




**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, JOHANNESBURG**

Case No: 012815/2024

In the application between:

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
09 April 2025	
DATE	SIGNATURE

NEW MODEL PROJECTS (PTY)LTD

APPLICANT

And

**LEVENBRO CENTRE (PTY) LTD
SHERIFF OF THE COURT
THE REGISTRAR OF DEEDS**

**FIRST RESPONDENT
SECOND RESPONDENT
THIRD RESPONDENT**

JUDGMENT

NHARMURAVATE AJ

INTRODUCTION

[1] This is an opposed specific performance application by New Model Projects the Applicant which is a private company registered in terms of the Companies Act 71 of 2008 as amended and in this application they seek to compel transfer of the property which they alleged was sold and paid for.

[2] In terms of the notice of motion filed by the Applicant the following orders are sought from this honourable court:

1. "the application to compel first respondent to transfer ownership of properties sold by it to the applicant and paid by the applicant in full, B and is hereby granted.

2. That the first respondent be and is hereby ordered and directed, within then [10] Days of this order, to sign and execute all documents and to c0-operates and do all such things as are necessary to effect the transfer of ownership of the properties otherwise known as Erf No 1403 (JOHANNESBURG TOWNSHIP, REGISTRATION DIVISION 1.r, PROVINCE OF GAUTENG), Title Deed T 11232/1957, measuring 495 square meters), Erf No 1404, (JOHANNESBURG, Township, REGISTRATION DIVISION 1.R, PROVINCE OF GAUTENG, Title Deed T8472/1971, Measuring 495 Square metres), and Erf No 1405 (JOHANNESBURG TOWNSHIP, REGISTRATION DIVISION 1.R, PROVINCE OF GAUTENG, Title Deed T8472/1971, Measuring 380 Square metres) to the Applicant.

3. That in the event that the first respondent fails and or refuses to comply with order [2] above, then and in that case, the sheriff of the court having jurisdiction, be and is hereby authorized and granted leave to sign and execute all documents in the stead of the first respondent, as necessary to effect the transfer of ownership of the properties referred to in paragraph [2] above from the name of the respondent to that of the applicant and in which event the third respondent is directed to accept such documents for that purpose.

4. That the First Respondent be and is hereby ordered to pay the Applicants costs of suit at the rate of attorney and own client."

- [3] This application is opposed by the First Respondent who is Levenbro Centre a private company registered in terms of a Company laws and the rest of the Respondents cited have not opposed the application.
- [4] The issue/s for this court to determined have been tabled by the parties in their practise note. However, from the argument raised, the main issue for this court to determine is whether the requirements for specific performance have been met.

BACKGROUND FACTS

- [5] The Applicant alleged that they entered into a memorandum of sale agreement (*"the sale agreement"*) in respect of commercial properties which belonged to the First Respondent. This agreement was concerning the properties known as Erf no. 1403, 1404 and 1405 situated at Johannesburg, township within the Gauteng Province. When the contract was entered into the First Respondent was represented by its director Mr. Brian Devonburg who has since deceased (*"the deceased"*) and the Applicant was represented by its director Mr Allan Mafu. The Applicant alleges that the First Respondent sold the properties in line with clause 1 of the sale agreement at an amount of 2 million rands which it duly paid for to the First Respondents erst while conveyancing Attorneys Howard S. Woolf Attorneys (*"Woolf Attorneys"*).
- [6] The Applicant alleged that payment was made in cash and in some instances in form of bank deposits in this regard proof has been annexed to the application. The Applicant alleged that despite the lawful payment being made towards the sale of the properties and despite complying with the obligations under the sale agreement the First Respondent has not transferred ownership of the property/s to the Applicant.
- [7] In terms of clause 5 of the sale agreement the First Respondent through its Conveyancing Attorneys Wolf Attorneys were supposed to transfer these properties upon final payment. This is the reason why the Applicant has brought

this application before this court to compel the First Respondent to transfer the properties to it.

