

SOUTH AFRICA / JUDGMENT

**BP Southern Africa (Pty) Ltd and
Another v Boy NO 50 Trading (Pty)
Ltd (Ex Tempore) (89753/2024)
[2024] ZAGPJHC 857 (20 August 2024)
[2024] ZAGPJHC 857**

COURT

South Gauteng High Court, Johannesburg

BEFORE

Wilson

CASE / FILE NUMBER

89753/2024

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 89753/2024

DATE: 20-08-2024

1. REPORTABLE: NO.
2. OF INTEREST TO OTHER JUDGES: NO.
3. REVISED.

20 August 2024

In the matter between

BP SOUTHERN AFRICA PTY LTD 1st Applicant AQUARELLA INVESTMENTS and 2nd Applicant
BOY NO 50 TRADING PTY LTD Respondent

JUDGMENT EX TEMPORE

WILSON, J: The applicant, BP, is a well-known supplier of fuel to garage forecourts throughout the country. The second applicant, Aquarella, owns a garage forecourt on which the respondent, Boy 50, currently sells fuel.

BP and Aquarella approached me on an urgent basis for relief authorising BP to de-brand Boy 50's filling station, and to eject Boy 50 from the garage forecourt. The basis for this application is three-fold. First, BP says that it has terminated its agreement to supply Boy 50 with fuel and accordingly Boy 50 has no right to pass off the fuel it sells as BP fuel. Secondly, Aquarella says that it has terminated the lease in terms of which Boy 50 is entitled to occupy the garage forecourt. This was done for non-payment of amounts due under the lease.

Thirdly, the matter is brought on an urgent basis because BP became aware at the end of July of a test done on the fuel being sold at the garage, which demonstrated that the fuel was not BP fuel, and that it had in fact been mixed with paraffin. The fuel is hazardous because the temperature at which it will ignite is significantly lower than is safe, and certainly significantly lower than the temperature at which BP fuel ignites. The sale of fuel and the storage of fuel at the forecourt therefore presents an acute and ongoing safety risk, both to people in the vicinity of the garage and those who may fill up their cars at it.

These material facts are not disputed in Boy 50's answering affidavit. Boy 50 simply complains about various undertakings that it says BP made to Boy 50 to amend, regularise, or continue its relationship with BP. These undertakings arise from meetings that took place earlier this year. Whatever those extra-contractual negotiations were, they do not affect the validity of BP's termination of the supply agreement, and they do not affect the validity of Aquarella's termination of the lease agreement. There is nothing I can see in Boy 50's answering affidavit that even begins to make out a case that they do.

Boy 50 further argues that Aquarella is debarred from approaching this court for urgent relief by an arbitration clause in the lease agreement. However, the arbitration clause specifically reserves the rights of either party to any arbitration to approach the court for urgent relief on any matter arising from the lease. It seems to me that the clause is broad enough to apply, on any sensible interpretation, whether a dispute has been referred to arbitration or not.

I was informed during argument of a counter-application in which Boy 50 apparently seeks relief setting aside the termination of its lease agreement with Aquarella and the termination of its supply agreement with BP. That application has not been brought on an urgent basis. Nor has it been enrolled before me. It only came to the applicants' attention during argument, and in any event makes out no better case to impugn the applicants' terminations of the lease agreement and the supply agreement than the answering affidavit does.

In all those circumstances there is simply no basis on which the relief BP and Aquarella Investments seek can be resisted. This is manifestly an urgent application, given the undisputed fact that the fuel being supplied by Boy 50 is hazardous and prone to ignition at temperatures significantly below fuel safety standards and below the temperature at which BP fuel would ordinarily ignite. Considerations both of law and of public safety impel me to make an order in terms of the draft handed up by the applicant's

counsel, which I have signed, dated and marked X.

WILSON, J

JUDGE OF THE HIGH COURT

20 August 2024

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CASE PAGE <https://chat.esheria.ai/case-law/south-africa/bp-southern-africa-pty-ltd-and-another-v-boy-unknown-topic-agpjhc-2024>

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