

SOUTH AFRICA / JUDGMENT

Hennie Lambrechts Architects v Bombaneiro Investments (Pty) Ltd, In re: Bombaneiro Investments (Pty) Ltd v Hennie Lambrechts Architects (3032/2012) [2013] ZAFSHC 8; 2013 (2) SA 477 (FB) (14 February 2013) [2013] ZAFSHC 8

COURT

Free State High Court, Bloemfontein

BEFORE

S.J. Thamage

CASE / FILE NUMBER

3032/2012

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FREE STATE HIGH COURT, BLOEMFONTEIN

REPUBLIC OF SOUTH AFRICA

Application No: 3032/2012

In the matter between:-

HENNIE LAMBRECHTS ARCHITECTSApplicant

and

BOMBANEIRO INVESTMENTS (PTY) LTDRespondent

In re:

BOMBANEIRO INVESTMENTS (PTY) LTDPlaintiff

HENNIE LAMBRECHTS ARCHITECTSDefendant

HEARD ON: 11 FEBRUARY 2013

JUDGMENT BY: THAMAGE, AJ

DELIVERED ON: 14 FEBRUARY 2013

- [1] This is an application for leave to appeal to either the Full Bench of the Free State High Court or the Supreme Court of Appeal.

- [2] Leave to appeal is on judgment delivered by this court on 15 November 2012 regarding the provision of security for costs by the plaintiff being an incola company.
- [3] Inter alia application is based on the following:
- 3.1 That the court erred in the consideration of vexatious litigation;
- 3.2 That the court erred in not considering that the respondent is a man of straw and litigate in nominal capacity;
- 3.3 That the court erred in not considering the principles laid down in the old section 13 of the Companies Act.
- [4] Respondent is opposing the application and indicated that the case of SIEMENS TELECOMMUNICATIONS v DATAGENICS 2013 (1) SA 65 (GNP) supports the decision of this court that the incola company does not have to provide security for costs.
- [5] Primary issues are that whether in the absence of section 13 of the Companies Act, common law should apply and if so to what extent.
- [6] I am of the view that the courts sitting on application for leave to appeal, should be careful not to refuse leave to appeal unless it is a hopeless case. In the circumstances a different court may, and not will, come to a different conclusion.
- [7] Having the principles laid down in SHOPRITE CHECKERS (PTY) LTD v BUMPERS SCHWARMAS CC AND OTHERS 2003 (5) SA 354 (SCA) in mind, I come to the conclusion that this matter be referred to the Full Bench of the Free State High Court.
- [8] Consequently the following order is made:
- 8.1 Leave to appeal is granted to the Full Bench of the Free State High Court.
- 8.2 Costs of this application be costs in the appeal.

S.J. THAMAGE, AJ

On behalf of applicant: Adv N. Snellenburg

Instructed by:

Lovius Block

BLOEMFONTEIN

On behalf of respondent: Adv J. Els

Neuhoff Attorneys

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