

SOUTH AFRICA / JUDGMENT

Garbade v Jan Van Niekerk (4987/2016) [2018] ZAKZDHC 7 (28 March 2018)

[2018] ZAKZDHC 7**COURT**

Kwazulu-Natal High Court, Durban

BEFORE

Ploos van Amstel

CASE / FILE NUMBER

4987/2016

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Source record**IN****THE HIGH COURT OF SOUTH AFRICA****KWAZULU-NATAL****LOCAL DIVISION, DURBAN****CASE****NO: 4987/2016****In**

the matter between:

HEIDI
GARBADE
Applicant
and
TASMYN-JAIN
VAN NIEKERK
Respondent
ORDER
(a)

The respondent is
interdicted and restrained
from:

- (i)
unlawfully interfering with the applicant's business;
(ii)
unlawfully casting aspersions on the applicant's character,
personality and
business reputation.
(b)
The respondent is ordered to pay the costs of the application.

JUDGMENT

Delivered on: 28 March 2018

Ploos van Amstel J

[1] On 27 May 2016 Chetty J issued a rule nisi calling upon the respondent to show cause why an order in the following terms should

not be made final:

- (a) That the respondent be and is hereby interdicted and restrained from intimidating, harassing, or in any way unlawfully interfering with the applicant and her business or in any way communicating with the applicant;
- (b) Interdicting and restraining the respondent from casting aspersions on the applicant's character and personality and the applicant's business reputation;
- (c) That the respondent be and are (sic) hereby forthwith interdicted and restrained from contacting, approaching any of the applicant's business clientele, sponsors and any other persons or juristic entities having an interest in the Gatsby Polo 2016 event scheduled to commence on 5 June 2016.
- (d) Directing the respondent forthwith to take immediate steps to procure that the statements, made and published by the respondent in relation to the applicant and her business, is withdrawn and ceases to be published on hellopeter.com and africacomplaints.com websites including Facebook and any other media and social media platform.
- (e) Directing that the respondent furnish proof of explain (sic) with 3
- (d) within 48 hours from the granting of this order.
- (f) Costs reserved.

[2] The learned judge also ordered that subparagraphs (a) to (e) would operate as interim orders pending the return day of the rule nisi. The matter came before me today on the opposed roll, with the applicant seeking the confirmation of the rule and the respondent its discharge.

[3] It is a reflection on both parties that the dispute between them has escalated to the point that the matter ends up as an opposed

application in the High Court. My impression from the application papers is that neither of them can afford to litigate in the High Court, and unfortunately they will have to accept the consequences of their failure to resolve the dispute in a mature and sensible manner.

[4] The applicant is Heidi Garbade, who describes herself as a businesswoman and events organiser and coordinator. The respondent is Tasmyn-Jain van Niekerk, who has rendered services to the applicant with regard to the online marketing of a particular event, and who claims that the applicant has not paid her in full for her services. There is a dispute on the papers as to what had gone wrong with the event in question, and whether or not the respondent is entitled to further payment. It is not necessary to resolve this dispute as this is not what the application is about. The applicant's complaint is that after the dispute arose the respondent made numerous defamatory statements about her and discouraged people from doing business with her.

[5] On 24 May 2016, when the applicant was in the process of organising the Gatsby Polo event, the respondent posted a statement on a Facebook page which she had created. It was headed 'Gatsby Polo Shongweni', and read as follows:

'A warning for business owners and jobseekers! After a very quick look around Google, I found that she has screwed hundred of people out of thousands of rand! I am still waiting for this Heidi Garbade to settle the money she owes me... She tells me to contact her lawyer, who refuses to respond to my emails, messages and calls! (Who has now since emailed me but without resolution). People be aware – do not do business with this woman. She is now looking for traders and corporates for the Gatsby polo event coming up. Scary stuff. Hold onto your money and sanity and rather don't get involved'.

[6] The applicant also complains that the respondent was the author of an anonymous 'warning email' on 23 May 2016, which circulated amongst traders, sponsors and the community at large, in which defamatory statements are made of her, including that she is an expert in fraud. She says as a result numerous traders and sponsors have withdrawn from the event.

