

SOUTH AFRICA / JUDGMENT

Juna Trading DMCC v We R the Stars Trading and Projects CC (A5034/2018) [2019] ZAGPJHC 541 (10 June 2019) [2019] ZAGPJHC 541

COURT

South Gauteng High Court, Johannesburg

BEFORE

Carelse, Mavundla, Maier-Frawley

CASE / FILE NUMBER

A5034/2018

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA,

GAUTENG

LOCAL DIVISION,

JOHANNESBURG

Appeal

Case No:A5034/2018

GJ

Case No: 25858/16

In

the matter between:

JUNA

TRADING

DMCC APPELLANT/

PLAINTIFF

and

WE

R THE STARS

TRADING

AND PROJECTS CC RESPONDENT/

DEFENDANT

JUDGMENT

Carelse J:

- [1] The appeal is with the leave of the court a quo against its judgment dismissing the claim by the appellant, Juna Trading DMCC, a foreign company which carries on business in Dubai. The Respondent is We R Stars Trading and Projects, a South African based close corporation. The claim was dismissed on the basis that the appellant (Plaintiff in the court a quo) did not have the necessary locus standi to institute the action. For ease of reference, the parties will be referred to as they were cited in the court a quo, namely, as plaintiff and defendant.
- [2] The effect of the finding that the plaintiff did not have standing to institute the action, disposed of the disputes between the parties to the extent that the judgment steers clear of the merits of the plaintiff's claim, which were undisputed.
- [3] The issue that this court is called upon to determine is whether the plaintiff had standing to institute the action for monies owed to it by the defendant. Put simply, is the plaintiff the appropriate legal person to receive the monies from the defendant.

Background**Facts**

- [4] During early 2016, the plaintiff (duly represented) and the defendant, represented by Ms Nzaramba, entered into an oral agency

agreement. The undisputed material terms of the oral agreement were that: the defendant would source a buyer in South Africa for paraffin wax on behalf of the plaintiff; the defendant would assist in concluding the sale and the defendant would facilitate payment of the purchase price to the plaintiff.

- [5] On or about 18 February 2016 the parties through their designated representatives orally amended the oral agreement incorporating the following: the defendant sourced Boardman Bros (Pty) Ltd ('Boardman') to buy paraffin wax; Boardman's would pay an amount of R16500 per ton of paraffin wax and the defendant would facilitate payment of the purchase price to the plaintiff.
- [6] Pursuant to the agreement Boardman's bought 306 tons of paraffin wax at R16500 a ton from the plaintiff. The total price of the sale was R5 049 000, 00 plus vat. It is undisputed that Boardman's paid over the money to the defendant. Because the defendant failed to pay over the monies, the plaintiff instituted a claim for R5, 049 000, 00 plus interest and costs, which was opposed. Thereafter the plaintiff launched summary judgment proceedings, which were later withdrawn. The defendant counter-claimed. Notwithstanding the issue of standing in the main claim, the plaintiff was cited as Juna Trading DMCC by the defendant in the counter-claim, which was ultimately dismissed on the merits.

Proceedings in the court a quo

- [7] In its particulars of claim, the plaintiff alleged that it is “Juna Trading DMCC, a company organised under the Laws of Dubai Multi Commodities Centre, with its principal place of business at office 4204, Jumeira Business Centre 1- Cluster G Jumeira Lake Towers, Dubai, and UAE.”[1] In the affidavit resisting summary judgment, the defendant alleged that “The applicant is Juna Trading DMCC.[2] . . . From the citing of the Applicant, it is clear that the Applicant does not even advance proof who they are, whether they are a registered company, and if so, in which country and what their registration number is, all of which are critical averments in any motion proceedings.”[3]
- [8] In its plea the defendant alleged that; ‘Except for admitting that the Plaintiff is Juna Trading DMCC, the Defendant has no knowledge of the remainder of the contents of this paragraph and the Plaintiff is put to the proof thereof.’[4] [My emphasis]. Pertinently in the defendant’s counter-claim it alleged that; ‘The Plaintiff then known as Juna Trading JLT was represented by Mathias Spillemaker[5] . . . The Defendant is in possession of R5 049 000. 00 of the Plaintiff
- [6] . . . The Defendant prays that the amount due and owing by the Plaintiff to the Defendant of US \$ 184,422,24 converted to Rand . . . be first set off by the Defendant before the remainder of the amount of R5 049, 000.00 are paid to the Plaintiff’s account nominated in South Africa.’[7]
- [9] The matter proceeded by way of trial. At the outset of the hearing the defendant challenged the locus standi of the plaintiff and submitted that it was common cause that the defendant received the monies from Boardman’s. The plaintiff

called two witnesses: Mr Gasser an erstwhile director of the plaintiff and Mr Lafdil. The defendant called two witnesses:

Mr Tshelane and Ms Nazaramba.

