

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: B40218/2022

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

Date: 30 October 2023

E van der Schyff

In the matter between:

JONICA MITCHELL

APPLICANT

and

JOHANNA CATHARINA BASSON N.O.

FIRST RESPONDENT

CHRISTIEN LEONIE L LE ROUX N.O.

SECOND RESPONDENT

DIONA GERMISHUYS N.O.

THIRD RESPONDENT

(In their capacities as the trustees of the
Armandt & Jonica Basson Trust)

JOHANNA CATHARINA BASSON

FOURTH RESPONDENT

ARMANDT LOUIS BASSON

FIFTH RESPONDENT

JOHANNA CATHARINA BASSON N.O.

SIXTH RESPONDENT

CHARLES KENDAL N.O.

SEVENTH RESPONDENT

ANTHONY NEVILLE JONES N.O.

EIGHTH RESPONDENT

(In their capacities as the trustees of the Eagle Business Trust)

Van der Schyff J

Introduction

- [1] In this application, the applicant primarily seeks interdictory relief in the form of an anti-dissipation interdict to safeguard the proceeds of the sale of property (the VC property) and an order prohibiting the sale of an immovable property known as 51 Southdowns Avenue, Southdowns, Centurion (the Southdowns Property) where the applicant currently resides, pending the finalisation of litigation already instituted under case number 31133/2022, alternatively an action to be instituted by the applicant within 30 days from the date of the order, pertaining to the applicant's loan account with the Armandt & Jonica Basson Trust (the AJB Trust).

Anti-dissipation relief sought

- [2] In seeking an order that the first, second, and third respondents pay the proceeds from the sale of the property known as 4[...] V[...] Crescent, Highveld, Centurion, into the transferring attorney's trust account pending the finalisation of the dispute already instituted by the applicant under case number 31133/2022, alternatively, an action to be instituted by the applicant pertaining to the applicant's loan account with the AJB Trust within 30 days from the date of the order, the applicant is essentially seeking an anti-dissipation order. This issue, however, became moot since the respondents had already instructed the transferring attorney to invest the proceeds of the sale in an interest-bearing trust account pending the outcome of an action to be instituted by the applicant.
- [3] During the proceedings, the applicant submitted that the proceeds must be held in trust pending the outcome of the litigation already instituted under case number 31133/2022. To provide clarity in this regard, the agreement already reached between the parties that the proceeds of the property be kept in trust by the

transferring attorney will be solidified in a court order, with the proviso that this is interim relief pending the outcome of either the action already instituted under case number 31133/2022 or the outcome of an action to be instituted by the applicant pertaining to the applicant's loan account with the AJB Trust, whichever action is finalised first.

Interim interdict prohibiting the sale of the immovable property known as 51 Southdowns Avenue, Southdowns, Centurion

- [4] The applicant claims that she had an agreement with the Trustees of the AJB Trust that she could occupy the Valley Crescent property without paying rent but paying the rates and taxes. She claims she was requested to vacate the property but offered the Southdowns property on the same terms. In the answering affidavit, the respondents admit that the applicant was afforded an opportunity to move into the Southdowns property during 2020 and that she undertook to pay the expenses in relation to the property similarly to the arrangement in respect of the Valley Crescent property.
- [5] Having regarded the averments, or lack thereof, in the answering affidavit explaining the origin and nature of the applicant's right to occupy the property, the fact that the applicant's occupation will ostensibly not be protected by the huur-gaat-voor-koop rule if the property is indeed sold, the pending litigation between the parties, and the requirements for providing an interim interdict, I am of the view that the applicant made out a case for interim protection.
- [6] In the circumstances, it is not sufficient for the respondents to merely state that it is within the trustees' discretion to determine whether the applicant will benefit from the trust if the *status quo* reveals that the applicant and her family were granted the right to occupy first the Valley Crescent property and after that the Southdowns property. The terms of the agreement between the parties and the origin of the right to occupy are some of the issues that lie at the root of the pending litigation.

- [7] The applicant made out a case that she has a *prima facie* right to occupy the property, that there is a well-grounded apprehension that she will suffer irreparable harm if the interim relief is not granted, that she has no other satisfactory remedy and that the balance of convenience favours the grant of an interim interdict.¹
- [8] The apprehension of irreparable harm that the applicant may suffer if this interim interdict is not granted and the pending litigation decided in her favour, exceeds mere financial loss and comprises, amongst others, the inconvenience and trauma associated with relocating one's family to a new home. The respondents, on the other hand, still hold the property as an asset. In the current circumstances, the value of immovable property is unlikely to decrease substantially over a short period of time.

Costs of the urgent court application

- [9] The relief sought in the urgent court is, for the most significant part, similar to what is sought in this application. Because the relief sought is interim, pending the finalisation of future litigation between the parties, I am of the view that the trial court finally deciding the issues between the parties will be in the best position to determine which party must carry the costs of both the urgent court application and this application.

ORDER

In the result, the following order is granted:

1. The proceeds from the sale of the immovable property known as 4[...] V[...] Crescent, Highveld, Centurion, are to be kept in an interest-bearing trust account by the transferring attorney, pending the outcome of the action instituted under case number 31133/2022 or the outcome of an action to be instituted by the applicant pertaining to the applicant's loan account with the Armandt and Jonica Basson Trust, whichever action is finalised first;

¹ *Reckitt & Colman SA (Pty) Ltd v SC Johnson & son (SA) (Pty) Ltd* 1995 (1) SA 725 (T) 729I-730G.

2. The Armandt & Jonica Basson Trust is interdicted from selling the immovable property known as 51 Southdowns Avenue, Southdowns, Centurion, pending the finalisation of the pending litigation under case number 31133/2022, unless the parties consensually agree otherwise;
3. All costs, inclusive of the costs of the urgent application, are reserved to be finally determined by the trial court dealing with the action under case number 31133/2022.

E van der Schyff
Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be emailed to the parties/their legal representatives.

For the applicant:	Adv. J. Vorster
Instructed by:	MD Mitchell Attorneys
For the first to fifth respondents:	Adv. A.A. Basson
Instructed by:	Delberg Attorneys
Date of the hearing:	11 October 2023
Date of judgment:	30 October 2023