IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NUMBER: 19785/2011

DELETE WHICHEVER IS NOT APPLICABLE

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

In the matter between:

MAHORI, GLADWELL TSAKANE First Appellant

MULEA, CONSTANCE MASHUDU Second Appellant

Versus

THE SHERIFF OF THE HIGH COURT FOR THE DISTRICT OF TEMBISA First Respondent

FIRSTRAND BANK LIMITED Second Respondent

MOKGOSINYANE, ALFRED Third Respondent

NEW AFRICA GATEWAY CHURCH Fourth Respondent

THE REGISTRAR OF DEEDS, PRETORIA Fifth Respondent

MOKGOSINYANE, VIOLET Sixth Respondent

Coram: SATCHWELL ET MAKUME ET WEPENER JJJ

Heard: 11 November 2015

Delivered: 18 November 2015

Summary: Estoppel: the negligent conduct of an owner of property may give rise to a plea of estoppel if, in the event of the loss of such property, the owner's conduct was culpable in creating the impression that the person dealing with the property was authorised to do so. The party relying on estoppel must plead and prove its case to justify reliance on the plea. However, that party's plea, in order to be successful, must be based on his or her own reasonable conduct in forming the impression alleged to be created by the owner of the property.

JUDGMENT

WEPENER J:

[1] The appellants have been granted leave to appeal by the Supreme Court of Appeal against the judgment delivered by Kganyago AJ, which judgment was delivered on 25 April 2013. The appellants were the registered owners of immovable property who were aggrieved that the property was registered in the name of the fourth respondent. The first respondent is the sheriff of the district of Tembisa. The second respondent is Firstrand Bank Limited (the bank), the party who initially obtained a judgment against the appellants, the third and sixth respondents are the parties who sold the immovable property to the fourth respondent and the fifth respondent is the relevant Registrar of Deeds.

[2] Due to the timelines provided for in the Rules, the present appeal had lapsed. The appellants' attorney set out a number of facts that had led to the lapsing of the appeal including the fact that the judgment of the court a quo was, after a search for it eventually found at the Palm Ridge Magistrates Court, where it was apparently delivered. This is by no means the only reason for the delay; there are a number of

administrative mishaps which contributed to the delay of the prosecution of the appeal. There was nothing to gainsay the allegations of the appellants' attorney and counsel for the respondents, at the outset of the hearing, did not pursue this objection.

[3] The fourth respondent spent approximately half of its written argument complaining about the appeal record and related technicalities. Counsel for the respondent was, however, unable to advance persuasive reasons why the fourth respondent was prejudiced especially since the missing pages and documents had been made available to the fourth respondent prior to the hearing of the appeal. That being the case, there is no merit in the complaint and it should not be allowed to derail the hearing of the appeal and counsel for the fourth respondent conceded that the argument on the merits of the appeal should be heard. An order was consequently issued condoning the late prosecution of the appeal as well as the late filing of documents, with no order as to costs in relation thereto.

[4] After obtaining default judgment against the appellants, together with an order declaring the immovable property executable, the bank took no further part in the proceedings which I will refer to below despite having been cited as a party thereto.

[5] Subsequent to the judgment and order, the appellants averred that the judgment was compromised by agreement between the appellants and the bank. The agreement entitled the appellants to pay an amount of R150 000, which would have resulted in both the loan agreement and the mortgage bond agreements between the appellants and the bank being 'reinstated'. The payment was duly made and, despite this, a sale in execution by way of auction was held during August 2010 whereafter immovable property registered in the names of the appellants, was sold.

[6] The version of the appellants regarding the compromise was never disputed by any party because there was no evidence by the bank. The only answering affidavit was filed on behalf of the fourth respondent, a church, who later purchased the immovable property from the third respondent. The result is that the appellants' version of events remained uncontested as the fourth respondent had no knowledge of the facts deposed to by the appellants and was in no position to dispute the facts. In so far as the

appellants' version of the compromise is uncontested, I accept that the agreement, as set out by them, was reached with the bank.

