IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO.: 2024-105894
(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED.
06/06/2025

In the matter between:

POISONWOOD INVESTMENTS (PTY) LTD	Applicant
and	
MEYER VAN DER WALT INCORPORATED	First Respondent
DEON MARIUS BOTHA N.O.	Second Respondent
JACOLIEN FRIEDA BARNARD N.O.	Third Respondent
LOUISE SIBIYA N.O.	Fourth Respondent

In their capacities as the appointed joint provisional liquidators of Silver Solutions 1206 CC with registration number 2005/081258/23 (in liquidation) with Master reference M000031/24

JUDGMENT

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van der Westhuizen, J

[1] In this application the applicant sought an order that:

(a) it be declared that the funds currently held in trust by the first respondent do not constitute an asset, and/or vest in the insolvent estate of Silver Solutions 1206 CC with registration number 2005/0815894/23 (in liquidation);

(b) the applicant is entitled to claim payment of the funds referred to above;

(c) the transfer attorneys (First respondent) be authorised to release the funds currently retained by them in trust to the applicant.

[2] The amounts that the applicant sought to have paid over to it, amounting to R778 655.50 and R2 195 000.00, were held in trust.

[3] It was contended by second, third and fourth respondents, being the provisional appointed liquidators, that the amounts the applicant sought to be paid out, were monies which arose from a loan advanced to Silver Solutions and hence that those funds remained vested in the insolvent estate of Silver Solutions. It was further contended by the provisional liquidators that the applicant therefor was obliged to lodge a claim against the insolvent estate.

[4] The applicant alleged that a contractual relationship existed between it and Silver Solutions in terms of which the applicant effected payment of Silver Solutions' invoices for the construction of residential units within the De Velde development, which was situated on property belonging to the applicant. The invoices related to the said construction of the units which third parties purchased. It was a further term of that contractual relationship that Silver Solutions would authorise the first respondent, the attorneys who would attend to the transfer of the units to the third parties, to transfer the proceeds of the building contracts to the applicant. Silver Solutions agreed to that term,

and had in fact authorised the first respondent to transfer such proceeds accordingly. The first respondent had in the past acceded to that authorisation and transferred funds paid into their trust account by third parties for the benefit of the applicant, to the applicant.

[5] After Silver Solutions was provisionally liquidated during June 2024, the provisional liquidators adopted the stance that the applicant was not entitled to those funds that were at that time held in trust by the first respondent and, which were earmarked for the applicant.

[6] Various correspondences were exchanged relating to the payment of the said funds. However, on 13 September 2024 the provisional liquidators demanded that the first respondent pay over those funds to them for the benefit of the insolvent estate.

[7] The issue to be determined by this court relates to the question whether the said funds vest in the applicant or in the insolvent estate of Silver Solutions. In this regard the following is to be noted.

[8] It was not disputed that all the invoices in respect of the construction costs of Silver Solutions were paid in full by the applicant to Silver Solutions. It was further not disputed that Silver Solutions previously instructed the first respondent to transfer any amount of proceeds paid into the first respondent's trust account for the benefit of the applicant, by third parties in respect of the De Velde development. The provisional liquidators did not dispute that the third parties did not pay the proceeds relating to their units in the De Velde development directly to Silver Solutions. All such proceeds were always paid directly into the trust account of the first respondent for the benefit of the applicant. The construction/building agreements between Siver Solutions and third parties, the purchasers of the units to be constructed, did not provide for any payment to Silver Solutions.

[9] Furthermore, it was not denied by the provisional liquidators that Remax Legacy marketed the units on the applicant's behalf. It would thus follow that the units were sold by the applicant, or on its behalf by Remax Legacy.

[10] In a letter dated 5 September 2024 addressed to the provisional liquidators by the first respondent, the second to fourth liquidators were advised that:

(a) Silver Solutions did not appoint the first respondent as it was appointed by the applicant to attend to the transfer of the units of the De Velde development and to receive the proceeds in respect of the sale of the said units and to pay such proceeds to the applicant;

(b) The first respondent was repeatedly advised by the applicant that Silver Solutions were fully reimbursed for its construction-related expenses and consequently, that the entire amount of proceeds so received, befell the applicant;

(c) It was further pointed out to the provisional liquidators that the applicant was the primary beneficiary of the transactions.

[11] The second to fourth respondents replied curtly to the aforementioned letter that they demanded the first respondent to deposit all amounts paid to them and held in trust, in terms of the agreements between the third parties and Silver Solutions, into the bank accounts of the insolvent estate.

[12] The premise upon which the second to fourth respondents relied for their aforementioned demand, related to their contention expressed in a letter dated 211 August 2024 where they stated that the said funds were held for the benefit of Silver Solutions as proceeds of a property sold by it. It was further contended on behalf of Silver Solutions that the applicant had financed Silver Solutions initially in terms of a written loan agreement which was later replaced by an oral agreement. Neither of the two agreements were produced and it was never disputed that Silver Solutions were paid in full for their expenses relating to the De Velde development. Furthermore, on a previous

occasion the member of Silver Solutions admitted on oath that no monies were lent and/or advanced to Silver Solutions in terms of an alleged loan agreement.

