W AND D CONSULTANTS (PRIVATE) LIMITED
versus
SEAN THOMAS NIELSON DORAN

HIGH COURT OF ZIMBABWE
DUBE J
HARARE, 30 July 2014, 7 July 2014,
23 and 26 September 2014 and 17 June 2015

Civil Trial

A Mugandiwa, for the plaintiff
E Samudombe, for the defendant

DUBE J: This dispute came before me as a trial matter. The parties agreed to dispense with the need to call oral evidence there being no disputes of fact arising from the facts. Thereafter the parties filed heads of argument and a statement of agreed facts .After argument, the court granted the following order,

"**IT IS ORDERED THAT:**

1. The defendant shall give vacant possession of No. 7 St. Michaels Lane, Borrowdale otherwise known as the remaining extent of Stand 10 Reitfontein Township of Lot 1AB Reitfontein measuring4714 Square meters within (7) seven days from the date on which the order id served on the defendant.

2. If the respondent or any person occupying the property through him remains on the property after that date, the Sheriff is authorised to remove them and their possessions from the property.

3. Payment of holding over damages in the sum of US$2 000-00 dollars per month from the 7th of February 2013 to the date of ejectment.

4. Costs of suit"

Brief reasons for the order were given. The court has now been requested for detailed reasons for its order.

The salient facts of this dispute are common cause. On 12 July 2013 the plaintiff issued summons claiming the ejectment of the defendant and all persons claiming occupation

through him from No 7 St Michael's Lane, Borrowdale, Harare and holding over damages at $3 000-00 per month from January 2013 to the date the defendant vacates the property. The plaintiff is the registered owner of the property in dispute having bought it at a sale in execution and subsequently transferred it into its name. The defendant who is in occupation of the property with his family has refused to vacate the property. The brief background of this case is aptly summarised in the statement of agreed facts as follows,

"1. A judgment by default for the payment of an amount of US$415 951-91, under case number HC 5917/10, was obtained by Kingdom Bank against the defendant, Dreibond Investments (Private) Limited ("**Dreibond**") and 9 other defendants on the 14th of February 2011.

2. The judgment also provided that a certain piece of immovable property known as certain piece of land situate in the District of Salisbury called the Remaining Extent of Stand 10 Rietfontein Township of Lot 1AB Reitfontein measuring 4 714 square meters ("the **Property**") be declared executable.

3. The **Property** was registered in the name of **Dreibond. Dreibond** is not a trading company.

4. The defendant holds all the issued shares in **Dreibond.**

5. The directors of **Dreibond** as per the Company Office records are Louise Nielson-Doran and the defendant.

6. A writ of execution against immovable property was issued in matter HC 5917 on the 15th of April 2011.

7. The **Property** was attached into execution and duly advertised for sale by public auction on the 19th of October 2012.

8. The Plaintiff represented by Tsitsi and Prince Zireva bid for the **Property** and the Sheriff for Zimbabwe on the 7th of November 2012 duly declared the Plaintiff the highest bidder and purchaser of the **Property** at a purchase price of US$284 000-00.

9. The **Property** was transferred to and registered in the name of the Plaintiff on the 5th of February 2013.

10. On the 7th of February 2013 the Plaintiff demanded that the Defendant vacates the **Property.**

11. The Defendant has refused to vacate the **Property** and contends that he has the right to remain in occupation in terms of a lease agreement allegedly executed between **Dreibond** and his wife, Louise Nielsen Doran, on the 28th of September 2012. A copy of the alleged lease agreement is attached hereto marked **Annexure "A"**. The alleged lease agreement provides for the payment of rentals at the rate of US$1 500-00 per month.

12. The Defendant and/or his wife have not paid any rentals whatsoever to the Plaintiff. The Defendant tendered rent to the Plaintiff on the 24th of July201.

13. The Defendant and the other 10 defendants applied for the rescission of the default judgment of the 14th of February 2011 under case number HC 9634/11. The application was dismissed on the 17th of October 2013. Judgment HH 363/13 refers.

