

SOUTH AFRICA / JUDGMENT

Atlantis Mining (SA) (Pty) Ltd v Blue Nut Trading (Pty) Ltd (33785/2015) [2015]

ZAGPPHC 843 (11 December 2015)

[2015] ZAGPPHC 843

COURT

North Gauteng High Court, Pretoria

BEFORE

Tlhapi

CASE / FILE NUMBER

33785/2015

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IN THE HIGH COURT OF
SOUTH AFRICA
(GAUTENG DIVISION,
PRETORIA)

CASE

NO: 33785/2015

11/12/2015

In

the matter between:

ATLANTIS MINING (SA)
(PTY)
LTD APPLICANT
and
BLUE
NUT TRADING (PTY) LTD (Reg. No.
2013/167198/07) RESPONDENT
JUDGMENT-REASONS
TLHAPI
J

[1]

On 9 September 2015 after hearing argument on behalf of the applicant and respondent I confirmed the rule and placed the respondent in final liquidation. The matter was heard in the Urgent Court. I also reserved my reasons, which now follow.

[2]

The respondent obtained a right to perform open cast mining at Coal Reserves on Kromdraai, 486, Middelburg (the Kromdraai").
It

appointed the applicant to conduct mining operation on its behalf and it was agreed that payment would be for the full amount per invoice presented in respect of services rendered. Interest on unpaid invoices would be charged at the rate of '15% per annum calculated pro rata' and standing time. On request of the respondent the invoices were presented to IPC Coal (Pty) Ltd. The respondent supplied the coal mined by the applicant to its customers. The non-payment of invoices was taken up with the respondent at various intervals via correspondence annexed to the founding affidavit as G1-G7. These letters contained an acknowledgement that the respondent was unable to pay its debts. The applicant contended that it had an undisputed liquidated claim for the amount of R15 471 169.28 plus interest at the rate of 15% per annum . Though not confirmed the respondent had other creditors mentioned in the founding affidavit for an amount of R16 214 094.00. The applicant contended that the respondent could not pay despite demand due to mismanagement of its operations. It suspected that the respondent was busy dissipating its assets and that it was just and equitable that the respondent be liquidated.

[3]

The respondent denied that the claim was undisputed. It placed in dispute the standing time invoices which amounted to R6 148 025 and

averred that it had not had face-to-face

meetings with the applicant since 3 March 2015, 'more than 72 days before the application was served'. In reply the applicant contended

that the charges were in terms of the Mining Contract Agreement and that this allegation was not borne out by the facts in the

Respondent's application in case number 37379/15, where it was second applicant against Kromdraai. The

respondent also issued summons

against Kromdraai which included amounts claimed by the applicant as standing time. The applicant

averred that there were meetings held with the respondent on 11 and 16 March 2015 to discuss payment.

[4]

According to the respondent none of the creditors mentioned in the founding affidavit have instituted legal proceedings. The respondent

averred that it had cash flow constraints due to the breach of the Mining Rights Holder and Optimum Coal (Pty) Ltd and

legal proceedings had been instituted. The damages recovered would place the respondent in a position to settle the amounts due to the applicant. The respondent contended that there was no urgency in the application in that the applicant failed to follow the dispute resolution mechanism in the Contract Mining Agreement. The respondent denied that he used monies from its sales of coal for purposes other than paying its liabilities. The applicant's inferences that funds of the respondent were being dissipated were unsubstantiated and amounted to hearsay. If these allegations were true there would be no purpose in opposing the application

[5]

In a supplementary affidavit to show cause why a final order should not be made, the respondent raised the issue that it was irregular for Bertelsman J to rely extensively on an affidavit of Mr Packham which was not before him in granting the provisional order.

This was case number 40216/25 where it was alleged that the respondent was indebted to FIS DMCC, a company existing under the laws of the United Emirates in the amount of \$ 935 000.00 (US Dollars).

[6]

It was contended that it was not just and equitable to grant a final order. Mr Packham had subsequently concluded the same contract the respondents had concluded with Kromdraai, over the same immovable property and also unconditionally accepted the cancellation of the contract which Kromdraai had with the respondent. The respondent contended that FIS had consequently abandoned all right it had against the respondent therefore the respondent was not commercially insolvent.

[7]

In determining the matter I shall not deal with issues around the alleged concealment of liabilities the respondent has with FIS, or the other cases issued by it against Kromdraai. Furthermore in as far as the comments against Bertelsman J are concerned, it is my view that a provisional order and not a final one was given in order to give the respondent another opportunity to satisfy the court.

[8]

It is not denied that there were monies owing by the respondent to

the defendant arising out of services rendered in terms of the Mining Contract. Having regard to G1-G7 annexed to the founding affidavit it does not seem that the respondent disputed any of its indebtedness to the applicant. There was no indication given that there were disputes raised with regard to standing time. This is fortified by the fact that in litigation with Kromdraai the amounts owing to the applicant were confirmed. The dispute raised by the respondent was in my view not bona fide.

[9]

Kromdraai has cancelled its agreement with the respondent and there is no source of income from which the applicant and the other creditors can be paid. The amounts owing were due long before the contract was cancelled. The respondent has failed to demonstrate that it is able to pay and relies on the probable success of a damages claim against Kromdraai, in order to settle the amounts owing to the applicant and other creditors listed in the founding affidavit. The respondent does not further deny its indebtedness to these other creditors. It relied on the fact that they have not instituted legal proceedings against it. It was my view that applicant made out a case for the respondents liquidation.

TLHAPI
W
(JUDGE
OF THE HIGH COURT)
MATTER
HEARD ON: 09 SEPTEMBER 2015

JUDGMENT

RESERVED ON: 09 SEPTEMBER 2015

ATTORNEYS FOR THE APPLICANT: VAN ZYL LE ROUX INC

ATTORNEYS FOR THE RESPONDENTS: ROTH & WESSELS ATT

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Prepared on 14 October 2026 · Esheria