- [8] In opposition the First Respondent raised a number of issues that the Applicant has not been able to prove the existence of a valid contract of sale between the parties. The lack of compliance with various sections in the Companies Act specifically 112(2) and 115(1) and further points *in limine* were raised in relation to prescription and the fact that the matter raises a dispute of facts. The First Respondent argued that the matter should have been referred to a trial as opposed to the application alternatively should be dismissed for lack of compliance with the agreement.
- [9] This court will analyse what it deems as pivotal issues in the matter to bring the matter to finality.

Analysis of the matter

Existence of a Contract

- [10] Ms Gordon for the First Respondent argued that the Applicant failed to prove the existence of the contract simply because this was not confirmed by any witness to the contract which view was opposed by Mr Mafu for the Applicant. Mr Mafu argued that the deponent was signatory to the agreement and this agreement was attached to the application. They simply could not locate the person who witnessed the agreement on the behalf of the Applicants. In my view, this argument is flawed in that there was a contract between the parties. There were no probable reasons put forward by the First Respondent why this court must doubt the evidence of the Applicant as he was the signatory on behalf of the purchaser on that day since Mr Brian Levenberg has since deceased.
- [11] My view is further fortified by the existence of documentary evidence which supports the Applicants contention that there was a contract in existence. The

existence of these documents corroborates the Applicants allegations regarding the existence of a contract between the two parties. The existence of these documents was not genuinely denied.

[12] Ms Gordon for the First Respondent argued that Mr Woolf from Howard S Woolf Attorneys was contacted regarding the existence of the sale agreement, and he allegedly answered that he had no recollection of the sale of agreement between the parties and could not confirm receipt of the monies or the sale between the parties. However, the First Respondent did not inform this court if Mr Woolf was shown the alleged deposit slips, his alleged correspondence and the signed sale agreement. In my view, not being able to recall, does not amount to a denial of the existence of the contract between the parties as they were then.

[13] In my view, there is no genuine dispute of fact regard being heard to the existence of the contract. The explanation of what constitute dispute of fact was stated as follows in the Wightmant/a JW Construction v Headfour (Pty) Ltd ¹ decision that: *‘A real, genuine, and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment.....*

[14] Interestingly, the First Respondent did not inquire from Mr Wolf if at any stage he legally representative the First Respondent pre or post 2018 or the deceased before the shares were sold. They also did not confirm or inquire from him if the account number alleged on the sale agreement which also appears on the various deposit slips was from his law firm. A denial of a fact has to be properly ventilated for it to raise a dispute of fact. In this regard, the probabilities and the

¹ 2008 (3) SA 371 (SCA) para [13]

evidence produced by the Applicant favour the fact that there was a valid contract entered into between the parties.

[15] Woolf Attorneys were allegedly appointed as the Conveyancing Attorneys for the First Respondent in terms of the sale of agreement. Woolf Attorneys were also the recipients of the partly paid monies or monthly instalments as directed by the sale agreement there were no probable reasons argued by the First Respondent why the Applicant will conduct itself (by paying the said sums) partially in line with the sale agreement if there was no valid contract between the parties.

[16] The Applicant has attached deposit slips which bear the name of Woolf Attorneys this was in accordance with clause 1.1.2 of the agreement which directed that :

"1.1.2 The sum of R 400 000,00 (FOUR HUNDRED THOUSAND RAND) shall be paid to the trust account of Howard S Woolf (hereinafter referred to as "the Seller's Attorney") within a period 7 (seven) days from date of conclusion of the Agreement, which monies shall be invested in an interest bearing trust account in the Purchaser's name pending the registration of National Deed of Servitude and Restraint of Free Alienation (hereinafter referred to as the National Deed), at which time the Seller's Attorney shall be authorised to pay the said sum directly to the Seller."

[17] The Applicant attached deposit slips dated, the 13 and 14th of November 2018 which were payments made immediately thereafter in lieu of the payment of the R 400,000.00. This was in line with clause 1.1.2 of the sale agreement, there are no probable reasons which were put forward by the First Respondent why the Applicant will do so if it was not because of the existence of a valid contract between the parties.

