

SOUTH AFRICA / JUDGMENT

Luvon Investments (Pty) Ltd and Another v Thabong Good Health Pharmacy CC (Leave to Appeal) (2023-033874) [2024] ZAGPPHC 1063 (23 October 2024)

[2024] ZAGPPHC 1063

COURT

North Gauteng High Court, Pretoria

BEFORE

Mooki

CASE / FILE NUMBER

2023-033874

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION,

PRETORIA

Case No: 2023 - 033874

Reportable: No

Of interest to other

Judges: No

Revised: No

SIGNATURE

Date: 23/10/2024

In the matter between:

LUVON INVESTMENTS (PTY)

LTD

First Applicant

TWIN CITY TRADING (PTY)

LTD

Second

Applicant

and

THABONG GOOD HEALTH

PHARMACY CC

Respondent

JUDGEMENT

- APPLICATION FOR LEAVE TO APPEAL

MOOKI J

1

The respondent was placed under provisional winding-up on 22 February 2024. The return date to consider whether the order be made final was set for 27 May 2024. The court granted a final winding-up order on 27 May 2024.

2

The respondent seeks leave to appeal the order of 27 May 2024. The application is made on the following grounds. The respondent contends that a final order ought not to have been granted because:

2.1 The applicants did not comply with section 346 (4A) (a) and (b) of the Companies Act, 61 of 1973; and

2.2 The applicants had failed to prove the respondent's indebtedness, or that amounts were due or payable, or show the respondent's inability to pay debts.

3

The respondent filed opposing papers in proceedings leading to the order on 22 February 2024. The respondent did not file papers in relation to the return date.

4

Counsel for the respondent accepted that the listed grounds for the application were not pleaded. Counsel for the applicants submitted that the respondent is not permitted to make an application on new issues, because the applicants never had the opportunity to address the new issues.

5

I agree that the respondent may not seek leave on issues that were never raised.

6

I make the following order:

6.1 The application for leave to appeal is dismissed.

6.2 Costs are in the winding-up.

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JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Counsel for the applicant (leave to appeal): Mr JMT Tlokana Instructed by: Ngengebule Attorneys Inc. Counsel for the respondents (leave to appeal) Mr H P Wessels Instructed by: Van Der Merwe & Associates Heard: 21 October 2024 Delivered: 23 October 2024

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