[7] A compromise is an agreement in own right. It is an absolute defence to any action that may be based on the original claim.[1] In *Gollach* it was said:

'It is necessary to consider whether the agreement concluded at the end of the meeting on 20 July 1972, when appellant agreed to pay, and the Group to accept, R10 000 "in full and final settlement..." was a transactio in the sense of that word as used in the Roman-Dutch law and applied in South Africa. In *Cachalia v Herberer & Co., 1905 T.S. 457 at p. 462*, SOLOMON, J., accepted the definition of transactio given by Grotius, Introduction, 3.4.2., as

"an agreement between litigants for the settlement of a matter in dispute".

Voet, 2.15.1., gives a somewhat wider definition which includes settlement of matters in dispute between parties who are not litigants and later, 2.15.10., he includes within the scope of transactio, agreements on doubtful matters arising from the uncertainty of pending conditions "even though no suit is then in being or apprehended". (Gane's trans., vol. 1, p. 452.) The purpose of a transactio is not only to put an end to existing litigation but also to prevent or avoid litigation. This is very clearly stated by Domat, *Civil Law*, vol. 1, para. 1078, in a passage quoted in *Estate Erasmus v Church*, 1927 T.P.D. 20 at p. 24, but which bears repetition:

"A transaction is an agreement between two or more persons, who, for preventing or ending a law suit, adjust their differences by mutual consent, in the manner which they agree on; and which every one of them prefers to the hopes of gaining, joined with the danger of losing."'

[8] In *Georgias and Another v Standard Chartered Finance Zimbabwe Ltd*[2], Gubbay CJ said as follows[3]:

'Compromise, or transactio, is the settlement by agreement of disputed obligations, or of a lawsuit the issue of which is uncertain. The parties agree to regulate their intention in a particular way, each receding from his previous position and conceding something - either diminishing his claim or increasing his liability. See *Cachalia v Harberer & Co* 1905 TS 457 at 462 in fine; *Tauber v Von Abo* 1984 (4) SA 482 (E) at 485G - I; *Karson v Minister of Public Works* 1996 (1) SA 887 (E) at 893F - G. The purpose of compromise is to end doubt and to avoid the inconvenience and risk inherent in resorting to the methods of resolving disputes. Its

[1] See *Gollach & Gomperts (1967) (Pty) Ltd v Universal Mills and Produce Co (Pty) Ltd and Others* 1978 (1) SA 914 (A) at 921A-D.
[2] 2000 (1) SA 126 (ZS).
[3] At 138I- 139C.

effect is the same as res judicata on a judgment given by consent. It extinguishes ipso jure any cause of action that previously may have existed between the parties, unless the right to rely thereon was reserved. See *Nagar v Nagar* 1982 (2) SA 263 (ZH) at 268E - H. As it brings legal proceedings already instituted to an end, a party sued on a compromise is not entitled to raise defences to the original cause of action. See *Hamilton v Van Zyl* 1983 (4) SA 379 (E) at 383H. But a compromise induced by fraud, duress, justus error, misrepresentation, or some other ground for rescission, is voidable at the instance of the aggrieved party, even if made an order of court. See *Gollach & Gomperts (1967) (Pty) Ltd v Universal Mills & Produce Co (Pty) Ltd and Others* 1978 (1) SA 914 (A) at 922H.'

[9] There is no evidence that the bank reserved the right to rely on the original cause of action. Any action by the bank after the compromise could and should have been taken pursuant to the terms of the compromise. However, no such action was ever taken or is alleged to have been taken by the bank.

[10] Despite this, a sale of execution by way of auction was proceeded with whilst not being based on any new judgment or order pursuant to the compromise but ostensibly, still based on the original judgment. I am of the view that on this basis alone the appellants are entitled to be declared to have remained the registered owners of the immovable property as there was no basis to hold a sale in execution.

