

BEWARE POTENTIAL HISTORICAL DEBT LIABILITY IN AN EXECUTION SALE

Langlaagte Truck and Car CC v Ethekwini Municipality (9219/2023P) [2024] ZAKZPHC 94 (31 October 2024)

In past years, there has been much controversy regarding liability for historical debt on a property to be transferred to a new owner. Our courts have clarified that, where rates for the 24 months preceding the date of application for the clearance certificate have been paid, the municipality must issue a clearance certificate. Regarding the older, historical debts, the municipality is empowered to enforce its claim against the person who was owner of the property at the time, not the new title holder. The court was asked to determine whether the Conditions of Sale in an execution sale make the purchaser liable for the historical debt.

The judgment can be viewed [here](#).

FACTS

Langlaagte Truck and Car CC ('LTC') had successfully bid, and accepted the Conditions of Sale for, a sectional title property sold in an execution sale. The purchase price was R2,763 million, this being the reserve price set by the Court in terms of rule 46A of the Uniform Rules, when the property was declared executable.

Clause 6 of the Conditions of Sale of the property is relevant for the purposes of determining this application and provided:

- 6. Further costs and charges
- 6.1 The purchaser shall be liable for and pay within 10 days of being requested to do so by the appointed conveyancer, the following:
 - 6.1.1 All amounts due to the municipality servicing the property in terms of s 118(1) of the Local Government Municipal Systems Act...for municipal service fees, surcharges on fees, property rates **and** other municipal taxes, levies and duties that may be due to the municipality.
 - 6.1.2 ...; and
 - 6.1.3 The costs of transfer...and any other amount necessary for the passing of transfer to the purchaser.
- 6.2 The purchaser is hereby informed of the following charges:
 - 6.2.1 Arrear rates and taxes, estimated at R351 093.75
 - 6.2.1 Arrear levies: R530 498.90

Langlaagte Truck and Car CC notes that the amounts indicated by the Sheriff as owing in respect of clause 6.2 are **estimates** only. Neither the Sheriff nor the execution creditor warrants the accuracy of these estimates. **The purchaser shall not be able to avoid his/her/its obligations hereunder, nor will the purchaser have any claims against the fact that the amounts actually owing in terms of clause 6.2 are greater than the estimated charges as stated by the Sheriff. The actual amounts owing in respect thereof must be paid by the purchaser** in terms of clause 6.2." (*Our emphasis.*)

Registration of transfer was not forthcoming due to a dispute with the municipality regarding the issuance of a municipal clearance certificate. The municipality had initially advised that the rates clearance figures, based on the

indebtedness of the judgment debtor, was an amount of R473 11. The amount was made up as follows:

- R29 080 was a forward projection for various charges;
- R240 340 was the judgment debtor's debt in respect of the period of two years preceding the date of the application for the rates clearance figures, in compliance with s 118(1)(b) of the Local Government: Municipal Systems Act 32 of 2000 ('the Act'); and
- R203 690 was his indebtedness for historical debt (in other words, older than 24 months), in terms of s 118(3) of the Act.

The municipality noted that the figures would remain valid until 28 February 2023.

The conveyancers queried the inclusion of the historic debt, but were advised by the municipality that "we record that the latter amount is the debt of the property which is secured under s 118(3) of the Act, and we cannot allow transfer of the property to proceed unless this amount is paid or secured by means of an irrevocable bank guarantee made payable to the municipality on date of registration." It stated that it would interdict transfer, if necessary, if the full debt is not paid or payment thereof secured.

LTC Continued to maintain that it was not responsible to pay the historic debt, being of the view that it was the judgment debtor's responsibility. Accordingly, it paid the sums of R240 340.00 and R29 080.22 to the municipality, which it believed were the correct amounts. But by this time, the validity period of the initial figures had lapsed and the conveyancers had to apply for new figures. On receipt, the new figures reflected that LTC's payment was offset against the historical debt, and that the balance for the 24 month period remained payable.

LTC proceeded to pay the additional amount under protest, and obtained a clearance certificate. After registration was effected, LTC commenced legal steps for the return of the R230 695.80 which it had paid under protest.

The municipality opposed the application arguing that LTC was indeed obliged to pay the actual arrears in respect of the property, in terms of clause 6.3 of the conditions of sale and despite these being substantially higher than the estimated amount recorded in the conditions of sale.

The relevant sections from the Act:

Section 118(1)(b): "(1) A registrar of deeds may not register the transfer of property except on production to that registrar of deeds of a prescribed certificate- (b) which certifies that **all amounts that became due in connection with that property for municipal service fees**, surcharges on fees, property rates and other municipal taxes, levies and duties **during the two years preceding the date of application** for the certificate have been fully paid."

