

SOUTH AFRICA / JUDGMENT

All Phone Solutions (Pty) Ltd and Another v Goldblatt (2022/049298) [2025] ZAGPJHC 274 (13 March 2025)

[2025] ZAGPJHC 274

COURT

South Gauteng High Court, Johannesburg

BEFORE

De Oliveira

CASE / FILE NUMBER

2022/049298

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, JOHANNESBURG

Case

Number: 2022-049298

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED: NO

In

the matter between:

ALL

PHONE SOLUTIONS (PTY) LTD

First Applicant

COME

BACK CORP (PTY) LTD

Second Applicant

and

BRADLEY

GOLDBLATT

Respondent

JUDGMENT

This judgment is handed down electronically by circulation to the parties' legal representatives by email and by being uploaded to CaseLines. The date and time for hand down is deemed to be 13 March 2025.

DE OLIVEIRA, AJ

Introduction

- [1] On 6 December 2022, the applicants obtained, on an urgent basis, an order in terms of which the estate of the estate of the respondent was placed under provisional sequestration. For reasons that are not presently relevant, the provisional sequestration order lapsed, was revived and thereafter extended from time to time, the most recent of which was on 29 July 2024, when the provisional sequestration order was again extended and the application was postponed for hearing before me on 10 March 2025.
- [2] When the application was heard before me, Mr. Lazarus, who appeared on behalf of the respondent, submitted that there are effectively three issues that require determination in the matter, namely:
- (a) Whether the applicants duly authorised the institution and prosecution of the proceedings, including whether their attorneys of record were duly authorised to institute and prosecute the sequestration proceedings on behalf of the applicant.
 - (b) Whether the applicants have the requisite locus standi in iudicio in that they are said to be not the true creditors of the respondent (if the respondent is indeed the true debtor).
 - (c) Whether the respondent is the true debtor or whether a company, of which the respondent is the sole director, Cellular Data Invest (Pty) Ltd ("CDI"), is the true debtor.
- [3] Mr. Roux, who appeared before me on behalf of the applicants, took no issue with Mr. Lazarus' summary of the issues requiring

determination.

The Applicants' Case

- [4] The deponent to the founding and replying affidavits is an individual by the name of Anthony Goodman. He was, at the time of deposing to the founding affidavit, the applicants' general manager. He subsequently became the sole director of the first applicant.

- [5] According to the applicants, the respondent is indebted to them in the amount of approximately R760 000.00 arising out of certain fraudulent misrepresentations made by the respondent to the applicants, and the theft under false pretences by the respondent of the aforesaid sum. In particular, the indebtedness is said to arise out of the following circumstances.
- [6] In or around March 2022, the applicants and Mr. Goodman decided that it was necessary to appoint a professional private investigator to assist them in obtaining information and documents that were required in a number of civil and criminal legal matters in which they were involved. It suffices for present purposes to mention that these cases included a case instituted by the applicants against a well-known online retailer, a criminal matter (which is still pending), wherein Mr. Goodman is the accused person, and an action, in which Mr. Goodman is the plaintiff and in which he seeks damages against a large well-known insurer.
- [7] In order to determine whether any of the parties in the aforesaid litigation had acted unlawfully, the applicants engaged the respondent and contracted with him to provide professional private investigation services. In doing so, the respondent, according to the applicants, made various representations pertaining to the services that he would provide, as well as to the information and documentation that he would obtain and present to the applicants and Mr. Goodman. The applicants contend that they were induced to contract with the respondent as a result of the aforesaid representations. The applicants contend further that the representations were, to the respondent's knowledge, false and fraudulent, in that, inter alia, he never intended providing the applicants with usable, admissible, authentic information and/or documents, which would be of assistance to them in their various legal matters.
- [8] In due course, the respondent furnished Mr. Goodman with various documents and information which suggested that the criminal proceedings against Mr. Goodman were being continued despite a lack of evidence, and an intention on the part of the National Prosecuting Authority not to continue therewith because of monies having illegally been paid to various persons, including but not limited to the lead prosecutor in the case, the deputy director of public prosecutions and two investigating officers.
- [9] As a consequence of having received this information and documentation, which appeared extremely convincing, Mr. Goodman approached the Hawks and requested them to consider the "evidence" provided by the respondent, which they undertook to do.
- [10] It later turned out that all of the documentation and information furnished by the respondent to Mr. Goodman were manufactured by the respondent, with the intention of misleading the applicants and Mr. Goodman into believing that they were authentic so that the respondent would continue being paid for his "services".
- [11] According to the applicants, the Hawks have now shifted the focus of their investigation to the respondent, and Mr. Goodman has been advised that such investigation is ongoing.

