

SOUTH AFRICA / JUDGMENT

Gearhouse South Africa (Pty) Ltd v Nqulo and Another (2006/8373) [2010] ZAGPJHC 163 (18 June 2010) [2010] ZAGPJHC 163

COURT

South Gauteng High Court, Johannesburg

BEFORE

P.A Meyer

CASE / FILE NUMBER

2006/8373

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SOUTH GAUTENG HIGH COURT, JOHANNESBURG

Case No. 2006/8373

DATE:18/06/2010

In the matter between:

GEARHOUSE SOUTH AFRICA (PTY) LTD.....Plaintiff

and

NOMONDE NQULO.....First Defendant

GODFREY MAUTLOA.....Second Defendant

J U D G M E N T

MEYER, J

- [1] The second defendant, Mr. Godfrey Mautloa, and his wife are partners in a restaurant business in Soweto, which is called Masakeng Restaurant. The second defendant is also the sole member of a close corporation called Soweto Beer Festival CC. The principal business of this close corporation is to hold a beer festival annually during the last weekend of October at Masakeng Restaurant. The beer festival is known as the Soweto Beer Festival. This annual event has, with the exception of the year 2005, been taking place at Masakeng Restaurant since 1990.
- [2] BlackGinger 36 (Pty) Ltd ('BlackGinger 36') is a company that conducts business in events management, promotions, sponsorships, and marketing. The first defendant is the managing director of BlackGinger 36. During the course of 2005, BlackGinger 36 approached

Soweto Beer Festival CC with the proposal that it would organise the Soweto Beer Festival into an event of much greater proportions with various forms of entertainment. The event would no longer take place at the Masakeng Restaurant, but at a stadium in Soweto and be funded by sponsorships which BlackGinger 36 would obtain. BlackGinger 36 would obtain the necessary services and equipment from various suppliers and artists. On 3 June 2005, a written joint venture agreement giving effect to this proposal was concluded between BlackGinger 36, represented by the first defendant, and Soweto Beer Festival CC, represented by the second defendant. Clause 7.2.4 of this agreement provides that '[a]s against third parties, any party incurring any liability in connection with the affairs of the joint venture shall be solely responsible for the discharge thereof.' It is common cause that the revenue received through ticket sales and the like for the 2005 Soweto Beer Festival was insufficient to enable BlackGinger 36 to meet the various financial obligations that it had incurred as a result of contracts that it had concluded with providers of services and equipment for the festival. One such unpaid creditor is the plaintiff.

- [3] On 15 October 2005, a written agreement was concluded between the plaintiff, which is a technical service provider for big events, and BlackGinger 36 ('the agreement'). In terms of the agreement the plaintiff undertook to render certain services and to supply certain equipment, such as a stage, lighting and sound equipment, to BlackGinger 36 at the 2005 Soweto Beer Festival for a total consideration of R576 551.01 including VAT, which amount was to be paid by BlackGinger 36 to the plaintiff before Friday, 21 October
2005. It is undisputed that the plaintiff duly complied with its obligations in terms of the agreement and that BlackGinger 36 has failed to pay to the plaintiff the contract sum of R576 551.01 when payment thereof fell due or at any time thereafter.
- [4] The plaintiff sought to hold the first defendant personally liable for the indebtedness of BlackGinger 36 on a deed of suretyship, which is contained in the agreement. Having been satisfied that a proper case had been made out against the first defendant based on the suretyship that she had signed in favour of the plaintiff, I granted default judgment against her at the conclusion of this trial on 25 November 2009, for payment of the sum of R576 551.01, interest, and attorney and own client costs.
- [5] The plaintiff alleges that the second defendant in writing also bound himself as surety and co-principal debtor with BlackGinger 36 for and in respect of the indebtedness of BlackGinger 36 to the plaintiff. This is denied by the second defendant. Ms. Yvette Mason (a co-partner of Mason Company), Mr. Ofer Lapid (the managing director of the plaintiff), and Mr. John McDermott (the Johannesburg branch manager for the plaintiff), were called as witnesses by the plaintiff. The second defendant testified in his own defence.
- [6] BlackGinger 36 engaged the services of Mason Company to assist in organising the 2005 Soweto Beer Festival. Ms. Yvette Mason, in turn, facilitated the conclusion of the agreement between the plaintiff and BlackGinger

36. Ms. Mason dealt with Mr. John McDermott, who represented the plaintiff in their dealings, and with the first defendant, who represented BlackGinger. Mr. McDermott prepared the agreement in accordance with the requirements of BlackGinger 36 that had been conveyed to him by Ms. Mason and by the first defendant. Mr. McDermott sent the agreement to Ms. Yvette Mason for her to present it to the first defendant. Ms. Yvette Mason testified that she, on 15 October 2005, handed the agreement to the first defendant. She explained it to the first defendant and in particular she made her aware of the suretyship and she showed the first defendant where she should sign, which the first defendant duly did. Ms. Mason testified that the first defendant thereupon approached the second defendant, who also signed the agreement.
- [7] The second defendant's evidence, which was not gainsaid, is that by appending his signature on the document he, at the request of the first defendant, signified the approval of Soweto Beer Festival CC to the equipment that was ordered for the requirements of and entertainment at the festival. He was told that the document was an order for the equipment and he was asked to sign it. He was satisfied with whatever equipment was ordered if Ms. Mason and the first defendant were satisfied. He did not read the document. He signed where the first defendant showed him to sign. He was not asked to and he did not sign the document as a surety and co-principal debtor. Ms. Mason, Mr. Lapid, or Mr. McDermott did not suggest when they testified that the plaintiff required the second defendant to sign the agreement or to bind himself as surety and co-principal debtor with BlackGinger 36 in favour of the plaintiff.
- [8] The second defendant's signature *inter alia* appears next to that of the first defendant in a section of the agreement with the heading 'Suretyship & Warranty of Authority'. This section of the agreement has two clauses. The first one deals with suretyship. It reads:
- 'The signatory on behalf of the client, by his/her signature hereto, binds himself/herself in favour of Gearhouse, its successors in title and assigns as Surety for and co-principal debtor in solidum with the client for the due and punctual performance by the client of all its obligations to Gearhouse in terms of the Agreement.'
- [9] The reference to 'client' is a reference to BlackGinger 36 and the reference to 'Gearhouse' is a reference to the plaintiff. Below the text in this section of the agreement is provision for a name and signature underneath the words: 'For BlackGinger 36'. This is where the second defendant wrote his name and surname next to those of the first defendant and where he signed next to the signature of the first defendant.
- [10] The wording of the suretyship is clear and unambiguous. Only the 'signatory on behalf of' BlackGinger 36, by his or her signature binds him or herself in favour of the plaintiff as surety and co-principal debtor with BlackGinger 36. It is common cause that the first defendant at all material times to the agreement represented BlackGinger 36. The signatory for and on behalf of BlackGinger was the first defendant. The second defendant is accordingly not liable to the plaintiff in terms of the suretyship contained in the agreement.

[11] In the result the plaintiff's action as against the second defendant is dismissed with costs.

P.A MEYER

JUDGE OF THE HIGH COURT

18 June 2010

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