer responsible for the costs. According to the respondent, once the applicant signed the conditions of sale, it created a binding contractual obligation between the applicant and the respondent in respect of the historical debt. It was therefore, according to the respondent, the applicant's obligation to discharge the indebtedness of the judgment debtor as provided for in the conditions of sale. For these reasons, the respondent believed that the application ought to be dismissed with costs.

[10] In reply, the applicant reiterated that the respondent's obligation was derived from the Act, which required the respondent to provide a clearance certificate upon receipt of a payment contemplated in s 118(1)*(b)* of the Act. In terms of the replying affidavit, even though this point was not pursued in argument, the applicant contended that the respondent was not a party to the conditions of sale agreement and therefore no personal rights existed between the respondent and the applicant. The applicant's contention was that the respondent ought to have interdicted the proceeds of the sale of the property to secure any outstanding balance due by the previous owner in title.

[11] The issue to be determined in this application is whether the applicant was obliged to pay the historical debt due by the previous owner to the respondent or whether the respondent had another recourse available.

[12] What one needs to bear in mind in this matter is that this was not an ordinary sale where the respondent could demand a guarantee by the previous owner to pay all the historical debt due to it before it could issue a rates clearance certificate. The property was sold in a sale in execution as a result of the previous owner having defaulted in its bond obligations to the bank. Indeed, it is so that the respondent is obliged to issue a rates clearance certificate once payment has been made for any outstanding rates and taxes owing on the property. It is also trite that a purchaser is obliged to pay for the two years preceding the application for clearance figures whilst the previous owner is responsible for the historical debt.

[13] When there is a historical debt and there is uncertainty regarding who will pay for it, the respondent is entitled to interdict any sale in order to secure its rights. It threatened to do so in this matter, but the applicant opted to pay the amounts outstanding, albeit under protest. However, this the applicant did at its own disadvantage as any interdict process would have clarified who was responsible for the historic debt. It is not difficult in my view to determine who pays for the historic debt when the sale is an ordinary one, as the previous owner would furnish an undertaking or guarantee, to the respondent's satisfaction, that such a debt would be paid. However, in a sale in execution the transaction is founded on the conditions of sale.

[14] Whilst it is so that s 118(1)(*b*) of the Act is concerned with property rates and other municipal taxes, levies, and duties during the two years preceding the date of application for the certificate, the respondent still needs to ensure that the historical debt is paid or secured before a change in ownership. It was held in *Jordaan and others v Tshwane Metropolitan Municipality and others*[3] that 'where there are unpaid municipal debts ... the charge enables them to slam the legal brake on any impending transfer by obtaining an interdict against transfer'. It is for this reason that it is important to consider the context of the conditions of sale. As held in *Natal Joint Municipal Pension Fund v Endumeni Municipality*, [4] one always must have 'regard to the context provided [in a document] by reading the particular provision or provisions

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[3] *Jordaan and others v Tshwane Metropolitan Municipality and others* [2017] ZACC 31; 2017 (6) SA 287 (CC); 2017 (11) BCLR 1370 (CC) para 54 ('Jordaan').

[4] *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; 2012 (4) SA 593 (SCA); [2012] 2 All SA 262 (SCA) para 18 (' Endumeni').

in the light of the document as a whole and the circumstances attendant upon its coming into existence'. The 'purpose of the provision and the background to the preparation and production of the document' is also important.

[15] As correctly argued by Mr Broster on behalf of the respondent, the conditions of sale came about as a result of the property having been declared executable when an application was made in terms of Rule 46A of the Uniform Rules. It is trite that whenever an execution creditor seeks to execute against the residential immovable property of a judgment debtor, the court considering the application, prior to determining a reserved price, must ensure that a statement from a local authority showing the amounts owing for rates and other dues is attached.[5] This must be so, so that consideration is given to outstanding rates and other charges due on the property, regardless of the time frame for such a debt. Clause 6.2 of the conditions of sale provided the estimated amount owing as of 19 May 2022 as R351 093.75. Clause 6.3 emphasised that this figure is an estimate only and that the purchaser would be liable for the actual amounts.