14. On the 19th of March 2013 the Plaintiff obtained a report from Clipcrunt Real Estate which put market rentals for the property at US$3 000-00 per month. A copy of the report is attached hereto marked **Annexure "B"**.

15. Defendant obtained two (2) independent evaluation reports from Estate Agents which put the rentals for the **Property** at US$ 1 500-00. Copies are attached marked as **Annexure "C"** and **"D"**.

16. The Parties have agreed that a fair market rental for the **Property** is in the amount of $2 000-00 per month."

At the hearing of this matter, the defendant raised preliminary points which I will deal with in seriatim. The defendant submitted that the plaintiff was required to cite the Registrar of Deeds in compliance with r 250 of the High Court Rules. Further that the Sherriff of the High Court should have been cited as the application makes reference to a sale in execution. That the failure to cite the two parties is fatal to the proceedings. Order 32 r 250 reads as follows:-

> "In any case of any application in connection with the performance of any act in the Deeds Registry, a copy of the application shall be served on the Registrar of Deeds concerned not less than ten days before the date of set down for his consideration, and for a report by him if he considers it necessary or the court requires such a report".

The ownership of property in this dispute has already been transferred to the new owner. In a related case of *Jamila Omar* v *Shabir Omar* HH 344/13, the same preliminary points were raised. I had occasion to deal with these points and ruled as follows.

> "The relief sought is for eviction and does not require that the Registrar of Deeds to perform any act in "connection with the performance of any act in the Deeds Registry" as the property has already been transferred. The applicant is not seeking registration or revocation of registration which would require the registrar to perform any act in Deeds Registry. There was no legal basis to cite the Registrar as an order for eviction does not affect the title of the property and does not concern the Registrar of Deeds. The Registrar will not be affected by the decision of the court nor is he required to do anything resulting from the outcome of this application. There was no need to cite the Deputy Sherriff because the order sought does not require him to perform any act in relation to it. The sale the respondent challenges was not conducted by the Deputy Sheriff but the Sheriff. No basis has been shown for the citation of both the Registrar of Deeds and the Deputy Sheriff. The point *in limine* does not find favour with the court and must fail."

I have not been swayed to shift my position with regards these points and my position remains the same. The Sheriff of the High Court has no interest in this case. He has

conducted the sale in execution and has no further interest in the property. The need to cite the Sheriff would only arise if this was an application to set aside the sale. That point fails.

The defendant submitted that the plaintiff does not have the requisite *locus standi* to bring this application on the basis that it does not own the property which is subject of the dispute. The parties agree in their statement of agreed facts that the plaintiff bought the property and registered it in its name. This point was not was not pursued.

The defendant further submitted that the defendant has the lawful right to remain in occupation of the premises through his wife Louise Nielsen who has a legal and binding lease with the former owners of the property thus, Dreibond Investment (Private) Limited. The defendant submitted that the new owner, the plaintiff is bound to observe and adhere to that lease agreement on the basis of the *huur gaat voor koop* concept. Further that the defendant's wife ought to have been joined to these proceedings on the basis that she is the holder of that lease. I propose to deal with this point when I deal with the merits of this case as this point is intrinsically intertwined with the merits of this matter.

The defendant requested the court to stay these proceedings for the reason that the main matter is still pending under HC 9634/11.The proceedings under that file relate to an application for rescission of a default order granted at a Pre-trial Conference stage which led to the sale of the property which is subject of this trial. The defendant submitted further that the defendant has objected to the sale of the property and applied to set aside the sale in terms of r 359 and that it is premature for the plaintiff to seek eviction at this stage.

The application for rescission of the default order under HC 9634/11 was subsequently dismissed .The defendant lost the application. The application to set aside the sale, if it has been filed, does not affect the plaintiff's rights over the property as the plaintiff has already transferred the property into his name. It has vested rights in the property and is entitled to vindicate its rights in the property. In any case where a party buys a property and that includes property bought at a sale in execution, and later registers the property in his name, he acquires real rights over the property. His registration of the property in his name in the Deeds Registries Office is an announcement to the whole world that he is the owner of the property. Such owner has the right to vindicate his property from any unauthorised person who may be in occupation or possession of the property. That point fails.

