

SOUTH AFRICA / JUDGMENT

Nedbank Limited v Zara Boerdery (Pty) Ltd (1681/2020) [2020] ZAFSHC 204 (10 November 2020) [2020] ZAFSHC 204

COURT

Free State High Court, Bloemfontein

BEFORE

Opperman, J

CASE / FILE NUMBER

1681/2020

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IN

THE HIGH COURT OF SOUTH AFRICA

FREE

STATE PROVINCIAL DIVISION

Case

No.: 1681/2020

In the matter

between:

NEDBANK
LIMITED
APPLICANT
(Registration
number: 1951/000009/06)
versus
ZARA
BOERDERY (PTY)
LTD
RESPONDENT
(Registration
number: 2016/117904/07)

Coram:

Opperman,
J
Date
of hearing: 5
November 2020

Delivered: The judgment was handed down electronically by circulation to the parties' legal representatives by email and release to SAFLII on 10 November 2020. The date and time for hand-down is deemed to be 10 November 2020 at 15h00.

Summary: Application for final order of liquidation
ORDER
Having considered the rule nisi issued out of this court on the 20th day of August 2020 and the other documents filed of record and having heard the legal practitioners for the Applicant and the Respondent; IT

IS ORDERED THAT: 1.
The Respondent company is hereby placed in FINAL LIQUIDATION.
2.
The costs of this application to be costs in the liquidation.

JUDGMENT

I

BACKGROUND

- [1] This is an application to place Zara Boerdery (Pty) Ltd in final liquidation.
- [2] On 1 July 2020 the matter became opposed and an order was issued for the postponement of the application to 20 August 2020.
- [3] On 20 August 2020 the Respondent was placed under provisional liquidation in the hands of the Master of the High Court.
- [4] The application is opposed on the grounds set out in the Affidavit Resisting Final Liquidation deposited by Izak Jacobus Labuschagne

(Deponent) that I will refer to hereunder. He is also the first defendant in the matter that runs concurrently with this matter; case number 1393/2020. Herein a summary judgment is sought against Labuschagne and Anton Herbert Taute N.O. as sureties for Zara

Boerdery (Pty) Ltd. It is opposed.

II THE FACTS AND ISSUES

[5] The Respondent and the deponent do not dispute the indebtedness in casu. Due to the fact that the Respondent was and still is commercially insolvent the provisional order was not opposed. The Respondent is indebted to the Applicant in the following amounts:

1. R 7 698 413.45 in respect of a Nedbond Loan Agreement with account number 29926120001;
2. R2 840 089.07 in respect of a Nedbond Loan Agreement with account number 29926120002;
3. R3 153 239.85 in respect of an overdraft facility with account number 1146706871.

[6] The provisional liquidation order is still not opposed but there lies an application for postponement of the rule nisi before the court. The rationale to be that the Respondent with the assistance of Labuschagne and AH Taute N.O. (In his capacity as duly appointed

curator bonis for and on behalf of George Petrus Enslin) will sell the property and privately liquidate the assets to meet the acknowledged debts.

[7] Since the remand there was no movement on the endeavour. No guarantees or prospects with veracity came to the fore. Counsel for the Respondent could not give any indication to the court; neither on the documents filed on record nor in address, as to when and how the reimbursement of the debt will happen. It is important to note that the company's business activities came to a standstill and no income is generated.

[8] Counsel for the Applicant referred the court to the dictum in Nedbank Limited v Zonnekus Mansion (Pty) Ltd 2013 JDR 0254 (WCC) at paragraphs 66 and 67 and it speaks to the crux of the issue in this case:

"[66] The provisional winding-up order sought by the applicant is not opposed by any other creditors of the respondent. Notwithstanding its admission that its last payment to the applicant was made during October 2009 the respondent contends that the court should exercise its discretion in favour of the respondent and refuse the order because the applicant is more than covered by abundant security in respect of its claim. Liquidation will simply result in the forced sale of assets which far exceed any claim that the applicant has against the respondent.

[67] To my mind however this misses the point, which is that it is the applicant which is entitled to payment without further delay. It is not that the applicant should have to wait indefinitely for payment so that the respondent can realise its assets to its own greatest advantage in the normal course. The fact that the applicant holds security for its claim makes no difference since the security itself does not automatically translate into immediate payment." (Accentuation added)

III

CONCLUSION

[9] The Respondent is indebted to the Applicant in the amounts set out in the founding affidavit, the debt is not disputed by the Respondent or the deponent, the deponent seeks an extension of the rule nisi, on the facts, ad infinitum to settle the debt due to the Applicant. Despite the fact that the court has indulged the deponent with a postponement, no guarantees have been received. There are also other creditors namely the employees and possibly Firststrand Bank Limited. The formalities ordered in paragraph 4 of the provisional liquidation order dated 20 August 2020 have been diligently complied with. The writing is on the wall and the time has come for the assets of the Respondent to be disposed of by the liquidator in order to ensure a proper and fair distribution between the Respondent's creditors.

IV ORDER

[10] In light of the above the following is ordered:

M OPPERMAN, J

APPEARANCES

Counsel for the Applicant

Advocate J Els

Chambers, Bloemfontein

EG Cooper & Majiedt Inc.

Bloemfontein

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Ref: RO/CD/NO 1655

Counsel for Respondent

Advocate J Zietsman

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Prepared on 14 October 2026 · Esheria