Section 118(3): "(3) **An amount due for municipal service fees**, surcharges on fees, property rates and other municipal taxes, levies and duties **is a charge upon the property** in connection with which the amount is owing and enjoys preference over any mortgage bond registered against the property." (*Our emphasis.*)

The question before the Court was whether LTC was liable for the historic municipal debt that was older than two years when it bought the property at a sale in execution.

HELD

General

- What one needs to bear in mind in this matter, is that this was not an ordinary sale where the municipality could demand a guarantee from the previous owner (judgment debtor) to pay all the historical debt due to it before it could issue a rates clearance certificate. The property was sold in a sale in execution as a result of the previous owner's default in respect of his loan obligations to the mortgagee.
- Indeed, it is so that the municipality is obliged to issue a rates clearance certificate once payment has been made for any outstanding rates and taxes owing on the property. It is also trite that a purchaser is obliged to pay for the two years preceding the application for clearance figures whilst the previous owner is responsible for the historical debt.
- When there is a historical debt **and there is uncertainty regarding who will pay for it**, the municipality is

entitled to interdict any sale in order to secure its rights. Section 118(3) places a charge on the property against an existing owner, and grants a municipality a preference claim over that of registered mortgagees. The provision enables municipalities to enforce the charge against the existing owner up to the moment of transfer – and to do so above and before any registered mortgagees. Where there are unpaid municipal debts, the charge enables them “to slam the legal brake” on any impending transfer by obtaining an interdict against transfer.

- The municipality threatened to do so in this matter, but LTC opted to pay the amounts outstanding, albeit under protest. This LTC did at its own disadvantage **as any interdict process would have clarified who was responsible for the historic debt.**

Execution sale

- It is not difficult to determine who pays for the historic debt when the sale is an ordinary one, as the previous owner would in all likelihood be asked to furnish an undertaking or guarantee, to a local authority’s satisfaction, that such a debt would be paid.
- However, in a sale in execution, the transaction is founded on the Conditions of Sale. Whilst it is so that section 118(1)(b) of the Act is concerned with property rates and other municipal taxes, levies, and duties during the two years preceding the date of application for the certificate, the municipality still needs to ensure that the historical debt is paid or secured before a change in ownership. As was stated earlier, it was held in *Jordaan and others v Tshwane Metropolitan Municipality and Others* that ‘where there are unpaid municipal debts ... the charge enables them to slam the legal brake on any impending transfer by obtaining an interdict against transfer’.
- It is for this reason that it is important to consider the context of the Conditions of Sale. The municipality correctly argued that the Conditions of Sale came about as a result of the property having been declared executable when an application was made in terms of Rule 46A of the Uniform Rules by the judgment creditor. It is also undisputed that whenever an execution creditor seeks to execute against the residential immovable property of a judgment debtor, the Court considering the application, prior to determining a reserve price, must ensure that a statement from a local authority showing the amounts owing for rates and other dues, is attached. This must be so, so that consideration is given to outstanding rates and other charges due on the property, regardless of the time frame for such a debt.
- LTC agreed to the Conditions of Sale, particularly clauses 6.1, 6.2 and 6.3, and thereby brought itself to the position of the judgment debtor. It accepted that the figures contained in clause 6.2.1 were estimates only and that it would become liable for actual figures once these had been provided.
- The wording of the Conditions of Sale is clear and unambiguous. There is no reason why the historic debt in the context of the conditions of sale should not be interpreted to fall under ‘**and** other municipal taxes...’. (*Our emphasis*.)
- In *Real People Housing (Pty) Ltd v City of Cape Town*, the principle was established that ‘[a] clearance certificate must be issued if the sums falling due in the two-year period are paid. Any sums which fell due prior to the commencement of the two-year period need not be paid as a condition precedent to the issue of the required clearance certificate’ However, Cameron J in *Jordaan* correctly pointed out that a municipality is allowed to place an obstacle in the path of any impending transfer, so as to ensure payment of any outstanding debt. He went on to state that the notification to the municipalities of an impending transfer is key: ‘Doing so is indeed indispensable and invariable. This gives the municipality full power, and full opportunity, to enforce the charge against the existing owner for all recoverable debt, even beyond the last two years.’
- What distinguishes this matter **from others is the fact that the municipality had raised all its demands with the conveyancers without imputing any liability on LTC. It required a guarantee that the historic debt would be paid and even threatened an interdict against the transfer should the guarantee not be furnished. LTC, on its own volition, took it upon itself to pay these amounts, prior to it being a new owner of the property.**

CONCLUSION

Accordingly, the application is dismissed with costs.