[18] There is also a further correspondence from Woolf Attorneys dated the 4th of February 2019 attached by the Applicants. This correspondence was headed *Sale of Land/ Levenbro// Mafu*. This correspondence served as confirmation of payment received on the 1st, 11th of December 2018 which was received

immediately after the parties allegedly signed the contract. The monies were also paid in the designated account as per the terms of the agreement. Additionally, some of the instalments paid by the Applicant were in line with the terms of the contract that is in relation to the amount of R133 333.33.

[19] In my view all probabilities prove that there was a valid sale of land agreement between the Applicant and Levenbro at the time. It would be bizarre for the Applicant to have gone through such an extent of partially complying with a non-existent agreement in 2019.

[20] Ms Gordon for the First Respondent further argued that the agreement entered into was invalid simply because there was no special resolution or consent obtained to dispose of the company's assets (the property in dispute) from the companies' shareholders. In this regard there is a contradiction on the papers filed by the 1st respondent that is at paragraph 39 and 40 of the answer it is not clear to this court who at the time were the ultimate shareholders. However, the crux issue in this regard is the non-existence of a special resolution in line with section 112 and 115 of the Companies Act or the lack of consent from the shareholders.

[21] Mr Mafu for the Applicant refuted this argument and maintained that the memorandum of sale agreement was valid between the parties and if in fact there was no special resolution in that regard he raised the defense of a Tarquand rule as they contracted in good faith.

[22] Upon my analysis, the first page of the sale agreement is headed:

“MEMORANDUM OF AGREEMENT OF SALE
made and entered into by and between
Levenbro Centre Proprietary Limited
Registration number

*herein represented by Brian Levenberg in his capacity as a director, who is duly authorized here to by virtue of a resolution passed (own emphasis)
(here in after referred to as the SELLER)."*

- [23] In my view, there were no probable reasons put forward why the Applicant should have doubted that a resolution was passed in this regard. The wording of the sale agreement for both the Applicant and the Seller affirms that both parties have obtained the rightful authorisations to sign this agreement in line with the resolution passed. The argument raised in this regard has no merit. This is simply because the Applicant took it in good faith that the First Respondent had obtained a special resolution in this regard.
- [24] In terms of the sale agreement which also bears signatures next to the wording there was no reason for the Applicant to doubt that there was a resolution passed. There was no law that demanded that the purchaser must insist on being shown a special resolution by the seller before entering into an agreement of sale at the time the deceased was the sole director and shareholder.
- [25] The Applicant rightfully raised the defense of a Turquand rule which protects third parties from being affected by the company's internal irregularities or the non-compliance with their internal procedures rightfully. The Applicant was entitled to assume that the First Respondent had followed all internal procedures even if they had not, simply because of the wording of the sale agreement. It was not demonstrated by the First Respondent that the Applicant had knowledge of the non-compliance if any. Therefore, in my opinion the contract entered between the parties at the time was a valid contract.
- [26] Whether there was compliance with the contract or the terms of the sale agreement by the Applicant is a separate analysis.

Was there compliance with the agreement

[27] Mr Mafu counsel for the Applicant argued that there was faithful compliance with the Applicants obligations under the sale agreement. He further argued that the purchase price was paid in full. This argument was refuted by Ms Gordon for the First Respondent as she argued that there was no compliance with the terms of the contract inclusive of the purchase price not being paid in full.

[28] The Applicant averred that it had paid the amount of 2 million rands for the property in dispute in full. In this regard the Applicant attached various documentary evidence (annexure C) to serve as proof of payment of the purchase price.

[29] Some of the salient terms of the sale agreement read as follows that:

"1. The purchase price of the properties in the sum of R2 000 000 (two million) payable as follows:

1.1

1.2 The balance of the purchase price in the sum of R 1 600 000,00 (ONE MILLION SIX HUNDRED THOUSAND RANDD) shall be paid by the Purchaser in 12 (twelve) equal monthly instalments each in the sum of R 133 333,33 (ONE HUNDRED AND THIRTY THREE THOUSAND THREE HUNDRED AND THIRTY THREE RAND), which instalments shall commence on the 1st January 2019 and all subsequent instalments shall be made on or before the 1st day of each successive month until the full purchase price has been paid. Pending the registration of the Notarial Deed, the instalments shall be paid into the trust account of the Seller's Attorney and upon the registration of the National Deed any such instalments held by the Seller's Attorney shall be paid by the Seller's Attorney directly to the Seller.