I now come to the merits of this matter. I will deal first with issues related to the making of the lease agreement and the correctness of the parties before the court. The ownership structure of the company reveals the following. The defendant is the sole

shareholder of Dreibond Investments (Pvt) Ltd, the former owner of the property which is subject of this dispute. The company is not a trading company. The defendant and his wife are the only directors of that company. The property was registered under the defendant's company and was sold in order to settle the defendant and his company's indebtedness to Zimbank Bank. The cardinal principle is that a company is a separate entity which has a separate and distinct legal existence from that of its members. See *Salomon* v *Salomon* (1897) AC 22 (HL). There are exceptions to this rule and these are grounded on policy considerations. In *US* v *Milwaukee Refrigerator Transit Company* (1905) 42 Fed 247 at 255 the court said of exceptions to the rule,

> "When the notion of a legal entity is used to defect public convenience, justify wrong, protect fraud or defend crime, the law will regard the corporation as an association."

In such cases the courts will lift the corporate veil and investigate the activities of the company. In *Cape Pacific Ltd* v *Lubner Controlling Investment (Pty) Ltd and Others* 1993 (2) SA 784 (C) the court held as follows,

> "The general principle underlying this aspect of the law of lifting the veil is that, when the corporation is the mere ego or business conduit of a person, it may be disregarded. This rule has been adopted by the courts in those cases where the idea of the corporate entity has been used as a *subterfuge* and to observe it would work an injustice."

In *Waltersteiner* v *Moir*; *Moir* v *Waltersteiner and Others* (1974) 3 ALLER 217 (CA) Denning MR was prepared to treat various companies through which the appellant Dr Waltersteiner had operated as if they were "just Puppets of Dr Waltersteiner." At 1013 of the judgment Lord Denning held as follows,

> "He controlled their every movement. Each danced to his biding. He pelted the strings. No one else got within reach of them. Transformed into legal language, they were his agents to do as he commanded. He was the principal behind them. I am of the opinion that the court should pull aside the corporate veil and treat these concerns as being his creatures for whose doings he should be and is responsible."

The evidence that emerged during the trial shows that the defendant and his wife have always been in occupation of the house. They then devised a scheme to save the property from the sale that was imminent. They entered into a lease agreement between themselves on the eve of a sale in execution of the house. It is necessary to unwrap the lease agreement and reveal its true nature. On 14 February 2011 Kingdom Bank obtained a default order against the defendant's company. A writ of execution against the property was issued on 15 April 2011 resulting in the property being attached. The property was advertised for sale by the Sheriff on 19 August 2011. The defendant tried to stop the sale by filing an urgent chamber

application, under HC 12308. That application was not to yield any fruit. The defendant's company states that he only got to know of the default judgment on 19 August 2011 when adverts appeared in the *Herald Newspaper* advertising the sale in execution. The property was going to be sold on 2 September 2011. The property was sold soon after the urgent chamber application on 7 November 2012.

On 28 September 2011 the defendant's company entered into an agreement of lease over the property. The defendant signed the agreement on behalf of his company. The defendant and his wife continued in occupation of the property. The lease agreement was entered into after the Sheriff had indicated that the property was going to be sold. The defendant and his wife were aware from as far back as April 2011when judgment was entered against them that this property was going to be sold. The defendant's company and his wife entered into a lease agreement solely for purposes of defeating the sale in execution that was imminent and so that they could remain in occupation of the property after the sale. The circumstances of the making of this lease agreement call for the court to pierce the corporate veil and investigate the activities taking place there under. This case is akin to the *Cattle Breeders Farm (Pvt) Ltd* v *Veldman* (2) 1973 (2) RLR 261 case. This case involved a husband who used his company to try and evict his wife. The court ruled that the husband could not hide behind the company to seek eviction of his wife. The defendant has tried to hide behind his wife and the company by leasing the property in issue to her and to escape eviction.

