

SOUTH AFRICA / JUDGMENT

I-Com Services (Pty) Ltd v Picture Perfect Trading 239 (Pty) Ltd (76358/2015) [2017] ZAGPPHC 533 (22 August 2017)

[2017] ZAGPPHC 533

COURT

North Gauteng High Court, Pretoria

BEFORE

TSS Malatji

CASE / FILE NUMBER

76358/2015

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NO: 76358/2015

22/8/2017

Not

reportable

Not

of interest to other judges

Revised.

In

the matter between:

I-COM
SERVICES (PTY)
LTD Applicant
And
PICTURE
PERFECT TRADING 239 (PTY)
LTD Respondent
(Registration
number: 2010/016788/07)

JUDGMENT

MALATJI, AJ

1. The applicant seeks an order for the provisional winding up of the respondent either on the basis that it is indebted and therefore unable to pay its debt to the applicant alternatively that it would be just inequitable to do so. The respondent in turn argues that it is not indebted to the applicant and further that a case has not been made out for winding up of the respondent.
2. The parties concluded an agreement in terms of which the applicant appointed the respondent as what is effectively a sub-contractor to collect debt on behalf of the applicant either in respect of debtors books the applicant will have purchased from the clients alternatively collection services it would have tendered for clients.
3. The relationship resulted in some 302 000 debtors being the subject matter of the initial contract. The respondent alleges that a misrepresentation was made to it that there is billions more money to be collected and the result of which the respondent expanded on its business in anticipation thereof.
4. I have found it difficult to establish precisely the amount which would be due and payable to the applicant from the papers and which the respondent would be unable to pay and thereby giving rise to an act of insolvency entitling the granting of a provisional order of liquidation. At best it is the admission made by the respondent in paragraph 17.16, 17.18 and reiterated, albeit differently, in paragraph 18.7, that the respondent ceased to make any payments of amounts collected from debtors owed to the applicant.
5. The applicant has not been able to point this court to an amount that is due and payable which the respondent is unable to pay, which will then ground a liquidation application. At best there is an allegation relating to the fact that the respondent stopped making payments of monies collected from debtors, but even that money cannot be characterised as monies that are due and payable to the applicants but these rather trust funds entrusted to both the applicant and the respondent for purposes of paying their debt over to the respective creditors.
6. It is accordingly my view that no grounds have been demonstrated that the respondent should be liquidated on the usual grounds of inability to pay its debts.
7. In relation to the just and equitable grounds, this court has a concern over the manner in which the parties are conducting themselves in relation to the collection of debt from members of the public and the payment thereof to creditors who would then exonerate those debtors. The matter seems to have already been reported to the Council for Debt Collectors by the applicant. It will be part of my order that the council be made aware of the impasse between these two parties and the impact it may be having on the ordinary member of the public from whom money is collected with a view to being paid over. It is my

considered view that an audit needs to be conducted and it needs to be ensured that money being collected is indeed paid over to creditors and that if there are any fees that are being charged in respect thereof, that they are in line with the applicable legislative framework.

8. In the result, I make the following order:

1. The application is dismissed with costs.
2. The Registrar is ordered to transmit this judgment to the Council for Debt Collectors.

PP LEDWABA DJP

TSS MALATJI

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG PROVINCIAL DIVISION, PRETORIA

Date of Judgment:

22 August 2017

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