[11] The appellants attended the auction in August 2010 where the successful bidder was one Vilakasi. The auction was completed and after some discussion between the auctioneer and Vilakasi the latter had left without having secured the mandatory deposit. The appellants later discovered that the immovable property was not purchased by Vilakasi nor was a re-auction held but rather it was sold to the third respondent at a much lower amount than the bid of Vilakasi. As a result of these facts, the appellants launched an application to court to have the sale to the third respondent set aside. It was at this time that the bank advised the appellants that the application need not be proceeded with as it would see to it that the sale to the third respondent was cancelled. Notwithstanding this undertaking, the property was transferred to the third respondent, who, in turn, concluded a written deed of sale with the fourth respondent. As a consequence of these events, the appellants launched a further

application to court to have the transfer of the property to the third respondent, and the sale by the third respondent to the fourth respondent, set aside. Spilg J issued an order setting aside both the transfer of the property to the third respondent as well as the sale by the latter to the fourth respondent. The effect of the order was that the appellants would have been restored as the registered owners of the immovable property, had the order of Spilg J been implemented.

[12] Despite the aforegoing facts, which are not in dispute, the property was transferred from the third respondent to the fourth respondent. Regarding this latter event, the fourth respondent sets out facts to show how it acquired the property from the third respondent for a second time with the assistance of an agent.

[13] From the onset, the property was registered in the names of the appellants. They had the real right therein[4], which could only be diminished by lawful conduct. There is no explanation how the immovable property came to be registered in the name of the third respondent. Neither the bank nor the third respondent filed affidavits to explain how the transfer to the third respondent occurred or by what authority it occurred. In the absence of any evidence of how the third respondent could lawfully have become the registered owner of the property in the face of the evidence of the appellants, the only conclusion that can be reached is that the appellants were unlawfully deprived of their ownership. It matters not that the third respondent thereafter transferred the property to the fourth respondent – the latter who may have been bona fide in its acquisition of the property although there is also a dispute about that fact. The third respondent obtained no lawful rights of ownership. He could pass nothing to the fourth respondent. In *Menqa and Another v Markom and Others*[5] it was said[6]:

'As regards the question of the implications of these findings for a bona fide purchaser of property pursuant to such an invalid sale in execution, the court in *Schloss* emphasised that any exercise of public power has to be carried out in terms of a valid rule of law. The court approved of the finding of McCall AJ in *Joosub* to the effect that, where there was no sale in execution or where the sale in execution which purported to have taken place was a nullity, then it could not

[4] *ABSA Bank Limited v Keet* 2015 (4) SA 474 (SCA).
[5] 2008 (2) SA 120 (SCA).
[6] At para 19.

have served to pass any title to the property concerned to the purchaser or to any successor-in-title into whose name the property was subsequently transferred: "The plaintiff [the judgment debtor], as owner of the property, would be entitled to recover the [property] by way of a rei vindicatio."'

[14] In *Knox NO v Mofokeng and Others*[7] *it was* said[8]:

'[27] It is evident from the facts in the present matter that the property fell within the estate of the late SM Knox and that the sale in execution took place in contravention of s 30 of the Administration of Estates Act. It is evident that the sheriff (being the person charged with the execution of the writ) could have known of the death of the late Mrs SM Knox, as the applicant was cited in the summons in his capacity as executor of the estate of the late SM Knox. In any event, there was no denial of the applicant's allegation in the founding affidavit that the sale in execution constituted a contravention of s 30 of the Administration of Estates Act. It follows that the sale in execution of the property constituted a nullity and that the sheriff had no authority to enter into the real agreement for the transfer of the property to the second respondent pursuant to the purported sale in execution of the property. Since the transfer of the property to the second respondent was invalid, the subsequent sale and transfer of the property by the second respondent to the first respondent was also invalid, because the second respondent was not the owner of the property. The principle, that no one can transfer more rights to another than he himself has, applies to the real agreement in respect of the second sale as well. See eg *Oriental Products (Pty) Ltd v Pegma 178 Investments Trading CC and Others* 2011 (2) SA 508 (SCA) in para 26, where Harms DP found that the old adage *nemo plus iuris ad alium transferre potest quam ipse haberet* applies to such a situation.