The lease agreement was deliberately offered to the wife even though there is no actual distinction between the wife, defendant and the company. Our courts have held that a husband and wife hold a uniquely special relationship and that they normally have a common interest and household. See *Warren Park Trust* v *Antony Ernest Pahwaringira and Others* HH 39/2009 and *Masiyiwa Cleopas Gonye* v *Stella Mavis Gonye* SC 15/09. The facts of the case involved a company formed by appellant which he, his wife and sons were shareholders. The court held that the company was part of the matrimonial estate. The court held as follows:

> "Stripped of the corporate veil, the proceeds of the farming operations belonged to the appellant. The company was nothing more that the applicant's alter ego. It had no greater rights to the money than he possessed."

When one considers the defendant's position in the company and that of his wife, one cannot avoid the conclusion that the property was, before the sale, part of the matrimonial

estate of the defendant and his wife. The transaction entered into is a simulated and dishonest transaction. The court is not deceived by its form but is concerned about its substance. It appears to me that this is a mere paper agreement. It cannot become a real agreement. In *Kilburn v Estate Kilburn 1931 AD 501* the court held that

> "--- a court of law will not be deceived by the form of a transaction; it will rend aside the veil in which the transaction is wrapped and examine its true nature and substance."

In *Boots Company (Pvt) Ltd* v *Somerset West Municipality* 1990 (3) SA 216 (C) at 219 the court set out the law on simulated contracts as follows:

> "I take the law on this question from the case of Skjelbreds Rederi A/S and Others v Hartless (Pvt) Ltd 1982 (2) SA 710 (A) in particular, I cite the following passage from the (as he then was), reading from p 732:
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> > 'The law relating to the question of simulated, or disguised, agreements is summed up in the well-known Roamanism, plus valet quod I agituraquam quod simulate concipitur. In Justiniaris Codex 4.22.1 the rule is briefly stated in the following terms: In Contractibusrei veritas debet, i.e. in contract the truth of the matter, rather than the writing, must be looked at.'"

In *Zandberg* v *Van Zyl* 1910 AD 302 INNES JA dealt with this subject and held that in a simulated contract, parties enter into such a contract in order to secure some advantage which otherwise the law would not give or escape some disability which the law would otherwise impose. He says at 309 that such parties,

> "Endeavour to conceal its (transaction) real character. They call it by a name, give it a shape intended not to express but to disguise its nature and when a court is asked to decide any rights under such agreement. It can only do so by giving effect to what the transaction really is and not what it in form purports to be."

It is easy to detect this simulation. This is be done by considering the facts leading up to the contract and circumstances under which it was made. It is apparent that the transaction or agreement was entered into simply to retain the property. The defendant company and defendant's wife entered into the lease agreement in order to thwart the sale of the house. They devised a plan, wherein they would remain in occupation of the property despite the sale and defeating the sale in execution that was in progress. The agreement was entered into after the writ of execution had been issued and after the property had been placed under judicial management. They wanted to defeat the sale at all costs. They devised a strategy to defeat the sale. The defence of *huur gaat voor koop* is being raised to frustrate the plaintiff's rights. The defendant now resists the eviction on the basis of this lease agreement. He seeks to hide behind his wife. His partner in crime. It is clear that the lease agreement was made

simply to save the property. The parties to the lease agreement were not *bona fide* when they entered into the lease agreement.

The court has considered, in coming up with this position, that the defendant is a sole shareholder and owner of the company. He is in effect the sole owner of the company. His company represented by himself entered this contract with his own wife, a director of the company. The defendant signed the lease agreement in the face of a pending execution. The defendant benefits from the existence of the lease. He is actually in occupation of the property with his wife. He was well aware that he would benefit from the agreement he was signing it. The parties were in occupation of the property without a lease agreement prior to the sale. One wonders why there was now a need for a lease agreement. The defendant clearly sought to protect his property. Any threat to the property was a threat to him. This cannot be a genuine lease agreement. There is no doubt in my mind that the lease agreement was simulated.

