

SOUTH AFRICA / JUDGMENT

Glazing Vision (Pty) Ltd v Rogers and Others (18325/2008) [2009] ZAWCHC 110 (3 February 2009) [2009] ZAWCHC 110

COURT

Western Cape High Court, Cape Town

BEFORE

Traverso

CASE / FILE NUMBER

18325/2008

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IN

THE HIGH COURT OF SOUTH AFRICA

(CAPE

OF GOOD HOPE PROVINCIAL DIVISION)

CASE

NO; 18325/2008

DATE:3

FEBRUARY 2009

In

the matter between:

GLAZING

VISION (PTY) LTD APPLICANT

versus

ANDREW

PIERS ROGERS 1st

RESPONDENT

FAIZEL

CHOONARA 2nd

RESPONDENT

PREMIER

ATTRACTIONS 1051 CC

t/a

THE GLASS SHOP 3rd

RESPONDENT

JUDGMENT

(Application for Leave to Appeal) TRAVERSO, DJP: This is an application for leave to appeal against a judgment which I handed down on 9 December last year, 2008. The grounds of appeal are lengthy and wide-ranging.

JUDGMENT

(Application for Leave to Appeal)

TRAVERSO, DJP:

This is an application for leave to appeal against a judgment which I handed down on 9 December last year, 2008. The grounds of appeal are lengthy and wide-ranging.

Firstly, the issue is raised that the respondents' counsels argument was limited to 35 minutes within which to deal with comprehensive

factual and legal issues. This is not a phenomenon that is unknown, that in certain matters, due to the urgency of the matter, that counsel's argument is limited to accused certain time period. That time period was not then and can never be cast in stone, it's a mere indication to counsel as to how much time they have available to them to argue the matter. This is a time limit that applied to both parties. Neither party objected during the hearing that the allotted time was insufficient I find it astounding to see this has a basis for an applicant for leave to appeal. Mr Barnard had every opportunity to address every argument in the book to me, and if he felt that he needed to go and research certain points further, I certainly would not have refused him an application to ask for the matter to stand down for a few minutes. Be that as it may, let me move on to the merits of this application. The only point argued before me today by Mr Barnard is that there was no evidential basis upon which I could find that in fact there was a springboard and that the applicants, through their actions, in fact gave themselves an unfair and unlawful advantage in the business world which would amount to unlawful competition. It is trite that a springboard must be proved and cannot simply be alleged. In my view, and I set it out fully in my judgment, as fully as I could in the time limits that applied to me, that there was an abundance of evidence in the papers to substantiate the allegation that a springboard had been established That evidence is referred to in my judgment, I do not believe that it is necessary for me to rehash it. Mr Goddard, on behalf of the respondents, argued that if I should grant leave to appeal, it would be a moot point. That may or may not be correct, but I do not believe that I have to deal with it, because in my view this application for leave to appeal is without any substance and in the circumstances I am satisfied it is unlikely that another Court will come to a different conclusion and in the circumstances the application is DISMISSED WITH COSTS. TRAVERSO, J

Firstly, the issue is raised that the respondents' counsels argument was limited to 35 minutes within which to deal with comprehensive

factual and legal issues. This is not a phenomenon that is unknown, that in certain matters, due to the urgency of the matter, that counsel's argument is limited to accused certain time period. That time period was not then and can never be cast in stone, it's a mere indication to counsel as to how much time they have available to them to argue the matter. This is a time limit that applied to both parties. Neither party objected during the hearing that the allotted time was insufficient I find it astounding to see this has a basis for an applicant for leave to appeal. Mr Barnard had every opportunity to address every argument in the book to me, and if he felt that he needed to go and research certain points further, I certainly would not have refused him an application to ask for the matter to stand down for a few minutes.

Be that as it may, let me move on to the merits of this application. The only point argued before me today by Mr Barnard is that there was no evidential basis upon which I could find that in fact there was a springboard and that the applicants, through their actions, in fact gave themselves an unfair and unlawful advantage in the business world which would amount to unlawful competition.

It is trite that a springboard must be proved and cannot simply be alleged.

In my view, and I set it out fully in my judgment, as fully as I could in the time limits that applied to me, that there was an abundance of evidence in the papers to substantiate the allegation that a springboard had been established. That evidence is referred to in my judgment, I do not believe that it is necessary for me to rehash it.

Mr Goddard, on behalf of the respondents, argued that if I should grant leave to appeal, it would be a moot point. That may or may not be correct, but I do not believe that I have to deal with it, because in my view this application for leave to appeal is without any substance and in the circumstances I am satisfied it is unlikely that another Court will come to a different conclusion and in the circumstances the application is DISMISSED WITH COSTS.

TRAVERSO, J

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