- [10] Mr Lafdil testified that in 2016 he was employed by Juna DMCC for a number of years. He dealt directly and only with Ms Nzaramba in relation to the sale of paraffin wax to Boardman’s and the payment thereof. Ms Nzaramba never indicated that payment would not be made. Under cross-examination Mr Lafdil explained that: ‘In Dubai DMCC before it was JLT then companies in JLT helped to change the name from JLT to DMCC.’ On the issue of the suffix change of Juna Trading JLT to Juna Trading DMCC, Mr Lafdil’s evidence is uncontroverted.
- [11] Mr Gasser testified that from 2011 he was the sole director of the plaintiff until 2016 when the plaintiff stopped trading. The plaintiff was still registered when he resigned in 2016. The plaintiff was incorporated as Juna Trading JLT but could also have been incorporated as Juna Trading DMCC at the time because the suffix JLT stands for Jumeira Lakes Towers which is the area where the plaintiff’s offices were situated. In 2014 the licensing authority in Dubai decided to harmonise all the companies’ names by using the suffix DMCC which stands for

Dubai Multi Commodity Centre because it did not matter in which part of Dubai a company traded. On 8 October 2014 Juna Trading JLT changed its name to Juna Trading DMCC.

- [12] He further testified that the registration number JLT2660 of Juna Trading JLT ('JLT') is the same for Juna Trading DMCC ('DMCC'). To confirm the change, he handed in a document titled 'certificate of registration' from the licensing authority which was sent to the plaintiff's legal department, which was based in Switzerland. Initially he authorised payments from Juna Trading JLT and later on from Juna Trading DMCC to the defendant. In 2015 Ms Nzaramba e-mailed the invoices to Juna Trading DMCC, to his personal e-mail account, for payment.
- [13] Under cross-examination he reiterated that the registration number JLT2660 is the same as Juna Trading DMCC. Surprisingly counsel for the defendant for the first time, during cross-examination, objected to the production of the 'certificate of registration' on the basis that plaintiff did not comply with Rule 63 of the Uniform Rules of Court.[8] Notwithstanding this objection, counsel for the defendant proceeded to cross-examine the witness on the contents of the document. [9]
- [14] Mr Gasser was referred to an e-mail dated January 2015 which was sent by an employee of the plaintiff to Ms Nzaramba wherein reference was made to Juna Trading JLT, instead of Juna Trading DMCC. He denied that this amounted to a contradiction and explained that the employee forgot to update his e-mail details to reflect the name change.
- [15] He was adamant that Juna Trading JLT and Juna Trading DMCC is one and the same company. Mr Gasser's evidence that Juna Trading JLT and Juna Trading DMCC is the same company with the same registration number is uncontroverted. No attempt was made during cross-examination to dispute the evidence of Mr Gasser, the erstwhile sole director of the plaintiff. That concluded the evidence presented by the plaintiff.
- [16] Mr Tshelane's evidence is material on the issue of the plaintiff's standing to the extent that during his evidence-in-chief, he admitted that the defendant entered into an agreement with Juna Trading DMCC. He said that Juna Trading DMCC was the trading zone and that the name Juna Trading DMCC appeared on all the invoices. His evidence in the main concerned the reasons for non-payment. He said that he has an amount of R2, 3 000.00 in the bank account which he tenders to pay.
- [17] Ms Nzaramba, who is also known as Ms Maya, resigned as a member of the defendant on 10 April 2017. In terms of the Boardman's deal, Ms Nzaramba said that the defendant received payment on 22 February 2016. It was never put to her during her evidence-in-chief that Juna Trading JLT changed its name to Juna Trading DMCC.

[18] Under cross-examination she admitted that the contracting party was Juna Trading DMCC. Her evidence in the main related to the counter-claim and the reasons for non-payment of the monies to plaintiff. Initially the non-payment related to approval from the Reserve Bank.