The evidence reveals that the defendant entered into the lease agreement to evade a creditor who was pursuing his company and property. The lease agreement was fraudulently entered into. This is a proper case in which to lift the corporate veil and investigate the activities of the company. The defendant is the *alter ego* of the company. The defendant controlled the company as he was the sole shareholder .He and his wife were the only two directors of the company. The company is a one man company. He is the company. The defendant's company is his. There is no separation between the defendant and his company. The company is simply a tool through which the defendant owned the property. He cannot be separated from the company. The defendant has involved in activities through the company which are irregular and fraudulent. The defendant used his company to justify wrong and protect fraud. This lease agreement is irregular .This agreement cannot stand in the way of the plaintiff's claim. The lease agreement is a nullity and no rights flow from it. The plaintiff is, on the basis of this reason alone entitled to evict the defendant, his company and his family from the house in issue.

The defendant contends that he has the right to remain in occupation of the property on the basis of a lease agreement executed between his company and his wife on 28 September 2012. This submission is premised on the argument that the plaintiff inherited an obligation to allow the defendant and his wife to continue in occupation of the property. He relies on the concept of *huur gaat voor koop.* The defendant contends that it is only his wife who can effectively respond to the issue regarding the terms and conditions of the lease

agreement. The defendant and his wife have always been aware of the plaintiff's title and claim in the property. The two are partners in the defendant's company and are in matrimony. The wife is presumed to be aware of this action. The defendant pleaded that there has been a nonjoinder of his wife as a party. No effort was made either at pre-trial stage or any other subsequent stage to join her as a party. The defendant and his wife seem to be playing a hide and seek game with the plaintiff. No explanation was given regarding the defendant's failure to apply for joinder to this action. The defendant and his wife seemed bent to frustrate the plaintiff's claim by not joining the wife to this claim. This is totally unacceptable. Misjoinder does not operate as a defence. The rules of this court provide in r 87 as follows:

> "***87. Misjoinder or nonjoinder of parties***
> (1) No cause or matter shall be defeated by reason of the misjoinder or non joinder of any party and the court may in any cause or matter determine the issues or questions in dispute so far as they affect the rights and interests of the persons who are parties to the cause or matter."

In any case where there has been a non joinder, the court may in terms of r 87 determine the issues and questions in dispute in so far as they affect the rights and interests of the persons before it . The defendant and his wife and family were in occupation of the property before the sale. What this essentially means is that the company, its shareholders as well as its directors are still in occupation of the house and have not moved an inch since the sale of the property. The defendant entered into a fraudulent lease agreement so that he would remain in the house. Once it is accepted that the defendant is the *alter ego* of the company and controlled all its activities, he should be responsible for its entire doings. He and the company are still in occupation of the property and there seems to be sense in citing the defendant as a party to these proceedings. The court has found that the lease agreement is simulated and a nullity and therefore anyone in the premises may be cited for ejectment. I cannot find fault with the plaintiff's citation of the defendant as a party to this action. The court will proceed and determine the dispute in so far as it affects the rights and interests of the persons before it.

Even assuming I am wrong in my approach, the rule of *huur gaat voor koop* does not assist the defendant's case or that of his wife. The concept of *huur gaat voor* koop is found under Roman Dutch law and simply means that hire takes precedence over sale. The doctrine was defined in *Genna-Wae Properties (Pty) Ltd* v *MedioTromics (Natal) (Pty)* (*supra*) as follows,

> "I hold that in terms of our law the alternation of leased property consisting of land or buildings, in pursuance of a contract of sale does not bring the lease to an end. The purchaser

> (now owner) is substituted *ex lege* for the original lesser and the latter falls out of the picture. On being so substituted the new owner acquires by operation of law all the rights of the original lesser under the lease. At the same time the new owner is obliged to recognise the lessee and to permit him to continue to occupy the leased premises in terms of the lease provided that he (the lessee) continues to pay the rent and otherwise to observe the obligations under the lease. The lessee in turn is also bound by the lease and provided the new owner recognises his rights, does not have any option, a right of election, to resile from the contract."