[28] I am accordingly of the view that the applicant is in principle entitled to claim vindication of the property. In *Joosub v JI Case SA (Pty) Ltd (now known as Construction & Special Equipment Co (Pty) Ltd) and Others* 1992 (2) SA 665 (N) at 680G – H and 681H, the court found, after considering the relevant Roman-Dutch texts, that it was not clear whether the common-law remedy of the owner was the rei vindicatio or restitutio in integrum, and whether the owner was obliged to restore the price to the purchaser, or was obliged to do so only if the latter could not recover it from the seller. In that matter the issues were decided on exception and the court found it unnecessary to decide the issue.'

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[7] 2013 (4) SA 46 (GSJ).
[8] At paras 27 -28.

[15] No person may be deprived of his or her property unless by lawful means. The original judgment and order, having been compromised, there was no basis for the transfer of the property to any other person, least of all the third respondent who's 'ownership' remains unexplained. On the papers before the court, the third respondent had no lawful title to the immovable property and the fourth respondent, similarly, could not obtain lawful title from the third respondent and the appellants were entitled to have the register restored to reflect them as the lawful registered owners of the immovable property.

[16] There is a further issue that needs to be dealt with. When Spilg J issued the order referred to above, the sixth respondent (the wife of the third respondent) was not a party to the application and order. However, subsequent to the issue of the application in this matter, the issue of the sixth respondent's non-joinder (as co-seller with the third respondent) was raised. She was joined as a party and was served with the papers. The sixth respondent, like the third respondent, knowing what relief was sought by the appellants, took no part in the proceedings and did not claim any right as part owner and co-seller of the property. On the papers before the court the sixth respondent was in the exact same position as her spouse, the third respondent and it is not surprising that she did not enter into the fray. She was well aware of the order given by Spilg J that set aside the sale and transfer to her husband as well as the sale to the fourth respondent and she did not claim any right or interest in the matter and must be taken as having no defence to the appellants' claim.

[17] The fourth respondent appears to accept the facts up to this point but advanced on appeal, that the appellants are estopped from claiming ownership of the property due to the alleged inaction of the appellants to have the property re-transferred into their name or to have an interdict registered in the deeds office after they learnt that the property was unlawfully registered in the name of the third respondent. In this regard, the fourth respondent, relying on *Oriental Products (Pty) Ltd*[9], submitted that the appellants were estopped from claiming ownership due to their negligence.

[9] *Oriental Products (Pty) Ltd v Pegma 178 Investments Trading CC and Others* 2011 (2) SA 508 (SCA).

[18] The only defence relied upon by the fourth respondent during submissions before us, was narrowed down to the submission that the appellants were estopped from asserting their ownership due to their negligence in failing to obtain or register a caveat in the deeds office, which would have prevented a transfer of the property to the fourth respondent. In order to succeed in a plea that the appellants should be denied the right to assert ownership of the immovable property, due to them representing a different factual state of affairs, the fourth respondent bore the onus to satisfy the court that the appellants were negligent in their conduct[10].

[19] Regarding estoppel by representation Corbett JA said in *Aris Enterprises (Finance) v Protea Assurance Company Limited*[11]:

'The essence of the doctrine of estoppel by representation is that a person is precluded, ie estopped, from denying the truth of a representation previously made by him to another person if the latter, believing in the truth of the representation, acted thereon to his prejudice (see Joubert *The Law of South Africa* vol 9 para 367 and the authorities there cited). The representation may be made in words, ie expressly, or it may be made by conduct, including silence or inaction, ie tacitly (ibid para 371); and in general it must relate to an existing fact (ibid para 372).'

[20] In *South African Broadcasting Corporation v Coop and Others*[12] , Navsa JA said as follows[13]:

'[64] The essentials of estoppel can briefly be stated as follows: The person relying on estoppel will have to show that he or she was misled by the person whom it is sought to hold liable as principal to believe that the person who acted on the latter's behalf had authority to conclude the act, that the belief was reasonable and that the representee acted on that belief to his or her prejudice.

[10] *Bester NO and Others v Schmidt Bou Ontwikkelings CC* 2013 (1) SA 125 (SCA) at para 17, *Oriental Products* at para 19.
[11] 1981 (3) SA 274 (A) at 291D.
[12] 2006 (2) SA 217 (SCA).
[13] At paras 64-66.