The

legal framework

[19] Locus standi is fundamental to due process for without it, proceedings are invalidated. Simply put, locus standi is a matter of law and cannot be conferred or be consented to. It is trite that at common law, a party instituting legal proceedings must be able to show a sufficient, personal and direct interest in the case.[10] In *Tulip Diamonds FZE v Minister of Justice and Constitutional Development and Others*[11] the Constitutional Court held: 'Standing is an important element in determining whether a matter is properly before a court.

Our law accords generous rules for standing that permit applicants to bring lawsuits either on their own behalf or on behalf of others. But these are not limitless. A methodical and thorough application of the rules of standing is necessary to ensure, amongst other things that relief is being sought by the appropriate party.'

[20] The defendant submits that locus standi comprises of two elements, firstly the capacity of a person (both natural and juristic) to litigate and secondly, a direct and substantial interest in the right which is the subject matter of the litigation. In this case the defendant conceded that the plaintiff has a direct and substantial interest in the case but disputes that the plaintiff has the legal capacity because the plaintiff has failed to provide documentary evidence issued by the relevant authority of Dubai that it has been properly incorporated or 'organised in terms of the laws of the Dubai Multi Commodities Centre. More pertinently, so it was contended, the 'certificate of registration' and the memorandum discovered by the plaintiff refer to a different entity. The further complaint is that the plaintiff failed to lead expert evidence relating to the laws of Dubai.

[21] What is required by this court to determine is whether the plaintiff is the appropriate party to sue or be sued. The proceedings were by way of action and not application. The plaintiff at all material times has been Juna Trading DMCC and not Juna Trading JLT. Both plaintiff's witnesses gave viva voce evidence that the plaintiff is Juna Trading DMCC, the entity that entered into an oral agreement with the defendant. The defendant's witnesses both testified that the oral agreement was between the defendant and the self-same plaintiff. It is undisputed that Mr Gasser, on behalf of the plaintiff, was the sole director of the plaintiff at the time the oral agreement was entered into. Not only did he give a plausible explanation but also uncontested evidence that the plaintiff had changed its name from Juna Trading JLT to Juna Trading DMCC whilst retaining the same registration number. Simply put, it was still the same company with the same registration number, save for the suffix change, which related only to the area where the business operated from.

- [22] Furthermore there is uncontroverted evidence that Mr Gasser opened a bank account in the name of the plaintiff after the name change. Furthermore it was Juna Trading DMCC that paid the defendant. The defendant admits that it received payment from the plaintiff.
- [23] The document titled 'certificate of registration' that was handed in during the proceedings was only objected to during cross-examination. Not much weight can be attached to it because it is an unsigned and an undated document and may very well fall foul of the rules of evidence relating to documentary evidence. However, there is no evidence controverting Mr Gasser's viva voce evidence that the plaintiff changed its name from Juna Trading JLT to Juna Trading DMCC with registration number JLT 2660. If these were application proceedings, it may have been a different outcome.
- [24] The court a quo in its judgment held:[12] "
- [36] . . . In my view, the legal standing of the plaintiff in these proceedings depended on whether it has been properly
- incorporated or 'organised' in terms of the law of Dubai Multi Commodities Centre. [37] During the testimony of Mr Gasser the plaintiff presented a copy of the document titled: "Certificate of Registration: The certification of Company
- Suffix Change." The document was never discovered during the discovery process but purports to have been executed abroad in Dubai. It was, however, not been authenticated in terms of rule 63 of the Rules. There was also no oral evidence presented by any person who saw the document being executed. . . There is also no indication anywhere in the document that it is an official document. In light of the above the only conclusion to draw is that the plaintiff has failed to discharge its onus of showing that it has locus standi to institute these proceedings. In the circumstances the plaintiff's claim stands to fail."
- [25] The appellant submits that the purpose of Rule 14 of the Uniform Rules of Court,[13] in particular, Rule 14(2) is to go beyond the requirements of the common law principle and to facilitate a firm to sue.
- [26] Counsel for the defendant's submission that the plaintiff failed to call an expert to prove the laws of Dubai is misplaced. The plaintiff does not rely on foreign law to prove its case. Therefore the calling of an expert is irrelevant.
- [27] The matter in *Barlow Logistics Africa (Pty) Limited v Silverstone 481 CC*[14] came by way of motion proceedings. It is trite in motion proceedings that a plaintiff must make out a case for standing in its founding affidavit, not in reply. In this case the plaintiff led evidence under oath from the sole proprietor that it is the appropriate party to sue, which was not challenged under cross- examination and which was in any event relied on by the defendant for purposes of prosecuting its counterclaim.

