

SOUTH AFRICA / JUDGMENT

Nobre and Another v A Barndard No Trustee and Others (2023/083050) [2024] ZAGPJHC 784 (20 August 2024) [2024] ZAGPJHC 784

COURT

South Gauteng High Court, Johannesburg

BEFORE

Fisher

CASE / FILE NUMBER

2023/083050

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

Case

Number: 2023-083050

1. REPORTABLE: NO

2. OF INTEREST TO OTHER

JUDGES:

3. REVISED: NO

20/8/2024

In the matter between:

NOBRE,

RUI MIGEL-RODRIGUES

First

Applicant

R

Nobre GRIFFIN INVESTMENTS (PTY) LTD

Second

Applicant

And

A

BARNDARD NO TRUSTEE

First

Respondent

K

KEEVY NO TRUSTEE

Second
Respondent
SNEECH,
BARRY HYLTON
Third
Respondent
EXG
INVESTMENTS (PTY) LTD
Fourth
Respondent
BLUE
DOT PROPERTIES 56 (PTY) LTD
Fifth
Respondent

JUDGMENT

FISHER J

Introduction and parties

- [1] This is an application to dismiss an action instituted in terms of section 38 of the 1973 Companies Act. Three other actions brought by the third respondent against the applicants were also involved in the application to dismiss but they were withdrawn and were also dismissed at the hearing out of abundant caution.
- [2] The protagonists in this long saga, which spans more than 13 years, are the first and second applicants: Nobre and the company he directs, Griffin Investments (Griffin) and on the other side the third respondent, Sneech.
- [3] The dispute involves a sale of shares in the fifth respondent, Blue Dot Properties 56 (Pty) Ltd (Blue Dot) which were previously owned by an off-shore entity,

Hannity of which Sneetch is/was the guiding mind

- [4] Sneech is an insolvent and the trustees of his insolvent estate are joined as the first and second respondents. The fourth respondent, EXG investments (Pty)Ltd (EXG) which was integrally involved in the saga is cited for its interest. Sneech is the only opposing respondent and the trustees abide.
- [5] The dismissal of the action is sought on the basis that it is vexatious and an abuse of process in that there has been inexcusable delay in the finalization thereof under circumstances where there are no prospects of the cause of action finding success.
- [6] As a result of the copious litigious processes issued out by Sneech in the context of the saga, much of which was misguided and vexatious, Sneech was declared a vexatious litigant.

Relevant facts

- [7] The sale of shares agreement was concluded in December 2003. In terms thereof Griffin purchased Hannity's 50% shareholding in Blue Dot for a price of R2.5 million.
- [8] Whilst the human protagonists Sneece and Nobre used companies to effect the transactions which are at the heart of the imbroglio, it is their personal business interests which are at stake. This has, inevitably, led to emotions running high.
- [9] Blue Dot is a property-owning company. It owns one large property. The property is leased to a division of the Midas group of companies (Midas).
- [10] Nobre was the managing director of Blue Dot at the time of the sale of shares and there is a central dispute as to Sneece's directorship at various times. This dispute relates to an argument as to whether Nobre had duties of disclosure to Sneece relating to the extension of the Midas lease.
- [11] Sneece alleges that, when the sale of shares was concluded between them, Nobre knew that the property was poised to be the subject of a further 10 year lease with Midas.
- [12] Sneece alleges that Nobre had a duty to disclose the imminent lease to him and that he dishonestly failed to do so.
- [13] This non-disclosure was the subject of an arbitration run during-----. Sneece lost the arbitration and appeal processes which followed.
- [14] Sneece's refusal to accept these losses led to a barrage of misguided litigation aimed at Nobre and even his legal representatives which ultimately led to the declaration that he was a vexatious litigant.
- [15] Cost orders obtained by the applicants against Sneece in the various litigious processes ultimately led to his sequestration.
- [16] In the action in issue, Sneece alleges that once Nobre had knowledge of the lease which was to be concluded with Midas he set about a scheme which entailed him using this lease as leverage to obtain a bank loan which he would use to fund the purchase of the shares.
- [17] Sneece alleges that the sale of shares thus ensued on the basis that the funds paid by Nobre (as guiding mind in the transaction structure which ensued) was derived either directly or indirectly from funding obtained from the leverage of the Midas lease.
- [18] Sneece alleges that the transaction ensued on the basis that ABSA advanced to Blue Dot a loan in the amount of R64.5 million obtained through the leveraging of the 10 year lease; Blue Dot then under the guidance of Nobre paid a portion of such advance into EXG which was also controlled by him – and which was allegedly an associated company of Blue Dot; and Nobre thus accessed these funds in EXG for the purposes of making payment under the sale of shares agreement.