[65] The distinction between actual and ostensible authority was explained by Denning MR in *Hely-Hutchinson v Brayhead Ltd and Another* [1968] 1 QB 549 (CA) at 583A - G ([1967] 3 All ER 98) at 102A - E (All ER):

"(A)ctual authority may be express or implied. It is express when it is given by express words, such as when a board of directors pass a resolution which authorises two of their number to sign cheques. It is implied when it is inferred from the conduct of the parties and the circumstances of the case, such as when the board of directors appoint one of their number to be managing director. They thereby impliedly authorise him to do all such things as fall within the usual scope of that office. Actual authority, express or implied, is binding as between the company and the agent, and also as between the company and others, whether they are within the company or outside it.

Ostensible or apparent authority is the authority of an agent as it appears to others. It often coincides with actual authority. Thus, when the board appoint one of their number to be managing director, they invest him not only with implied authority, but also with ostensible authority to do all such things as fall within the scope of that office. Other people who see him acting as managing director are entitled to assume that he has the usual authority of a managing director. But sometimes ostensible authority exceeds actual authority. For instance, when the board appoint the managing director, they may expressly limit his authority by saying he is not to order goods worth more than £500 without the sanction of the board. In that case his actual authority is subject to the £500 limitation, but his ostensible authority includes all the usual authority of a managing director. The company is bound by his ostensible authority in his dealings with those who do not know of the limitation. He may himself do the ''holding-out''. Thus, if he orders goods worth £1 000 and signs himself ''Managing Director for and on behalf of the company'', the company is bound to the other party who does not know of the £500 limitation. . . ."

[66] In *NBS Bank Ltd v Cape Produce Co (Pty) Ltd and Others* 2002 (1) SA 396 (SCA) this Court, in applying that dictum, stated (in para [25]):

"As Denning MR points out, ostensible authority flows from the appearances of authority created by the principal. Actual authority may be important, as it is in this case, in sketching the framework of the image presented, but the overall impression received by the viewer from the principal may be much more detailed. Our law has borrowed an expression, estoppel, to describe a situation where a representor may be held accountable when he has created an

impression in another's mind, even though he may not have intended to do so and even though the impression is in fact wrong. . . . But the law stresses that the appearance, the representation, must have been created by the principal himself. The fact that another holds himself out as his agent cannot, of itself, impose liability on him. Thus, to take this case, the fact that Assante held himself out as authorised to act as he did is by the way. What Cape Produce must establish is that the NBS created the impression that he was entitled to do so on its behalf. This was much stressed in argument, and rightly so. And it is not enough that an impression was in fact created as a result of the representation. It is also necessary that the representee should have acted reasonably in forming that impression: *Connock's (SA) Motor Co Ltd v Sentraal Westelike Ko-operatiewe Maatskappy Bpk* 1964 (2) SA 47 (T) at 50A - D. Although an intention to mislead is not a requirement of estoppel, where such an intention is lacking and a course of conduct is relied on as constituting the representation, the conduct must be of such a kind as could reasonably have been expected by the person responsible for it, to mislead. Regard is had to the position in which he is placed and the knowledge he possesses.'" (own emphasis)

[21] In *Bester NO and Others*[14]*,* Brand JA said[15]:

'Broadly stated, the concept of estoppel, borrowed from English law as applied by our courts, amounts to this: when a person (the representor) has by words or conduct made a representation to another (the representee) and the latter acted upon the representation to his or her detriment, the representor is estopped, that is precluded, from denying the truth of the representation (see eg *Union Government v Vianini Ferro-Concrete Pipes (Pty) Ltd* 1941 AD 43 at 49). As the party who raised the defence of estoppel, Absa therefore bore the onus to allege and prove a misrepresentation by Schmidt Bou upon which Absa relied and which reliance was the cause of it acting to its detriment (see eg *Oriental Products (Pty) Ltd v Pegma 178 Investments Trading CC and Others* 2011 (2) SA 508 (SCA) para 19).'

