IN THE HIGH COURT OF SOUTH AFRICA
(WITWATERSRAND LOCAL DIVISION)

Johannesburg

CASE NO: 16789/2004

DATE:07/10/2004

In the matter between:

JACOBS, CHARLES	Applicant
and	
WILLIAMS, ELSIE MARIA MAGDELENA	First Respondent
WILLIAMS, RICHARD ALEXANDER	Second Respondent
BARRUS PROPERTIES CC	Third Respondent
REGISTRAR OF DEEDS, PRETORIA	Fourth Respondent
REGISTRAR OF CLOSE CORPORATIONS	Fifth Respondent

JUDGMENT

WILLIS J:

[1] The applicant approached the court by way of urgency seeking an interdict restraining the first respondent from transferring her member's interest in the third respondent, and selling the assets of the third respondent, restraining the third respondent from selling Portion 1 of erf

125 Randburg ("the property") and certain ancillary relief, pending certain events. Consequent upon certain undertakings given by Deon S. Goldschmidt, the attorney acting for the first, second and third respondents that he would not make payment of any proceeds from the sale of the property, pending the outcome of the application, the sale and transfer of the property were proceeded with and the application was to proceed in the ordinary course. Mr Goldschmidt, it is common cause, acts for the first and second respondents both in this application and also in the matter of the transfer of the property. My sister Snyders J made an order to this effect on 17th August 2004. The applicant has, as a result, sought an amended order that the first and second respondents be interdicted from receiving payment of, securing, transferring, utilising, withdrawing or in any way benefiting from the proceeds of the sale of Portion 1 of Erf 125 Edenburg from the trust account of Deon. S. Golschmidt pending the final winding up of the joint estate of the applicant and the first respondent. During the course of argument the possibility of security being provided in the alternative was debated. This option was agreed to by the applicant.

[2] The applicant and the first respondent had previously been married to each other in community of property. They built up a considerable estate. They were divorced on 11th October, 2002 in this division of the High Court. As part of their divorce settlement, they agreed that their

joint estate be divided jointly between them by a liquidator/ receiver to be appointed by the Chairperson of the Johannesburg Bar Council. Some two years later this has not yet been done.

[3] Prior to the divorce, no fewer than three different interdicts were granted by different judges in this division restraining the first respondent from alienating assets in the joint estate or ordering her to return certain assets. She has unconvincingly denied that she did not comply with these orders. The duly appointed liquidator has alleged that the first respondent has unlawfully disposed of assets subsequent to the divorce and has proven to be singularly uncooperative in the exercise of effecting a division of the joint estate. This has also been unconvincingly denied by the second respondent. A new liquidator, Mr Felix Gaye has been appointed.

[4] It is common cause that, after her divorce from the applicant, the first respondent married the second respondent in community of property. Through the medium of the third respondent, in which they had joint interests, they purchased the property which was at 60 Stighling Road, Edenburg, Sandton.

[5] Relying on the history of this matter and information which he had received that the first and second respondents were about to leave South

Africa for the United States of America, the applicant approached the court as he did, claiming that he feared a dissipation of assets and that, insofar as the division of the joint estate was concerned he would be left remediless. The first and second respondents have emphatically denied that they have any intention of emigrating to America. This denial has to be accepted. Contrary to the allegation that they intend to emigrate to America, they say they intend to settle In Cape Town where they have purchased a home at 21 Upper Paradise Road, Newlands, where they intend to live and conduct their business. This property has been bonded. They say they intend to use the proceeds from the sale of the property forming the subject matter of this dispute in reduction of the bond. They say that the applicant has nothing to fear. If the liquidator finds that the first respondent owes the applicant there will be a secure asset which can be attached. Besides, the applicant is still residing in the former matrimonial home of the applicant and the first respondent which is worth millions. She has a 50% interest in this which, she says, secures any amount which the liquidator may find she owes the applicant. The applicant retorts that she has exaggerated the value of this home and that she unlawful took possession and control of assets in the joint estate worth more than R2 million.