1.3 It is recorded that any monies paid to the seller's attorney cannot be invested in an interest bearing account until the purchaser has complied with the provisions of the Financial Intelligence Centre Act 38 of 2001. Accordingly the purchaser undertakes when called upon to do so to furnish the Seller's attorney with all information required in terms of the Act.

1.4 Once the National Deed has been registered subsequent monthly instalments will be paid into the following bank account-.....

- 2 *Upon payment of the Initial amount of R 400 000,00 possession and occupation of the properties shall pass to the Purchaser. The Seller by its signature hereto hereby authorises and empowers the Purchaser to take whatever steps are necessary to develop the properties purchased into an educational facility, which authority includes, inter alia, eviction of squatters (if applicable), demolition and/or alternation of existing structures, submitting and obtaining approval of building plans for the construction of the building on the properties. The Seller shall when be called upon to do so sign all necessary documents to give effect to this clause.*

- 3 *Attorneys Calteaux and Partners (hereinafter referred to as "the Purchaser's Attorneys) shall upon payment of the initial deposit into the trust account of the Seller's Attorney, attend to the registration of a Notarial Deed against the properties. The Notarial Deed prohibits the Seller to dispose, alienate, further encumber or further mortgage the properties in any way and is a personal servitude in the Purchaser's favour registered against the properties in any way and is a personal servitude in the Purchaser's favour registered against the properties. The Seller shall be responsible for ensuring that the existing mortgage bondholder, if applicable, consents to the registration thereof and when called upon to sign all documents required to register the said Notarial Deed. The Purchaser shall be liable for the costs of registering the Notarial Deed.*

- 4 *The parties record that there is no estate agent's commission payable on this transaction.*

- 5 *Transfer of the properties shall be effected by the Seller's conveyancer, HOWARD S WOOLF, within a reasonable time and all costs incidental to the transfer of the properties including transfer duty, if applicable, shall be payable by the purchaser on demand.*

[30] The contract was concluded on the 13th of November 2018. In terms of clause 1.1 of the agreement, the Applicant was to pay R 400 000.00 within 7 days from the date of conclusion of the agreement. The agreement directed that the said amount be paid to the sellers Attorneys, Woolf Attorneys. The Applicant had to make payment of the R 400 000.00 on or about the 25th of November 2018. This amount was paid timeously that is in accordance with the deposit slips dated the 13th and 14th November 2018 which amounts total the amount of R 400 000.00. Although the Applicants papers are drafted poorly in this regard but there is proof pointing towards the payment of same.

[31] The balance which the Applicant had to pay was the amount of R1.6 million which was the balance of the purchase price. In terms of the sale of agreement, the Applicant was to pay the balance of the purchase price in 12 equal monthly

instalments each in the sum of R 133 333,33. The papers filed by the Applicant are very poor in that this court was not addressed by whom ,where and when various amounts were paid and if indeed they were paid within the 12 months as per the sale of contract agreement.

[32] In my view, clause 1.2 of the contract meant that the said instalments were to be fully paid up within 12 months of 2019. The Applicant has not demonstrated that indeed there was compliance with its obligations timeously and over the period of 12 months. The Applicants first instalment was due on the 1st of January 2019. The only available documentary evidence regard being had to the instalment of January is the letter from the First Respondent's conveyancing attorneys which only confirms payment of the amount of R 1 600.00 being paid on the 11th of January 2019.

[33] This lack of compliance with the 1st of January 2019 instalment is not addressed if at all in the Applicant's papers. It is the Applicant who has attached such documents, attaching documents without properly explaining them in the papers is of no assistance to both litigants and the court. A court cannot be burdened with a duty of figuring out what the attached documents mean or what does it serve to prove without proper averments being made in support thereof. The Applicant bears the onus of proof as he is the party that is alleging full payment so he has to fully prove it. The Applicants papers were badly designed.