[22] In the *Oriental Products* matter it was held[16] that:

'. . . The possessor raising estoppel must prove that:

(a) there was a representation by the owner, by conduct or otherwise, that the person who disposed of his property was the owner or was entitled to dispose of it;

[14] Note 10 supra.
[15] At para 17.
[16] At para 19.

(b) the representation must have been made negligently in the circumstances;

(c) the representation must have been relied upon by the person raising the estoppel; and

(d) such person's reliance upon the representation must be the cause of his detriment.'

[23] In the matter under consideration, the fourth respondent failed to prove the factors referred in *Oriental Products*. No representations were made by the owner or on behalf of the owner to it. Having obtained an order directing the first, second and third respondents to correct the register, the appellants had secured their rights. They had the comfort that the court ordered those parties who caused them harm to do take the necessary steps to correct the register. They cannot be said to have been negligent as the duty to ensure the correction of the register was upon those respondents.

[24] The court a quo held:

'Under the circumstances the court finds that the respondents bought the property based on the for sale notice and assurance given by the estate agents'.

[25] Neither the erection of the 'for sale' sign on the property, nor the assurance given by the estate agents can be laid at the feet of the appellants. On the contrary, when the appellants became aware of this 'for sale' sign on the property they caused it to be removed. It is not in dispute that the appellants knew nothing of the conduct of the estate agent.

[26] In these circumstances, I am of the view that the court a quo erred in holding that the appellants were negligent in not bringing the court order to the attention of the fifth respondent, the Registrar of Deeds. The duty to correct the registers with the fifth respondent was placed upon the first, second and third respondents, who failed to do so.

[27] The first important issue that distinguishes the present matter from the cases referred to above is that the fourth respondent never had any dealings whatsoever with either of the appellants or even the third respondent. The fourth respondent exclusively relied upon representations made by an agent unknown to the appellants. It is not in dispute that the agent had no authority to act on behalf of the appellants and reliance on

representations made by the agent cannot bind the appellants. Reliance on the doctrine of estoppel in such circumstances would, in my view, be misplaced.

[28] The fourth respondent averred that the appellants are estopped from asserting their right of ownership due to their failure to take steps to register an interdict in order to avoid the transfer to the fourth respondent. There is nothing on the papers to show what effect this interdict would have had, if any. However, the appellants launched an urgent application in 2010. At that time the appellants obtained an undertaking from the attorney, acting for the third and fourth respondents, that the transfer from the third respondent to the fourth respondent would not take place. Thereafter, the appellants brought another a substantive application during 2011 when an order was issued by Spilg J which order came to the knowledge of to the fourth respondent. The order reads as follows:

‘1. The sale in execution, held on 11 August 2011, by the first respondent to the third respondent, of the property described as Portion 51 (Remaining Extent) of the farm 401 Olifantsfontein Township, Registration Division J.R., Province of Gauteng, situated at 51 Olifantsfontein Road, Olifantsfontein (‘the property”), is set aside.

2. The transfer of the property into the name of the third respondent pursuant to the sale referred to in paragraph 1, is set aside.

3. The sale of the property by the third respondent to the fourth respondent on 28 March 2011, is set aside.

4. The fifth respondent shall do all things and take all steps as may be necessary to give effect to the provisions of paragraph 2 above.

5. The first, second and third respondents, shall do all such things, take all such steps and sign all documents as may be necessary to give effect to the provisions of paragraph 1 to 3 above, in the event that any such respondent fails to do so, then the Sheriff of this Court, shall do all such things, take all such steps, and sign all such documents, in the place and stead of any such respondent.

6. The first, second and third respondents shall pay the costs of this application, jointly and severally.

7. The applicants are to forward the papers in this application to the National Prosecuting Authority (the "NPA") and the NPA is requested to consider the need for investigation.'