- [12] As part of the respondent's "investigations", he introduced Mr. Goodman to a certain Shaun Heneke, an individual who, according to the respondent, worked at Nedbank and who could provide the applicants with evidence of the aforementioned bribes having been made. In due course, however, Mr. Heneke confessed to Mr. Goodman that all of the information and documentation furnished to him and the applicants by the respondent were false and manufactured. Mr. Heneke also confessed to Mr. Goodman that he (Mr. Heneke) had received gratification from the respondent in return for participating in the scheme, which participation included spending significant time with Mr. Goodman, telling him about his and the respondent's "investigations" and the discovery of the alleged conspiracy against Mr. Goodman.
- [13] After learning of the above, Mr. Goodman, on 29 August 2022, confronted the respondent, who admitted to Mr. Goodman that everything he had told Mr. Goodman was a lie and that all of the "evidence" he had gathered, of clandestine activities against the applicants and Mr. Goodman, was false. This included manufacturing and falsifying alleged proofs of payment by certain entities to the persons mentioned above and who were responsible for, and engaged in the prosecution against Mr. Goodman.
- [14] There was thus no cause for the payments to be made by the applicants to the respondent, alternatively if there was such cause, it is void as a consequence of the misrepresentations and has been treated as such by the applicants. They are accordingly out of pocket in an amount of more than R760 000.00.
- [15] Matters came to a head at the end of August 2022, when Mr. Goodman and Mr. Goldblatt exchanged various WhatsApp messages. The extract attached by the applicants to their founding papers is not disputed by the respondent. In terms thereof, it appears to me to be undeniable that the respondent (i) acknowledged his indebtedness and (ii) acknowledged that he was unable to pay his debts. He also sought further time to pay the applicants and otherwise offered to make certain arrangements with them. According to the applicants, the WhatsApp exchange is undeniable proof that the respondent has committed various acts of insolvency, namely:
- (a) in terms of section 8(c) of the Insolvency Act 24 of 1936 ("the Act") in that the respondent made or has attempted to make a disposition of his property which has or will have the effect of prejudicing his creditors or preferring one creditor above another; and/or
 - (b) in terms of section 8(e) of the Act in that he has made or offered to make arrangements with his creditors to release him wholly or partially from his debts; and/or
 - (c) in terms of section 8(g) of the Act in that he has given notice in writing to one or more of his creditors that he is unable to pay his debts.
- [16] It is further submitted by the applicants that the respondent is actually insolvent and that his estate falls to be sequestrated in order that his creditors can be dealt with equitably, and so that no creditors are preferred above others.

- [17] As far as an advantage to creditors is concerned, it is trite to state that the applicant has at least an evidentiary burden to show that the sequestration of the respondent's estate will be to the advantage of his creditors. In this regard, Mr. Goodman states that the respondent has, on numerous occasions, advised him that he is not only employed part-time as a police officer, but that he is also self-employed and runs a number of businesses. Accordingly, so say the applicants, the respondent must earn a substantial income from all of his business activities. Furthermore, the applicants submit that, in view of the scheme perpetrated on the applicants by the respondent, it is likely that he has perpetrated similar schemes on other unwitting parties and that such conduct requires further investigation by a trustee.
- [18] I should add, in concluding a summary of the applicants' case, that it is set out in the founding papers in considerable detail, supported by documentary evidence and required of the respondent to engage meaningfully and comprehensively with its contents.

The Respondent's Case

- [19] In what is a worryingly terse answering affidavit, the respondent:
- (a) seeks condonation for the late filing thereof;
 - (b) disputes that Mr. Goodman lacks the requisite locus standi because he is neither a director nor employee of either applicant;
 - (c) further disputes that the applicants have authorised the institution and prosecution of the proceedings;
 - (d) asserts that the true creditor, if monies are owed by the respondent at all, is Mr. Goodman; and
 - (e) denies that he, the respondent, is the true debtor, asserting that CDI is the true debtor view of the fact that, according to the respondent, it was CDI with which Mr. Goodman and the applicants contracted for in regard to the services.
- [20] Remarkably, whilst the respondent appears to concede that either he or CDI was engaged to render the services in question, he denies having represented to Mr. Goodman that any documentation obtained would be admissible in court proceedings because, and I quote "... Anthony Goodman was well aware that the documents which I would be able to source would be obtained in an unlawful manner." According to the respondent, therefore, the purpose of the documents and information would be to intimidate State witnesses and prosecutors in the criminal proceedings against Mr. Goodman. The respondent himself calls this an "unlawful agreement". He submits further that, as a result, the agreement was void ab initio and of no force or effect.[1]
- [21] Furthermore, and as mentioned, the respondent also disputes that, because no payments were made to him directly, he is not the true debtor. According to him, the true debtor, if any, is CDI.

- [22] As far as the respondent's alleged insolvency is concerned, he does no more than to baldly deny it. He did not, for example, disclose his financial position to this Court at all, let alone by furnishing documentary evidence in regard thereto.
- [23] What is most concerning about the respondent's affidavit, however, is that he does not deal at all with the serious allegations made against him by the applicants, nor does he deal with the WhatsApp exchange in any way whatsoever. More about this later.