[13] The said member of the CC further confirmed that he had instructed the first respondent to pay over to the applicant the proceeds of the alleged sale of property "*as repayment of the loan."* That very statement was in direct conflict with the second to fourth respondents' allegation in the answering affidavit that the resolution adopted by Silver Solutions was "*falsified".* The aforementioned statement by the member of Silver Solutions confirms the allegations by the applicant and the first respondent that Siver Solutions gave an instruction that the funds held in trust were for the benefit of the applicant.

[14] A further important issue that gainsays the allegation of a loan to Silver Solutions was the fact that the latter levied VAT on its invoices rendered to the applicant in respect of its construction expenses, which if it was repayment of a loan, would not attract VAT. The second to fourth respondents did not dispute the levying of VAT on the said invoices.

[15] The second to fourth respondents in their answering affidavit bemoaned the fact that the applicant sought final relief in motion proceedings whilst there existed a genuine factual dispute on the papers. The alleged factual dispute related to the nature of the relationship between Silver Solutions and the applicant. On the one hand the applicant alleged a mere contractual relationship for the development of the De Velde project, and on the other hand the second to fourth respondents alleged a loan agreement.

[16] There is no merit in the alleged factual dispute.[1] The alleged dispute can readily be resolved on the papers filed. In view of what is recorded earlier, no proof was provided to support the alleged loan agreement. Furthermore, the undisputed facts recorded earlier pointing to a relationship of contractor and employer clearly gainsays the said allegation. In particular, it was not disputed

[1] See *Wightman t/a JW Construction v Headfour (Pty) Ltd et al* 2008(3) SA 371 (SCA); see also *Plascon-Evans Paint Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 SA(3) SA 523 (A)

that Remax Legacy marketed the units and sold them on behalf of the applicant, the latter being the owner of the property on which the development was undertaken. The purchasers of the units were to pay the proceeds into trust with the first respondent, who was appointed by the applicant to attend to the transfer of the sold units, for the primary benefit of the applicant.

[17] It follows that the second to fourth respondents failed to prove that the funds held in trust were so held for the benefit of Silver Solutions and hence accrued to the insolvent estate.

[18] The applicant sought *inter alia* declaratory orders. In terms of the provisions of section 21(1)(c) of the Superior Act, 10 of 2013, this court has the power:

> *"to in its discretion, and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination."*

[19] The determination of an application for a declaratory order requires a two-stage enquiry.[2] Firstly, the enquiry is to determine whether the person has an interest in and existing, future or contingent right, and, secondly, should the court be satisfied that such an interest exists, it is to be considered whether to grant such order.

[20] In view of all the foregoing, the applicant has a clear and enforceable interest in and to the funds held in trust by the first respondent. Consequently, the applicant is entitled to the declaratory relief it sought as well as the consequential relief following on the declaratory relief.

[21] There remains the issue of costs. In its notice of motion, the applicant sought cost only in the event of opposition. From the foregoing it is clear that the second to fourth respondents' opposition was frivolous. No substantive

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[2] *Cordiant Trading CC v Daimler Chrysler Financial Services (Pty) Ltd* 2005(6) SA 205 (SCA)

defence was raised and contradictory statements were made by them in their answering affidavit as recorded earlier. It would thus be fair and reasonable that the second to fourth respondents be ordered to pay the costs of opposition.

[22] Accordingly, I grant the following order:

1. It is ordered that:

   (a) The funds in the amounts of R778 655.50 and R2 195 000.00 held in trust by the first respondent do not constitute an asset, and/or vest in the insolvent estate of Silver Solutions 1205 CC, with registration number 2005/081268/23 (in liquidation);

   (b) The applicant is entitled to claim payment of the funds referred to in paragraph (a) above;

   (c) The first respondent is authorised to release the funds referred to in paragraph (a) above, currently retained by it in trust to the applicant;

2. The first respondent is directed to immediately upon the granting of this order, effect transfer of the amount of R778 655.50 in respect of unit […] retained by it on trust to the applicant;

3. The first respondent is directed to immediately upon the granting of this order, effect transfer of the amount of R2 195 000.00 in respect of unit […] retained by it on trust, to the applicant;

4. The second to fourth respondents are directed to pay the costs occasioned by the opposition on the scale of attorney and client, such costs to include the costs consequent upon the employ of two counsel.

C J VAN DER WESTHUIZEN
JUDGE OF THE HIGH COURT

On behalf of Applicant:	Adv J Hershenshohn SC Adv SN Davis
Instructed by:	Tintingers Incorporated
On behalf of 2-4 Respondents:	Adv S Jansen van Rensburg SC
Instructed by:	John Walker Attorneys Incorporated
Date of hearing:	17 March 2025
Judgment handed down:	06 June 2025