[29] Significantly, the duty to give effect to the cancellation of the transfer to the third respondent was placed on the first, second and third respondents who were, according to the papers, the cause of the unlawful transfer to the third respondent in the first place. There was nothing for the appellants to do at the time. In addition, the court order, which effectively cancelled the transfer of the immovable property to the third respondent, came to the knowledge of the fourth respondent who received its purchase price back. The fourth respondent accordingly knew full well that the third respondent had no title to the property and could not sell the property to it. Despite this, and relying exclusively on the word of an agent who failed to place an affidavit before the court to explain his actions, the fourth respondent again entered into an agreement of sale with the third respondent. The contention that the appellants were negligent in not obtaining an interdict against the title deed is rather far-fetched having regard to the knowledge of the fourth respondent who, despite that knowledge, again entered into an agreement with the third respondent. Red flags should have been raised with the fourth respondent, if regard is had to paragraph seven of the order of Spilg J. In addition, there is a great deal of correspondence in which the fourth respondent attempted to negotiate the purchase of the property from the appellants prior to the fourth respondent entering into the second purchase agreement with the third respondent. Despite this, the fourth respondent signed an agreement with the third respondent to acquire the property. It lies not in the mouth of the fourth respondent to argue that the appellants were negligent vis-à-vis the fourth respondent if regard is had to the direct knowledge of the fourth respondent of the true facts. It cannot be said that the fourth respondent acted reasonably in forming the impression that the third respondent was entitled to sell the property having regard to its knowledge of the true facts[17].

[30] Having received the knowledge that the court had set aside the transfer to the third respondent, as well as the subsequent sale to the fourth respondent, the latter had

[17] *Connock's (SA) Motor Co Ltd v Sentraal Westelike Ko-operatiewe Maatskappy Bpk* 1964 (2) SA 47 (T) at 50A -51A; *South African Broadcasting Corporation* supra at para 19.

ample reason to suspect that the third respondent had no title to the property[18]. Although the fourth respondent relied on the judgment of the *Oriental Products* case in order to justify its submission regarding negligence, the *Oriental Products* case, in my view, is distinguishable from this matter in a number of ways, not least of all the fact that the registered owner in the *Oriental Products* case did nothing intervene when it learnt that the property had been registered in the name of a new registered owner. In the present matter the appellants approached the court twice and obtained an order to rectify the unlawful transfer and an attorney gave the undertaking that it would be done.

[31] It is significant that the fourth respondent's assertion of negligence on the part of the appellants is, in the main, premised on the failure of the appellants to obtain an interdict against the title deed. This failure was not the cause of the fourth respondent's entering into a second agreement of sale with the third respondent as the fourth respondent relied wholly on representations made the agent who misled the fourth respondent. The fourth respondent does not allege that it inspected the title deed at the deeds office and relied on its contents. Any negligence of the appellants, if there was such negligence, is wholly unconnected to the manner in which the fourth respondent acquired the immovable property.

[32] Due to the conclusion reached by the court a quo, it did not deal with the relief sought by the appellants that the third and fourth respondents be found in contempt of the court order of Splig J. However, the appellants did not pursue that relief on appeal and I need not say anything further about it.

[33] In the circumstances, I propose, that the appeal succeeds with costs and that the order of the court below, dismissing the application with costs be set aside, and the following order be substituted therefor:

1. The registration of the property described as Portion 51 (Remaining Extent) of the Farm 410 Olifantsfontein Township, Registration Division J.R. Province of Gauteng, situated at 51 Olifantsfontein Road, Olifantsfontein ('the property') into the fourth respondent's name on 27 March 2012, is set aside.

[18] See *Oriental Products* at para 28.

2. The property shall be registered in the names of the first and second appellants.

3. Without limiting the right of the appellants to do so, the Sheriff shall do all things and take steps as may be necessary to give effect to the provisions of para 1 and 2 above and is authorised to sign all documents required to give effect to this.

4. The fifth respondent shall do all things and take all steps as may be necessary to give effect to the provisions of para 1 and 2 above.

5. The second, third and fourth respondents are ordered to pay the costs of the application, jointly and severally, the one paying and the other to be absolved, including the costs which were reserved on 30 January 2013.

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W.L. Wepener

I agree. It is so ordered.

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K. Satchwell

I agree.

_____

M. Makume

Counsel for Appellants: N. Alli

Attorneys for Appellants: Stan Fanaroff and Associates

Counsel for the Respondents: C.J. Mouton

Attorneys for the Respondents: Michael Krawitz and Co.