[16] One must bear in mind that properties are sold in execution as a result of an execution debtor failing to pay whatever amount is due on the property to that judgment creditor. When the applicant agreed to the conditions of sale, particularly clauses 6.1, 6.2 and 6.3, which must be read together, it brought itself to the position of the judgment debtor, in my view. This was particularly so when it accepted that the figures contained in clause 6.2.1 were estimates only and that it would become liable for actual figures once these had been provided. It could not have been so that it was expected that these figures would decrease, as the applicant only initially paid R240 340, way below the R351 093.75 estimate. In line with the principle enunciated in *Endumeni,*[6] this would be a more sensible interpretation which leads to a sensible businesslike result in the context of the conditions of sale.

[17] The wording of the conditions of sale is clear and unambiguous. It makes provision for the payment of the amounts due in terms of s 118(1) of the Act *and* (my emphasis) all other taxes due on the property. As made clear in clause 6.1.1, the

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[5] Uniform rule 46A(5).
[6] *Endumeni* para 18.

purchaser was liable for all amounts due to the municipality servicing the property in terms of s 118(1) of the Act, for municipal service fees, surcharges on fees, property rates, and other municipal taxes, levies, and duties that may be due to the municipality. There is no reason why the historic debt in the context of the conditions of sale should not be interpreted to fall under 'and other municipal taxes... '. Mr Pietersen, on behalf of the applicant, correctly submitted that the applicant had also relied on the conditions of sale in its argument, which was contrary to what was stated in its replying affidavit. If that is the case, then the applicant's reliance on the maxim *res inter alios acta*[7] was ill-founded.

[18] Much reliance was placed on *Real People Housing (Pty) Ltd v City of Cape Town*.[8] There, the principle established was that '[a] clearance certificate must be issued if the sums falling due in the two-year period are paid. Any sums which fell due prior to the commencement of the two-year period need not be paid as a condition precedent to the issue of the required clearance certificate' .[9] However, Cameron J in *Jordaan* correctly pointed out that a municipality is allowed to slam the legal brake on any impending transfer so as to ensure payment of any outstanding debt.[10] He went on to state that the notification to the municipalities of an impending transfer is key:[11]

'Doing so is indeed indispensable and invariable. This gives the municipality full power, and full opportunity, to enforce the charge against the existing owner for all recoverable debt, *even beyond the last two years*.' (My emphasis.)

What distinguishes this matter from others is the fact that the respondent had raised all its demands with the conveyancers without imputing any liability on the applicant. It required a guarantee that the historic debt would be paid and even threatened an interdict against the transfer should the guarantee not be furnished. The applicant,

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[7] This is 'a common-law doctrine which holds that a contract cannot adversely affect the rights of one who is not a party to the contract' (see *Coughlan NO v Road Accident Fund* [2015] ZACC 9; 2015 (4) SA 1 (CC) fn 1).
[8] *Real People Housing (Pty) Ltd v City of Cape Town* 2010 (1) SA 411 (C).
[9] Ibid para 31.
[10] *Jordaan* para 55.
[11] Ibid.

on its own volition, took it upon itself to pay these amounts, prior to it being a new owner of the property.

[19] An argument was also raised in the heads of argument that the payment made for the initial figures ought to have been allocated to a specified debt. There is, however, no merit in this argument as the respondent made it clear how it allocated the funds and also in the light of the interpretation I have attributed to clauses 6.1 to 6.3 of the conditions of sale. In my view, no case has been made out for the relief sought. The applicant was liable for all debts and taxes owed in respect of the property. as provided for in the conditions of sale. hence the respondent was entitled to demand payment for same before the exchange of ownership.

[20] Accordingly, the application is dismissed with costs.

POYO DLWATI JP

APPEARANCES

Date of Hearing:	30 July 2024
Date of Judgment:	31 October 2024
Counsel for Applicant:	Mr Pietersen
Instructed by :	Kaveer Guiness Attorneys c/o Viv Greene Attorneys Inc
Counsel for First Respondent:	Mr Broster
Instructed by:	Dwarika, Naidoo and Company c/o Tomlison, Mnguni James Attorneys