[28] In our view, the change of the suffix does not change the legal personality of the plaintiff. The explanation given by the sole proprietor of the business, Mr Gasser in respect of the name change, is uncontroverted. The plaintiff has always been Juna Trading DMCC, the contracting party. In our view the plaintiff has the necessary standing to institute the action. The defendant has no defence to the merits of the claim, therefore judgment should be granted in the plaintiff's favour.

[29] In the result the following order is made:

1. The appeal is upheld
2. The order of the court a quo is set aside and substituted with the following order:
 - a. Payment in the amount of R5 049 000.00 (five million and forty nine thousand rand only) and interest at the rate of 9% (see leave to appeal) per annum from 20 February 2016 (in poc seek 15, 5% temporae mora) to date of payment.
3. Costs of the appeal together with costs of the hearing in the court a quo. All such costs to include the costs consequent upon the employment of two counsel.

J Carelse

Judge of the High Court:

Gauteng Local Division, Johannesburg

I agree

J Mavundla

AJ Maier-Frawley

Acting Judge of the High Court:

Appearances

Counsel for the Plaintiff : Advocate N Cassim SC

Advocate S Ebrahim

Instructed by: Webber Wentzel attorneys

Counsel for the Defendant : Advocate E R Venter

Instructed by: JHS attorneys

Date of hearing: 06 May 2019 (Court 11D)

Date of judgment:

[1] Vol1, page 4 and 5

- [2] Vol page 56 para 5
- [3] Vol 1 page 65 para 33.8
- [4] Vol 1 page 12. The plea of ‘no knowledge’ of the plaintiff’s citation (apart from its name) is predicated on a non-admission regarding the plaintiff’s standing to claim monies which are, however, admittedly owing by the defendant to the plaintiff. In the defendant’s counterclaim, it seeks to set-off the amount it admits it owes to the plaintiff (as cited in the particulars of claim) from the amount which it alleges is owed to it by the self-same plaintiff. Within this context, the remarks by Marais AJ (as he then was) in *Standard Bank Factors Ltd v Furncor Agencies (Pty) Ltd and Others* 1985 (3) SA 410 (C) at 417H-418B are easily understood, namely that, ‘...A plaintiff faced with a non-admission [because of a lack of knowledge] need not anticipate and prepare to meet contradictory evidence to be adduced by the defendant...’ The merits or demerits of the aforesaid plea aside, the defendant in fact succeeded in establishing its standing by means of the unrefuted oral evidence its witnesses presented at trial.
- [5] Vol1 page 18 para 3.2
- [6] Vol1 page 19 para 9.1
- [7] Vol1 page 20 para 9.2
- [8] Rule 63 provides for the authentication of documents executed outside the Republic for use within the Republic. There is, however,
- no substantive enactment which lays down that a document executed in a foreign place must be authenticated. See in this regard , Erasmus, *Superior Court Practice*, second edition, vol 2 at D1-744 and authorities there cited for the proposition that the provisions of the rule are not exhaustive or imperative but merely directory.
- [9] The evidence tendered by the plaintiff’s witnesses established that the document was indeed duly executed abroad.
- [10] *Jacobs en ‘n Ander v Waks en Andere* 1992(1) SA 521(A) at 534 A-B.
- [11] 2013[10]BCLR 1180 CC para 1.
- [12] Judgment court a quo page 353 para 36 ; 37 38 and 39
- [13] Rule 14 provides: Proceedings by and against partnerships, firms and associations
- (1) In this rule- . . . ‘Firm’ means a business, including a business carried on by a body corporate, carried on by the sole proprietor thereof under a name other than his own. . .
- (2) A partnership , a firm or an association may sue or be sued in its name . . .’
- [13] Rule 14 provides: Proceedings by and against partnerships, firms and associations

(1) In this rule-

. . .

‘Firm’ means a business, including a business carried on by a body corporate, carried on by the sole proprietor thereof under a name other than his own. . .

(2) A partnership , a firm or an association may sue or be sued in its name . . .’

[14] Unreported judgment 2013 JDR 1542(GNP)

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Prepared on 11 October 2026 · Esheria