

SOUTH AFRICA / JUDGMENT

## Firststrand Bank Limited v Classco Trading (Pty) Ltd (2012/72945) [2017] ZAGPPHC 418 (31 July 2017) [2017] ZAGPPHC 418

COURT

North Gauteng High Court, Pretoria

BEFORE

Tsatsawane

CASE / FILE NUMBER

2012/72945

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IN THE GAUTENG DIVISION OF THE HIGH COURT OF SOUTH AFRICA, PRETORIA

Not reportable

Not of interest to other judges

Not revised.

31/7/2017

CASE NO.:2012/72945

In the matter between: -

FIRST RAND BANK LIMITED APPLICANT

And

CLASSCO TRADING (PTY) LTD RESPONDENT

### JUDGMENT:

APPLICATION FOR LEAVE TO APPEAL

Tsatsawane AJ

1. This is an application for leave to appeal against my judgment in which I dismissed the applicant's application for liquidation.
2. The application for leave to appeal is based on a long list of grounds on the basis of which it is contended that I erred "on one or more of" them.

3. The application for leave to appeal is opposed by the respondent. In his heads of argument on behalf of the applicant, Mr. Smit contended that the judgment is based on aspects which were not argued before me. The parties agreed to argue the question whether the applicant had locus standi to seek a liquidation order against the respondent. In this regard, the applicant relied on a deed of suretyship to found its locus standi. This is what was argued before me and the judgment which is the subject of this application for leave to appeal deals with exactly that issue.
4. It was contended on behalf of the applicant that the applicant made out a prima facie case of indebtedness, i.e. that the respondent was indebted to it. The respondent's indebtedness to the applicant is based on the deed of suretyship. Without the deed of suretyship, the applicant does not have a case against the respondent.
5. Mr. Smit referred me a recent decision of the Supreme Court of Appeal in *Afgri Operations Limited v Hamba Fleet (Pty) Ltd* [2017] ZASCA 24 (24 March 2017) in which that Court restated the legal position that where an applicant for liquidation has prima facie established the respondent's indebtedness, the onus is then on the respondent to show that the indebtedness so established is disputed on bona fide and reasonable grounds. The applicant contended that I erred in not finding that the respondent did not have bona fide and reasonable grounds to dispute the prima facie indebtedness which it established.
6. What is clear from *Afgri Operations* and the cases before it is that the affidavits placed before the Court must demonstrate a prima facie case of indebtedness in favour of the applicant. As I understand Mr. Smit's argument, the affidavits filed of record do establish a prima facie case of indebtedness in favour of the applicant and that I erred in "holding that the respondent drew no onus in circumstances where it was incumbent on the respondent to demonstrate that the indebtedness contended for by the applicant was disputed bona fide and based on reasonable grounds." The question of onus dealt with in the judgment relates to whether locus standi was established by virtue of the deed of suretyship relied upon by the applicant.
7. On behalf of the respondent, Mr. Rossouw SC persisted that the applicant does not have locus standi to seek a liquidation order against the respondent and that there are no prospects of another Court coming to a different conclusion on this issue. He urged me to dismiss the application for leave to appeal with costs.
8. Having considered the submissions made on behalf of both parties, I am of the view that there are prospects of another Court coming to a different conclusion on whether the applicant established a prima facie case of indebtedness against the respondent and on the other grounds set out in the application for leave to appeal. Accordingly, there are prospects that an appeal would succeed.

9. In its notice of application for leave to appeal and heads of argument, the applicant contended that leave to appeal be granted to the full bench of this Court, alternatively, to the Supreme Court of Appeal. No case has, however, been made as to why leave to appeal should be to the Supreme Court of Appeal. The Supreme Court of Appeal has already restated the legal position on the main issue on which I am inclined to grant leave to appeal.
10. The other grounds of appeal listed in the notice of application for leave to appeal do not raise novel points of law which justify the referral of this matter to the Supreme Court of Appeal. Accordingly, I am not persuaded that leave to appeal should be granted to the Supreme Court of Appeal. Insofar as my judgment reached a different conclusion from the judgments of Makume J and Mabuse J, that conflict, if any, does not relate to matters which justify an appeal to the Supreme Court of Appeal when regard is had to the findings made in my judgment. The full bench of this Court is capable of resolving that conflict, if any.
11. In the premises, I make the following order -
  - 11.1 The applicant is granted leave to appeal to the full bench of this Court.
  - 11.2 The costs of this application shall be costs in the appeal.

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Kennedy Tsatsawane

Acting Judge of the Gauteng Division of the High Court of South Africa, Pretoria

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Prepared on 27 October 2026 · Esheria