[7] The respondent admits that she posted the statement on Facebook. She denies however that she was the author of the anonymous email. On 24 May 2016, which was the date on which the Facebook post appeared, the applicant's attorney wrote to the respondent as follows:

'Our client advises that you have taken extraordinary steps to publicly defame and sabotage her Polo event set down for June 2016. This has been done via social media and other public platforms. Our instructions are to request that you remove these unlawful postings within 24 hours failing which our client will proceed to the High Court for an urgent interdict preventing you from persisting in your conduct together with a criminal charge of crimen iniuria.'

[8] The respondent's response on the same day read as follows:

'So lovely to hear from you considering that you have ignored previous documents and correspondence sent to you. Please be advised that your client has failed to pay monies owing to me as well as various other members. I have spoken to both an attorney as well as the police regarding the links and personal experience I shared with others. Should your client settle the amounts she owes me and others I will then remove the posts. I am under the impression that she will not do this so I will then be seeing you in the high court. FYI – Kindly note that I did not

use obscene or racially offensive language or gestures. I simply shared many links from many different people on many different sites so that people know what they are getting involved (sic) should they choose to. Bring it on Heidi – I have all my ducks in a row!!! Do you????

[9] Although the respondent's response suggests that the Facebook post was not the only statement that she published about the applicant, I cannot find on the papers, and without oral evidence, that the respondent was the author of the so-called 'warning

email'. In the circumstances of the case, however, I do not think that this really matters. In the Facebook post, which she

admits she was responsible for, she warns business owners and jobseekers not to do business with the applicant. She says the applicant has 'screwed' many people out of thousands of Rands. One of the meanings of the word 'screw' in the Oxford South African Concise Dictionary is 'cheat or swindle'. In the present context the statement in the post can only mean that the applicant has cheated people out of their money. The respondent then advises people to 'hold onto' their money and sanity and rather not get involved with the applicant.

[10] It is by now generally accepted that the posting of a defamatory statement on social media, such as Facebook, can constitute

publication for the purposes of defamation. See *Heroldt v Wills* 2013 (2) SA 530 (GSJ); *Isparta v Richter and Another* 2013 (6) SA 529 (GNP). People need to be aware that the publication of a defamatory statement concerning another person on social media is not excused by the fact that the statement is true. It also has to be in the public interest, which is not the same as being interesting to the public, as Corbett CJ pointed out in *Financial Mail (Pty) Ltd v Sage Holdings Ltd*

[1993] ZASCA 3; 1993 (2) SA 451 (AD) at 464C.

[11] I consider the contents of the Facebook post defamatory of the applicant and an unlawful interference with her business. The respondent's defiant written response seems to me to make it clear that her attack on the applicant was aimed at ensuring payment of what she claimed was owing to her, and had nothing to do with the public interest or fair comment, as was suggested by her counsel.

[12] In any event, the respondent has not shown on the papers that the allegations in her Facebook post are true. It is one thing to say that someone has not paid her creditors – it is an entirely different thing to say that someone has cheated or swindled 'hundred' of people out of thousands of Rands and cannot be trusted to do business with.

[13] There was therefore no justification for publishing these statements. Even if they were true, it is difficult to see how they could have been in the public interest or fair comment in the context of the law of defamation.

[14] Counsel for the respondent submitted that it will not be appropriate to confirm all of the rule nisi, as some parts of it were not proved, such as, for example, the reference to her intimidating or harassing the applicant. I agree, and I will only confirm those parts which I regard as appropriate. The applicant was nevertheless substantially successful and is entitled to her costs.

[15] The order that I make is as follows:

Appearances:

For the Applicant

: N Manilal

Instructed by

: T Giyapersad Incorporated

c/o Messenger King

Durban

For the Respondents : M Sponneck

Instructed by

: Janssens & Associates Attorneys

c/onM B Pederson & Associates

Durban

Date Judgment Reserved : 22 March 2018

Date of Judgment

: 28 March 2018

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Prepared on 13 October 2026 · Esheria