Analysis

- [24] The issue pertaining to authority can be disposed of swiftly. Firstly, the respondent appears to have conflated the separate issues of authority, on the one hand, and locus standi on the other. As far as the former is concerned, on 1 March 2024, the respondent's attorneys delivered a notice in terms of rule 7 of the Uniform Rules of Court calling on the applicants to prove that their attorneys, Mendelson Attorneys Inc., are and were at all material times authorised to represent the applicants, which must be taken to dispute that such attorneys were authorised to institute and prosecute the proceedings on behalf of the applicants. In response thereto, the applicants confirm that, at all material times, Mr. Goodman was and remains authorised to represent them in the proceedings (notwithstanding that this was not the respondent's true complaint in terms of its rule 7 notice) and that Mendelson Attorneys are and were at all material times duly authorised to represent the applicants in these proceedings. In support thereof, the applicants annex resolutions by the first and second applicants confirming the above, and to the extent required or necessary, ratifying any step taken by the applicants and/or Mendelson Attorneys in the proceedings to date. There is no doubt, in my view, that Mendelson Attorneys are duly authorised to represent the applicants in these proceedings and that they have been authorised and/or ratified by the applicants.
- [25] As far as Mr. Goodman is concerned, the complaint that he lacks locus standi is misplaced for the reason that he is not a litigant in these proceedings; he is merely the deponent to the applicants' affidavits. It is trite to state that there is no need for any person, whether he or she is a witness, or someone who becomes involved, especially in the context of authority, to be authorised other than the litigant's attorneys. It is, for example, irrelevant whether a deponent to an affidavit is authorised to depose thereto.[2] In any event, it is evident from the applicants' response to the respondent's rule 7 notice that Mr. Goodman is so authorised.
- [26] As far as the second ground of opposition is concerned, I do not consider the respondent's dispute in regard to the locus standi of the applicants to be genuine and bona fide. In this regard, whilst it is trite to state that insolvency proceedings should not be employed in the face of genuine and bona fide disputes of fact,[3] the operative phrase here is bona fide. So, for example, and in the first instance, whilst the respondent disputes that the payments in question were made by the applicants

(on the basis that the proofs of payment reflect the payer as being “Aedo Processing Solutions (Pty) Ltd”, as opposed to the first applicant), it appears from the CIPC search furnished to the respondent in response to his rule 7 notice that, on 4 June 2018, the first applicant changed its name from Aedo Processing Solutions to that of the first applicant, namely All Phones Solutions (Pty) Ltd.

[27] The same can be said of the respondent’s bald denial that the applicants are indeed the appropriate creditors. Mr. Goodman pertinently alleges that, at all material times, he was acting for and on behalf of the applicants and it was they, the applicants, that made payments to the respondent and/or his nominee/s. I do not consider the respondent’s dispute in this regard to be genuine and bona fide.

[28] As far as the issue of the true debtor is concerned, I likewise do not consider the respondent’s denials in this regard to be genuine and bona fide. In the first instance, and as Mr. Roux, who appeared before me on behalf of the applicants, pointed out, in order for the respondent to render services as a private investigator, he had to do so and be registered as such in terms of the Private Security Industry Regulation Act 56 of 2001. The respondent did not assert that he was registered in terms of this Act.

[29] Accordingly, and in view of the fact that the three grounds of opposition are unsustainable, and considering that the respondent did not otherwise take issue with the fact that a final sequestration will be to the advantage of his creditors, or with the compliance with statutory formalities,[4] I am persuaded that a proper case has been made out for a confirmation of the rule nisi and for an order placing the respondent’s estate under final sequestration.

[30] According I make the following order:

- (a) The rule nisi dated 6 December 2022, revived on 12 December 2023 and extended from time to time, is hereby confirmed.
- (b) The estate of the respondent is placed under final sequestration in the hands of the Master of this Court.
- (c) The costs of these proceedings shall be costs in the administration of the respondent’s estate.

DE OLIVEIRA AJ

ACTING JUDGE OF THE HIGH COURT

JOHANNESBURG

Counsel for the Applicant:

C Roux

Intstructed by:

Mendelson Attorneys Inc.

Counsel for the First Claimant: J Lazarus (Attorney)

Instructed by:

Joshua Lazarus Attorneys

- [1] The parties thus appear to be ad idem that the underlying agreement was void, for one reason or another. They all appear to have treated the agreement as such.
- [2] See in the regard Ganes and Another v Telecom Namibia Ltd 2004 (3) SA 615 (SCA) at [19].
- [3] See generally Bardenhorst v Northern Construction Enterprises (Pty) Ltd 1956 (2) SA 346 (T).
- [4] In any event, I am satisfied that there has been due compliance with section 9(4A) and 11(2A) of the Act.
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