
SOUTH AFRICA / JUDGMENT

Mampeule v South African Securitisation Programme (RF) Ltd and Others (A5067/2015) [2017] ZAGPJHC 124 (22 February 2017) [2017] ZAGPJHC 124

COURT

South Gauteng High Court, Johannesburg

BEFORE

WHG van der Linde, DSS Moshidi, FHD Van Oosten

CASE / FILE NUMBER

A5067/2015

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG LOCAL DIVISION, JOHANNESBURG)

Appeal case no: A5067/2015

Not reportable

Not of interest to other judges

Revised.

22/2/2017

SEKGWARE BERNARD MAMPEULE APPELLANT

and

SOUTH AFRICAN SECURITISATION

PROGRAMME (RF) LTD FIRST

RESPONDENT

SASFIN BANK LIMITED SECOND

RESPONDENT

SUNLYN (PTY) LTD THIRD

RESPONDENT

JUDGMENT

VAN DER LINDE J:

- [1] In this case, the appellant, an attorney, appeals against a judgment that holds him liable for the finance charges of office equipment which his firm bought when he was still a partner. The practice was conducted in the form of a limited liability company in which the appellant was thus a director, having been appointed on 2 August 2004.
- [2] The memorandum of the company provided, as was required by s.23 of the Attorneys' Act, 53 of 1979, that the “directors and past directors shall be liable jointly and severally, together with the company, for such debts and liabilities of the company as are or were contracted during their periods of office.”[1]
- [3] The company bought office equipment in March 2009, and the appellant resigned as director from 1 August 2009. The form of the purchase of the office equipment was in fact a rental, payable over a period of three years. So the equipment was availed immediately, but had to be paid over three years.
- [4] The agreement contained an acceleration clause, clause 9.2. It provided that upon late payment of any one instalment, the financier
- described as the Hirer - had the power to elect amongst others to treat the outstanding balance of the rental amounts immediately payable.
- [5] According to the evidence there was a default on 11 August 2009, thus after the appellant had left the firm, but in any event the Hirer appears not to have elected then to treat the outstanding balance of the rental amounts immediately payable.
- [6] In my view however, this acceleration clause is irrelevant. If a director incurs personal liability for all liabilities of the company “contracted” while he was a director, then clearly the liability to see the rental agreement through its three year period is included. It does not matter whether any particular amount is then actually due and payable. And this interpretation makes absolute sense.
- [7] By way of analogy, take the case of a three man law partnership which sets up offices. It buys (rents) all the expensive electronics needed. The rental term is say three years. There is a split, and two walk away. Why should the remaining partner alone foot the bill? What is more, if their arrangement were a common law partnership, the consequence would have been exactly the same. The rental agreements would have been partnership liabilities, and the individual partners would have remained individually liable for those liabilities.[2]
- [8] The issue that arises in this appeal was dealt with by the North Gauteng High Court in *South African Securitisation Program (RF) Limited and Others v Leppan Beech Incorporated and Others*[3] where Makhubele, AJ (as he then was) rejected the same argument[4] which the appellant advanced before us, on facts that were in point, and refused the subsequent

application for leave to appeal, on the basis that there were no reasonable prospects of success. The reasoning of the learned judge followed the same path as that set out above. We find the judgment persuasive and there is no reason not to follow it.

[9] As to costs, clause 17 of the rental agreement provides that although the parties agree to the jurisdiction of the Magistrates'

Court, the Hirer would not be limited to costs on that scale, if it were to choose to institute action in any other court. Further, it provides that if the Hirer were to take steps to enforce its rights under the rental agreement, the "User" would be liable for costs on the scale as between attorney and own client. The court a quo made an order on that scale, and the appellant did not, before us, submit that any other scale should be directed, if the appeal were to fail.

[10] In my view there is no merit in the appeal and I would propose the following order:

The appeal is dismissed with costs on the scale as between attorney and own client.

WHG van der Linde

Judge, High Court

Johannesburg

I agree.

DSS Moshidi

I agree, and it is so ordered.

FHD Van Oosten

Judge, high court

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Date of hearing: 22 February, 2017

Date of judgment:

- [1] Compare s.53(b) of the Companies Act 61 of 1973, now reflected in s.19(3) and sch 5 Para 4(1) (b) of the new Act (71 of 2008). When the appellant was appointed as director, the old Act still applied.
- [2] Lee v Maraisdrift (Edms) Bpk, 1976(2) SA 536 (A) at 542 in fin, 534 – 544.
- [3] (67751/2011) [2014] ZAGPPHC 483 (28 March 2014).
- [4] The matter before our colleague was presented as an exception by the plaintiff Hirer to the defendants' plea. The exception was upheld. It is a matter for comment that these proceedings went as far as a trial.

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