What the concept entails is that a tenant who entered into a lease agreement prior to the sale is protected from eviction where the property is sold to a third party. He is entitled to remain in occupation of the property until his lease expires. He must abide by the terms of the lease agreement. See, *One Naught Three Craighall Park (Pty) Ltd* 1940 TPD 299, where the court held that a lessee of property transferred from the previous lesser is required to recognise and observe the terms of the lease after transfer.

For a tenant to benefit from the lease, the lease should not have been fraudulently entered into or entered into in bad faith. In *Genna Wae Properties (Pty) Ltd v Medio Tronics (Natal) (Pty) Ltd* (*supra*), Corbett J quotes from a passage from *Voet 19.2.17* which states as follows,

> "*...sive private venditio interveniat,sive publica, aut ex decreto magistratus adhibitis hastoe solennibus ad creditorum pettitionem;sic ut et jus retentionis conductor competat, si remanere in conductutione malit, quam post eeexpilsionem intempestivam ad id quod interest judio experiri, si modo bona fide, non in fraudem creditorum (pendent forte subhastationionis judicio ,aut lite jam mota), location facta sit."*

The Beinart and Ormonde's translation of that passage reads as follows,

> " .....whether it be a private sale or a public one, or a formal judicial sale following on a decree of a magistrate at a petition of creditors; the result is that the lessee has a right of retention, if he wishes to remain in possession rather than bring an action for damages after he had been ejected with prejudice to himself, <u>provided that the lease had been made in good faith and not in fraud of creditors(for instance , where process for judicial sale was pending .or the suit had already been brought)"</u>(the underlining is mine for emphasis)

The underlined part emphasizes the need for the tenant to be *bona fide* and the requirement that the lessee should not enter the contract of lease fraudulently and with a mind to evade creditors especially where a sale in execution was pending.

A tenant wishing to rely on the concept should show that he entered into the lease agreement with the previous owner before the sale. He should show that he is *bona fide* and did not enter into a lease agreement fraudulently in order to avoid an imminent sale or a claim by creditors. He must also show that the new owner was aware of the lease agreement and bought the property with the knowledge of the lease agreement. It is a requirement that the

tenant should abide by all terms of the contact and continue to pay his rentals to the new owner. Failure to do so amounts to breach. The new owner only has an obligation to adhere to the lease agreement if the tenant is willing to pay rentals and does pay the rentals. Where the tenant fails to pay rentals agreed to with the previous owner, he commits a breach and he is liable to the new owner. See the *Genna Wae Case* for this proposition.

There are two schools of thought regarding whether this concept applies to sales is execution.

In the *Liquidators Union & D Rhodesia Wholesalers Ltd* v *Brown & Co* 1922 AD 549 at 558-9 by Kotze JA made the following remarks.

> "While an ordinary arrest of property under the Roman-Dutch law gives no preference, an arrest effected on property in execution of a judgment creates a *pignus praetorium* or to speak more correctly a *pignus judiciale,* over such property. The effect of such a judicial arrest is that the goods attached are thereby placed in the lands or custody of the officer of the court. They pass out of the estate of the judgment debtor so that in the event of the debtor's insolvency the curator of the latter's estate cannot claim to have the property attached delivered up to him to be dealt with in the distribution of the insolvent's estate."

A similar approach was adopted in *Maphosa and Anor* v *Cock and Others* 1997 (2) ZLR 314 (HC) where the court following on the *Liquidators Union* case the court held that in such an instance, the property could not be dealt with by the company as if it had not been attached. See also *Simpson* v *Klein NO and Others* 1987 (1) SA 405 (W).

