

SOUTH AFRICA / JUDGMENT

Burmeister and Another v Avenue Brittany (Pty) Ltd and Others (4523/2011) [2012] ZAWCHC 328 (11 October 2012) [2012] ZAWCHC 328

COURT

Western Cape High Court, Cape Town

BEFORE

Binns-Ward

CASE / FILE NUMBER

4523/2011

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF SOUTH AFRICA

WESTERN CAPE HIGH COURT, CAPE TOWN

CASE NO: 4523/2011

In the matter between

EBERHART BURMEISTERFirst Applicant

AVENUE BRITTANY 9 (PTY) LTDSecond Applicant

and

AVENUE BRITTANY (PTY) LTDFirst Respondent

MICHAEL JOSEPH V1ETRISecond
Respondent

ARTHUR STANLEY QUINTONThird Respondent

KORNELIA QUINTONFourth
Respondent

THE REGISTRAR OF COMPANIESFifth Respondent

THE REGISTRAR OF DEEDSSixth
Respondent

AQUACOR ARCHITECTS CC t/a

Arthur Quinton ArchitectsSeventh
Respondent

FAIRCAPE PROPERTY DEVELOPERS (PTY) LTDEighth Respondent

CONSTANZE BURMEISTERNinth
Respondent

JUDGMENT DATED 11 OCTOBER 2012

BINNS-WARD J:

[1] This application for an order that the company cited as the first respondent in the proceedings be restored to the register of companies, together with other ancillary relief, was argued on 4 September 2012. Consequent upon a consideration of that argument a rule nisi issued on 7 September 2012. The reasons for the issue of the rule were given in a written judgment handed down at the time. The return day of the rule was 8 October 2012. No-one appeared to oppose the confirmation of the rule. The only intervening development was that a notice of intention to abide the judgment of the court was delivered on behalf of the first to fourth and seventh and eighth respondents. (As observed in the judgment of 7 September, the notional participation of the first respondent in these proceedings is anomalous to say the least because until its registration is restored it does not exist, but once restored its deregistration is deemed never to have occurred.) These parties had argued for the dismissal of the application at the hearing on 4 September. It seems that the intended effect of the notice to abide is to avoid liability by the respondents for the costs of the proceedings on the return date.

[2] The judgment of 7 September treated of the procedural basis for the opposition to the application and of the respondents' reliance on the judgment in *Ex Parte Minister of Lands; Ex Parte Ventersdorp Muslim Trust (Pty) Ltd and Others* 1964 (3) SA 469 (T). It remains to consider whether there is anything in the argument that the directors of the first respondent had been entitled reasonably to assume that the applicant had abandoned their action against the company and that they and the other respondents would be prejudiced if the company were to be reregistered at this stage only for the purpose of the litigation to proceed. In this

connection counsel for the respondents cited the judgments in *Molala v Minister of Law and Order and Another* 1993 (1) 673 (W) and *Golden International Navigation SA v Zeba Maritime Co Ltd\ Zeba Maritime Co Ltd v MV Visvliet* 2008 (3) SA 10 (C).

[3] I do not find the *Molala* judgment to be particularly on point. That case concerned an application by the defendants in an action to have the case dismissed

because they had been prejudiced by the plaintiffs delay in prosecuting it. The application was prompted when the plaintiff, having been served with a request for further particulars on 16 April 1987, furnished a reply thereto only on 23 September 1991. The delay

in the current matter was considerably less, and its allegedly prejudicial effect not so evident. The pleadings had closed in the

current matter and, as mentioned in the 7 September judgment, an admission of liability by the defendant to the plaintiff in a certain amount had been made in the plea. The matter had been set down for trial well before the application for deregistration of the company was submitted and notice of a trial date had been given by the registrar before the deregistration of the defendant company was effected. These are materially distinguishing factors. The judgment in *Golden International Navigation* also proceeded from quite distinguishable facts. Moreover, it is striking that in both of the matters upon which the respondents'

counsel relied in argument the party seeking to avoid the continuance of the litigation took active steps to obtain its dismissal for want of efficient prosecution.

- [4] I have not been persuaded in the current matter that the delay in the prosecution of the action between 2004 and 2006 affords good enough reason to refuse the application for the restoration of the first respondent to the register of companies. The delay is more than offset by the fact that the deregistration of the company in 2010 occurred as a consequence of a misstatement by its directors that it had no liabilities. In the context of the admission of liability contained in the first respondent's plea this was a statement that it was not possible to sustain.
- [5] In the face of the admission of some liability by the first respondent to the applicants in the plea, I have not been disposed to enter into the issue of the attack by the respondents against the sustainability of parts of the plaintiffs' claims in the action.
- [6] The applicants were directed in terms of paragraph 3 of the order made on 7 September to pay the wasted costs incurred by the second, third, fourth, seventh and eighth respondents by reason of the postponement of the application for the issue of the rule. It was observed at paragraph 11 of the judgment that those costs would not include the costs of argument before me on 4 September 2012 if no additional substantive hearing was required consequent on the rule. That eventuality has transpired and therefore the issue of liability for the costs of the hearing on 4 September falls to be determined. The opposition to the application has been unsuccessful. No reason has been suggested why costs should not follow the result.
- [7] The following orders are made:
1. It is directed in terms of s 73(6)(a) of the Companies Act 61 of 1973 that the registration of AVENUE BRITTANY (PTY) LTD, Registration Number 2001/00541/07 (hereinafter referred to as 'the company') shall be restored to the register of companies as a pre-existing company, as defined in s 1 of the Companies Act 71 of 2008.
 2. The Second, Third and Fourth Respondents shall be deemed to have been put back in position as the directors of the company.

3. The Companies and Intellectual Property Commission (hereinafter referred to as 'the Commission' is directed to do

everything necessary to give effect to the order in terms of paragraph 1 within 30 (thirty) days of the service upon it by the

applicants of a copy of this order.

4. The Second, Third and Fourth Respondents are directed:

1.4.1. to do all such things to satisfy any condition/s as may be determined by the Commission, so as to restore the company to the register of companies within such period as may be determined by the Commission in order to enable the Commission to give effect to the order made in terms of paragraph 3; and

1.4.2. to cause all outstanding annual returns due by the company to be filed with the Commission within 30 (thirty) days from the date of this order;

5. Any assets of the deregistered company which might have accrued to the State as bona vacantia upon the company's deregistration shall be restored to the company upon its restoration to the register of companies.
6. It is declared in terms of s 73(6)(b) of the Companies Act, 1973, that any acts purportedly undertaken by or on behalf of the company during the period of its deregistration in the conduct of the litigation in the Western Cape High Court, Cape Town in case no. 1029/04 shall be deemed to have been validly and effectively undertaken for the purposes of that litigation.
7. Subject to the effect, if any, of paragraph 3 of the order made on 7 September 2012, the Second, Third and Fourth Respondents shall be liable, jointly and severally, the one paying the others being absolved, to pay the Applicants' costs of suit incurred up to the date of the delivery of the 'Notice of Intention to Abide', dated 25 September 2012

A.G.BINNS-WARD

Judge of the High Court

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAWCHC/2012/328.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/burmeister-and-another-v-avenue-unknown-topic-awchc-2012--6a3ea51b3b1caa9129811c40>

Prepared on 13 October 2026 · Esheria