[34] This court is then left to speculate that the confirmed payments by Woolf Attorneys correspondence dated the 11th of December 2018 amounting to R 133 333,33 was perhaps the instalment of the 1st of January 2019. However this speculation is thrown off when this court views the attached unexplained cash voucher dated the 11th of January 2019 amounting to R134 933.00. A court cannot be expected to base its decision on pure speculation. Courts are not there to make up cases which are poorly advanced by the parties on paper.

[35] The contract between the parties clearly stipulated that the instalments were due on or before the first day of each successive month. However, the Applicant has attached deposit slips for the following months that is the 5th of February, the 8th

of March, the 7th of May , the 4th of June, the 5^t and 16th of July 2019. These amounts were not paid in line with the sale agreement and there was no explanation proffered to this court why that was so. Further, at all material times when these instalment payments were made by the Applicant the contract remained binding between the parties. Therefore non-compliance with same should have been addressed. These were paid late and lesser then the directed amount.

[36] Other than that, there was no documentary evidence attached by the Applicant pertaining to the following instalments that is the 1st April 2019, 1st of August 2019 and 1st of September 2019, 1st of October, 1st of November and 1st of December 2019. Once again, this court was not addressed on paper why there was no proof attached for these months. It is trite law that a party stands and falls by its own papers². The Applicant has failed to set out it's facts clearly and in a chronological sequence to support its case³. Failure to address the non-payments for these mentioned months demonstrates non-compliance with the obligations of the contract by the Applicant.

[37] Additionally, there was also no explanation why in July 17 , 2019 there were two deposit slips made respectively on 5th and 16th of July 2019 with odd amounts. Yes, when one adds both of them they amount to 133 332.00 but there was no explanation why the amounts were paid after the 1st of July 2019 and in such a manner. This court is stuck in the middle of a chaotic papers. The rule is that the necessary allegations upon which the Applicant relies must appear in his or her affidavit⁴. This is not the case with the Applicants papers.

[38] Even if this court were to ignore all the above issues, if one quantifies “annexure c” which were the alleged proof of payments attached, these do not amount to R 1,6 million which was the balance of the purchase price which the Applicant had to pay. The total paid is R1 223 931.00. This court can therefore not make a conclusion that a full payment of 2 million was made by the Applicant to compel

² Director of Hospitals V Mistry 1979(1) SA 626(A) 635H-636B

³ Rule 6 of the uniform rules of court

⁴ Betlane v Shelly Court CC 2011 (1) SA 388 (CC)

the first Respondent to transfer the said property as there was a clear non-compliance with the agreement.

[39] In my view, the Applicant was very much aware that the amount of 1.6 million as the balance of the purchase price was not paid in full. This conclusion is based on the argument by Mr. Mafu for the Applicant who repeatedly argued that if the amount was not paid in full, they are willing to pay it in full which is in contradiction with the papers filed and the orders sought from this court.

CONCLUSION

[40] Therefore the Applicant has failed to demonstrate that it performed its obligations if at all within the time frame set. Full payment of the balance of the purchase price had to be made by the 1st of December 2019 this was not demonstrated by the Applicant in their papers. Courts not bound to consider arguments made from the bar by Counsel. The Applicant had an obligation under the contract to fulfill which it did not discharge. Wherefore it is impossible for this court to grant the orders sought in terms of the notice of motion.

[41] In addition to that, there were various supplementary which were filed by the Applicant and the Respondent in the matter, I was not addressed by the parties nor did I find any proof of a leave which had been sought before court to supplement these papers, therefore same shall be regarded as *pro-non scripto*.

[42] In conclusion, the following order is made :

1. The Application is dismissed with party and party costs with Counsels fees on scale "B"



**NHARMURAVATE, AJ
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

For the Applicant : Adv M Mafu

Instructed by. : Koena Mpshe Attorneys

For the First Respondent: Adv C Gordon

Instructed by. : MDT Attorneys

Date of Hearing : 04 March 2025

Date of Judgment: 09 May 2025