In Herbstein and Van Winsen *Civil Practice of the Superior Courts in South Africa* 3 ed state at p 597: G

> "A judgment creditor is entitled to attach and have sold in execution the property of his debtor notwithstanding that a third party has a personal right against such a debtor to the ownership or possession of such property which right arose prior to the attachment or even the judgment creditor's cause of action and of which the judgment creditor had notice when the attachment was made. An attachment in execution creates a judicial mortgage or *pignus judici* here are exceptions to this rule."

In *Graham* v *Local Overseas Investments (Pvt) Ltd* 1942 AD 95 the court suggests that the concept is not available if insolvency is involved. In *Genna-Wae Properties (Pty) Ltd* v *MedloTronics (Natal) (Pvt) Ltd* (435/13) (1995) ZA SCA 42 1995 (2) SA 926 AD, 1995 (2) ALL SA 410, the court took the view that the concept of *huur gaat voor koop* applies to judicial sales in execution. The court in that case remarked as follows,

> "Whether the sale takes place privately or publicly or by order of a magistrate a petition of creditor is irrelevant."

I am persuaded to follow the approach followed in *Liquidators case.* .This is a decision of our own Appellate Division. The concept of *huur gaat voor koop* does not apply to sales in execution. In any case where a property has been placed under judicial arrest, it falls into the hands and control of the Sheriff. It ceases to be part of the debtors' estate. It cannot be dealt with in any manner not sanctioned by the Sheriff. The previous owner and debtor are not at liberty to deal with the property as if it has not been attached. The debtor at that moment ceases to have any right to deal with the property in any manner not sanctioned or directed by the Sheriff. The debtor cannot deal with the property at his whims. To do so would be to defeat the judicial process underway. The defendant company, defendant and his wife ought not to have dealt with the property as if it was still in under their control.

The defendant is a schemer. His game plan is as plain as the nose on his face. His imagination ran riot when he and his company being aware of this development proceeded and entered into a lease agreement with his wife, a director of the same company and unauthorised by the Sheriff. The defendant's company and its directors dealt with the property as if unaware that it had been attached. It should not matter that the sale of the property had not actually gone through. There is no doubt that the idea behind the principle of *huur voor gaat koop* was to protect litigants who prior to the attachment and sale of the property had entered into a lease agreement for the lease of the property. A judgment creditor who leases his property which is subject of an attachment in the hope that he can later rely on the lease agreement and remain in occupation of the property to frustrate the new buyer can only fantasize. They were waiting to pull the carpet from under their feet. The courts have no interest in aiding and abetting unscrupulous litigants. The lease agreement is for this reason also irregular. The defendant and his wife did not advise the Sheriff and the purchaser of the lease agreement. The Sheriff dealt with the sale as if it was free of a lease. The purchaser did not have knowledge of the lease. This was part of the game. The defendant cannot benefit from the lease agreement.

The defendant and his wife never treated the lease agreement as such. It does not appear that they ever paid any rentals in lieu of the lease agreement. Although being aware that the plaintiff had bought the property and his interest in it, the defendant and his wife never paid any rentals for it. The defendant and his wife have deliberately not been paying rentals for the leased property to the new owner, the plaintiff. They are in breach of the lease agreement. No evidence was led to show that the defendant and his wife tried to pay rentals to plaintiff or that the plaintiff refused to accept such rentals as alleged .Even assuming that

the lease was valid, the defence of *huur gaat voor koop* can only avail a tenant who pays his rentals and on time. The plaintiff is entitled to eject the defendant from its property. The payment plan and rentals payable and due was only discussed and agreed to at the hearing. The parties agreed that a reasonable and fair rental for the premises is $2000-00.The plaintiff became entitled to rentals the moment the property was transferred into its name. The plaintiff is entitled to vindicate its property from whoever may be in occupation or possession of the property. The defendant and his company are in occupation of the property. They have not shown an entitlement to remain in the property. The plaintiff is entitled to the order sought.

It is for these reasons that I granted the order sought.

Wintertons, plaintiff's legal practitioners
Dzvetero & Antonio Legal Practitioners, defendant's legal practitioners