

SOUTH AFRICA / JUDGMENT

Du Plessis v Swartz (17015/03)

[2003] ZAGPHC 12 (9 October 2003)

[2003] ZAGPHC 12**COURT**

High Courts - Gauteng

BEFORE

Willis

CASE / FILE NUMBER

17015/03

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

NOT REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA

(WITWATERSRAND LOCAL DIVISION)

JOHANNESBURG

CASE NO:17015/03

DATE:2003-10-09

In the matter between

MARTIN RODNEY MICHAEL DU PLESSISApplicant

and

ENVER LIONEL SWARTZ.....Respondent

JUDGMENT

WILLIS, J; This is an application in terms of which the applicant seeks an order granting the following relief:-

"

1. Dat die respondent gelas word om onmiddellik betaling te maak aan die applikant van

1.1 R93000; en

1.2 R35 000.

2. Dat die respondent gelas word om met ingang 1 Julie 2003 en tot en met die finale vasstelling van die leningsrekening van die applikant in die boeke van die

vennootskap die bedrag van R40 000 per maand te betaal voor/op die derde dag van iedere en elke maand beginnend Julie 2003.

3. Dat die respondent gelas word om na vasstelling van die omvang van die leningsrekening van die applikant in die boeke van die

vennootskap die voile balans aan die applikant te betaal.

4. 4.1 Die respondent binne 10 dae vanaf datum van verlening van 'n bevel hierin volledig rekenskap doen van die boeke van die

vennootskap tot op datum van ontbinding. 4.2 Indien die partye hiertoe nie binne vyf dae nadat die rekening gelewer is, die rekening gedebatteer het nie en of daar daarby dispute oorbly nadat debattering van sodanige rekeninge, die applikant geregtig sal wees om hierdie Agbare Hof weer te nader op dieselfde stukke behoorlik aangevul vir 'n bevel tot debattering van die rekeninge en vir

betaaiing van sodanige bedrag as wat verskuldig bevind mag word te wees.

5. Die respondent verbied word om enigsins vender en totdat die voormelde afgehandel is, enige onttrekkings uit die besigheidsrekening van die vennootskap (of die ingelyfde maatskappy) met die naam "Swartz Du Plessis" te maak maar om alle deposito's wat daarin gemaak moet word daarin te deponeer.

6. In die alternatief tot smeekbede 4 dat -

7. 'n Likwidadeur vir die vennootskap te wete T Van den Heever van Corporate Recovery and Insolvency Deloitte & Touche Trust (Edmsl aangestel word met die volgende magte en bevoegdhede:

7.1 om die vennootskap tussen die applikant en die respondent te likwideer;

7.2 om die vennootskap se bates te realiseer;

7.3 om debiteure van die vennootskap in te vorder;

7.4 om die verpligtinge van die vennootskap af te los;

7.5 om 'n finale rekening tussen die partye voor te berei;

7.6 om die surplus vennootskapsbates gelykop tussen die vennote te verdeel;

7.7 om beheer te neem van al die vennootskapsbates soos wat dit gestaan het op datum van die ontbinding van die vennootskap, insluitende die werfkrag waarde;

7.8 om vennootskapsbates te likwideer op 'n wyse wat in sy uitsluitlike diskresie tot die beste voordeel van die vennote is.

8. Dat die respondent die koste van die aansoek betaal.
9. Verdere of alternatiewe regshulp."

This dispute relates to the dissolution of a partnership between two attorneys. The respondent has no objection to relief being granted in terms of prayers 3 and 4 of the notice of motion. The respondent alleges that he has always been willing to enter into a debate concerning the accounts between the respective parties. I therefore consider it appropriate that the respondent should be held to his word in this regard.

In so far as the allegations of monies due are concerned, the respondent deals with these allegations in an astonishingly evasive manner. There is much huffing and puffing but no dispute actually that the amounts in question are due and payable. There is no allegation that the amounts have been paid nor are there any annexures that would indicate such payments have been made.

Despite Mr Cajee's protestations that there are disputes of fact that require that this matter be referred to trial, alternatively, oral evidence, it seems to me that at the end of the day the respondent's affidavit contains much obfuscation but does not deal with the real issues.

Accordingly, in my view, the applicant is entitled to the relief which he seeks and an order is made in terms of prayers 1, 2, 3, 4, 5 and 8 of the notice of motion dated 27 June 2003.

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/ZAGPHC/2003/12.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/du-plessis-v-swartz-unknown-topic-agphc-2003>

Prepared on 10 October 2026 · Esheria