

SOUTH AFRICA / JUDGMENT

E H Hassim Hardware t/a E H Hassim v Silangos Managemnt Systems CC (66580/2012) [2013] ZAGPPHC 285 (10 October 2013) [2013] ZAGPPHC 285

COURT

North Gauteng High Court, Pretoria

BEFORE

E M Kubushi

CASE / FILE NUMBER

66580/2012

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NOT

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IN

THE HIGH COURT OF SOUTH AFRICA (NORTH GAUTENG, PRETORIA)

CASE

NO: 66580/2012

DATE:10/10/2013

In

the matter between:

E
H HASSIM HARDWARE T/A E H
HASSIM.....APPLICANT
and
SILANGOS
MANAGEMNT SYSTEMS CC
(Registration

number:

2003/069516/23).....RESPONDENT

JUDGMENT**KUBUSHI, J**

- [1] This is an application for the liquidation of the respondent. The applicant is applying for the winding-up of the respondent in terms of the provisions of section 344 (f) and 346 of the Companies Act 61 of 1973 (the Act) which has been retained in terms of items 7 and 8 of schedule 3 to the new Companies Act 71 of 2008 and sections 66 and 69 (1) of the Close Corporations Act 69 of 1984.
- [2] The applicant alleges that the respondent owes it an amount of R998 496, 31 which is disputed by the respondent. The evidence before me is that the respondent's indebtedness to the applicant emanates from a court order and a subsequent arbitration award in terms of which the applicant obtained a judgment against the respondent for payment of R2 100 000, 00 and a subsequent award of R400 000, 00. The respondent was further ordered to pay costs in the amount of R100 000, 00. All these amounts came to the sum of R2 600 000, 00. Pursuant to an attachment order obtained by the applicant against the Standard Bank account of the respondent, the applicant was able to receive direct payments from Standard Bank on behalf of the respondent totalling R2 101 098, 37 which left a balance of R498 901, 63.
- [3] At the hearing of the matter the respondent's counsel submitted that the respondent has made a further payment of R400 000, 00 which left only R98 000, 00 in dispute. The applicant's counsel was not aware of the payment and was thus not prepared to accept that the payment was made without instructions from his instructing attorney. I therefore requested that I be provided with proof of payment of the alleged payment.
- Indeed on 2 August 2013 I was provided with an affidavit attested by a candidate attorney from the respondent's attorneys to which was attached proof of payment of the R400 000, 00. Although the respondent's counsel disputed the balance of R98 000, 00 I am,
- however, prepared to accept that that amount is still due and owing.
- [4] My view is that I should exercise my discretion against the grant of an order for the liquidation of the respondent. Even if it could be concluded that the respondent was unable to pay its debts, I can still exercise my judicial discretion in terms of section 344 of the Companies Act to refuse the application. See *Western Assurance Co V Caldwell's Trustee* 1918 AD 262 at 271.
- [5] Section 344 sets out circumstances in which a company may be wound up by a court. Sub-section 344 (h) provides that: -

"A company may be wound up by the court if it appears to the court that it is just and equitable that the company should be wound up."

This sub-section gives a court the discretion to grant or refuse the application.

[6] It is common cause that the respondent cannot pay its debt in one lump sum. However, the respondent has accepted that he owes the applicant and even tendered to

pay the debt off as and when money is received from its debtors. This the company has done. The evidence is that the initial amount due was R2 600 000, 00. At the hearing of the application the amount owing was a mere R98 000, 00. To my mind the circumstances of this case do not call for the winding-up of the respondent. I find therefore that it is not just and equitable to do so.

[7] I was not addressed on the issue of costs and I do not intend to make an order in that regard. Each party must pay own costs.

[8] In the premises the application is dismissed. I make no order as to costs.

E. M. KUBUSHI

JUDGE OF THE HIGH COURT

Appearances:

HEARD ON THE :31 JULY 2013

DATE OF JUDGMENT:10 OCTOBER 2013

APPLICANT'S COUNSEL: ADV D. PRINSLOO

APPLICANT'S ATTORNEY : BRESLER BECKER

C/O DU PLESSIS & EKSTEEN INC

RESPONDENT'S COUNSEL :ADV B. D. STEVENS

RESPONDENTS' ATTORNEY : ROUTLEDGE MODISE INCORPORATED

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