[6] Mr *Segal*, who appears for the first and second respondent, has criticised the applicant's amended form of relief submitting that it is new

relief and impermissible. Given the nature of the settlement concluded between the parties which was reflected in the order of my sister Snyders J, I cannot see how the applicant can be criticised for amending his relief as he has. The relief which is now sought by the applicant is lesser relief than that for which he first approached the court. Mr *Segal*, has also submitted that, as the applicant's allegations that the first and second respondents intended to emigrate to America have been convincingly denied by them, the application must fail. I disagree. The applicant did not rely on these allegations alone.

[7] Counsel for both sides have relied on the well-known case of ***Knox D'Arcy and Others v Jamieson and Others*** 1996 (4) SA 348 (A) in support of their submissions. Mr *Segal* has submitted that the applicant has failed to show that the first respondent has a particular state of mind to get rid of funds, or is likely to do so, with the intention of defeating the claims of the applicant and that there would be no justification to compel the first and second respondents to regulate their *bona fide* expenditure so as to retain funds in their patrimony for the payment of claims (which are disputed) by the applicant (see the ***Knox D'Arcy*** case at 372G-I). Mr *Meyer*, on the other hand, who appears for the applicant, says the history of this matter entirely justifies the relief which his client has sought.

[8] One must look at the full *conspectus* of the facts. The icy-cold, hard, objective and indisputable fact that some two yeas after their divorce, the applicant and the first respondent have not succeeded in dividing their joint estate does, in the words of the cliché, "speak volumes". This is a very unsatisfactory state of affairs-the more so as the first respondent has remarried. The matter must come to finalisation so that the parties can get on with their lives. Then, apart from other facts which I have mentioned, there is the evidence of the liquidator appointed by the chairman of the Johannesburg Bar Council.

[9] In my view, the applicant has established, *prima facie*, that (a) the first respondent is likely to get rid of funds, with the intention of defeating the claims of the applicant and (b) has been acting *mala fide.* He has also established that he has a well-grounded apprehension of irreparable harm if the interim interdict is not granted and he succeeds in establishing that, consequent upon the division of the joint estate, that the first respondent must pay him money. The applicant, by agreeing to accept security which is satisfactory to the liquidator, has established the balance of convenience in his favour. The first and respondents could, for example, pledge some of their evidently very valuable collection of art and other collectables, at minimal inconvenience to themselves, while the joint estate between the applicant and the first respondent is being wound up. In the circumstances, I can

see no other satisfactory remedy available to the applicant. He is therefore entitled to a temporary interdict which will restrain the use of funds owned by the first and second respondents in community of property until they provide security or the joint estate of the applicant and the first respondent is wound up, whichever shall first occur.

[10] The following is made:

(i) The First and Second Respondents are interdicted from receiving payment of, securing, transferring, utilising, withdrawing or in any way benefiting from the proceeds of the sale of Portion 1 of Erf 125 Edenburg from the trust account of Deon. S. Goldschmidt, pending the final winding up of the joint estate of the applicant and the first respondent or the provision of security which in the opinion of the liquidator, Felix Gaye is satisfactory, whichever shall first occur;

(ii) The said proceeds shall be held in trust by Deon S. Goldschmidt pending the events referred to in paragraph (i) above;

(iii) The costs of this application, including the costs of two counsel, are to be paid from the joint estate of the applicant and the first respondent.

DATED AT JOHANNESBURG THIS 7th DAY of OCTOBER, 2004

N.P. WILLIS

JUDGE OF THE HIGH COURT

Counsel for the Applicant: *R. Meyer* SC, with him, *J.M.Heher*

Counsel for the First and Second Respondents: *.M. M. Segal*, with him, *T.Eichner*

Attorneys for the Applicant: MICHAEL PER ATTORNEY

Attorneys for the First and Second Respondents: Deon Goldschmidt

Date of hearing of the application: 23rd September, 2004

Date of judgment: 7th October, 2004