

SOUTH AFRICA / JUDGMENT

Baumann and Others v Pharmatech (Pty) Ltd (12584/2017) [2017] ZAGPPHC 887 (7 December 2017) [2017] ZAGPPHC 887

COURT

North Gauteng High Court, Pretoria

BEFORE

GC Wright

CASE / FILE NUMBER

12584/2017

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA,

GAUTENG

DIVISION,

PRETORIA

CASE

NO: 12584/2017

7/12/2017

In

the matter between:

DION

BAUMANN FIRST

APPLICANT

DB

FINE CHEMICALS (PTY)

LTD SECOND

APPLICANT

DB

FINE SPECIALITIES (PTY)

LTD THIRD

APPLICANT

and

PHARMATECH

(PTY)

LTD RESPONDENT

JUDGMENT

1. The applicants seek the winding up of the respondent company. The applicants' papers show that the respondent has admitted, through its moving force, Mr Louw that the respondent owes at least one of the applicants a substantial amount of money and that the respondent can't pay. On 17 October 2016 Mr Louw emailed the first applicant acknowledging that "it is unable to repay your Joan account due to slow debtors and orders." The email goes on to state that "/" need to still pay other creditors to keep operations running in order to service the payments underneath." The email acknowledges an outstanding amount of R1 400 000.
2. It would appear that the R1 400 000 was owed by the respondent to the second applicant rather than to the first applicant. The respondent has only paid R1m to the second applicant of an admitted initial loan of R2m. Regarding the R1m owed on the R2m loan the respondent says that R276 585 and R413 820 need not be repaid because at some stage the second and third applicants delivered defective goods to the respondent. The total of these two amounts is R690 405. Even if this allegation is true it still leaves a balance of R309 595 owing by the respondent to at least one applicant. This is apart from any question of interest.
3. In my view, the second applicant, if not the second and third applicants, has shown an indebtedness of a sum, more than sufficient for the purposes of a winding up application , owed by the respondent and which the respondent is clearly unable to pay.
4. The respondent takes issue with the certificate of security by the Master put up the applicants as security for costs. The certificate was issued by the Master on 22 February 2017. The Notice of Motion is dated 20 February 2017 and was issued by the Registrar on 21 February 2017. In my view the certificate is good. There is no requirement that the certificate has to precede either the date of the Notice of Motion or the date of issue by the Registrar of the application. In my view, the applicants have complied with section 346(3) of the Companies Act, 61 of 1973.
5. In my view the applicants are entitled to a provisional winding up order.
6. This case has been allocated by Judge President Mlambo to be heard by a Judge sitting in the High Court in Johannesburg. With the provisions of section 27 of the Superior Courts Act 10 of 2013 in mind I asked both counsel if they applied for the removal of the matter from Pretoria to Johannesburg. Both agreed that the matter continue before me.
7. Even in the absence of an application by any party I may mero motu hear the case. See Thembani Wholesalers v September 2014(5) SA 51 ECG at paragraph 13. In my respectful view, the learned Judge President was acting in the best interests of the administration of justice and was seeking only to improve case-flow and the efficient disposal of cases caused by the high number of cases needing adjudication in Gauteng and especially in Pretoria.

ORDER

1. A rule nisi is issued, returnable on 7 May 2018 calling upon the respondent and all interested persons to show cause why the provisional winding up of the respondent should not be made final.
2. This order is to be served on the respondent, the Master, SARS, any employees of the respondent and any trade union of which such employees are members.
3. A copy of this order is to be sent to all known creditors of the respondent.
4. Pending the return day, the respondent is placed in provisional winding up.
5. Costs reserved.

GC WRIGHT J

JUDGE OF THE HIGH COURT,

GAUTENG LOCAL DIVISION,

JOHANNESBURG

On behalf of the Applicant: Adv HAA Krige

Instructed by: Martini-Patlansky

012 424 0200

On behalf of the Respondent: Adv JC Van Eeden

Instructed by: Phillip Du Toit Attorneys

083 251 5281

Date of Hearing: 7 December 2017

Date of Judgment: 7 December 2017

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Prepared on 10 October 2026 · Esheria