- [19] In essence, Sneeck alleges that Nobre orchestrated a sleight of hand which had the intended result that he disposed of his shares in Blue Dot at price which was below value (as the Midas 10 year lease was not accounted for in such price) and on the basis that the funds of Blue Dot were used to finance the shares.
- [20] Having lost an arbitration where the sale of shares was attacked by Sneeck on the basis of misrepresentation, Sneeck seeks to achieve the setting aside of the agreement in the action on the basis of the section 38 contravention contended for.
- [21] The scheme is obviously disputed by Nobre. In fact, the scheme has not been properly pleaded by Sneeck. This is conceded by Mr Mundell SC who appeared for Sneeck. What is still required is that it be clearly pleaded that the sale of shares agreement is integral to the alleged scheme. Sneeck alleges that the scheme falls foul of section 38 and that this should result in the setting aside of the sale of shares agreement. It is argued that the pleadings will, in due course, be amended to reflect this cause of action to the extent that this may not be clear at present.
- [22] A further potential hurdle in Sneeck's cause of action in the case is that it is based on an alleged cession of rights. Recall, Hannity was the entity through which the sale of shares transaction was concluded. Sneeck contends for a cession of the rights to sue in the action. Nobre disputes the validity of this cession.

Legal principles

- [23] The legal principles applicable are relatively trite and there is no real dispute about them.
- [24] The applicants concede that inherent power which resides in the court to dismiss an action for inexcusable delay in prosecution will be exercised sparingly because a dismissal of the case has a serious impact on the constitutional and common law rights to have a dispute adjudicated in a court of law by means of a fair trial.[1]
- [25] They concede further that they must show that the defendant is seriously prejudiced by the delay.[2]
- [26] Unreasonable delay and prejudice alone may still not be sufficient and the court must determine whether the conduct of the proceedings is abusive in the sense that the process in question is not for the legitimate purpose of furthering the administration of justice but rather to cause injustice.[3]

The applicants case

- [27] The applicants, having acknowledged this high bar, contend that they have met such threshold.

- [28] The applicants contend that they have been subjected to a torrent of abuse for more than ten years. Nobre says that this has caused him considerable stress and embarrassment personally and in his business dealings both in South Africa and internationally. This position he says is exacerbated by the fact that it is inherent in the action that there has been dishonesty on his part.
- [29] The action in question was launched on 26 November 2015. There were notices to remove causes of complaint and amendments followed during 2016. By August 2016 Sneeck had apparently run out of funds. His attorney withdrew and he continued with the litigation unrepresented. Much of the litigation pursued by him in his unrepresented state was ill-advised.
- [30] In August 2017 the applicants sought security for costs in the action and in July 2019 the applicants were granted security for costs in an amount that Sneeck alleges he is unable to pay. He was also declared to be a vexatious litigant. These circumstances had the effect of staying the action.
- [31] Sneeck's predicament was not helped by the provisional sequestration order taken on the application of the applicants in January 2020 with a return date during March 2020 and on 23 June 2020 the provisional order was made final notwithstanding Sneeck's protestations that the application for a final order was not properly set down.
- [32] After his provisional sequestration Sneeck set about attempting to have the order rescinded. He was not successful and thus all the litigation that he had entered into remained stayed in terms of section 20(1)(b) of the Insolvency Act.
- [33] Many of Sneeck's litigious efforts were directed at attempting to remove the impediments to, inter alia, the action in issue. Regrettably, these attempts were substantially misguided.
- [34] I was appointed to case manage the various processes and they were disposed of during the course of 2023.
- [35] The action remains as the sole process which Sneeck seeks to persist with. He continues to be hamstrung in the prosecution of the case due to his sequestration, the order that he pay security for costs and the declaration that he is a vexatious litigant.
- [36] The applicants as part of the contention that the proceedings are abusive seek to suggest that they are what it calls "stillborn". They raise certain law points and defences and seek that these be determined as part of this inquiry.
- [37] These are the locus standi point in relation to the attack on the cession; a prescription point; and an argument that a contravention of section 38 does not, in and of itself, result in the invalidity of the sale of shares agreement.

[38] To my mind none of these aspects have been shown to be untriable to the extent that they should be determined by this court in the context of this application. It would in my view serve no purpose to analyse the plethora of law points and arguments raised by the parties as these are matters for the action.

[39] I now move to discuss the submissions of the parties with reference to the legal principles.

Discussion

[40] It seems to me that the delay is cannot be found to be inexcusable precisely because of the impediments to the furtherance of the litigation which have been laid in the path of Sneeche by the applicants - i.e. the application to declare Sneeche a vexatious litigant, the staying the Sec 38 action pending payment of security, the sequestration of his estate on 23 June 2023 and a suspended sentence for contempt obtained before me in on 17 April 2023.

[41] Whilst I acknowledge the prejudice which is sustained by Nobre in light of the lengthy processes involved in the litigation, I do not believe it to be such that it reaches the threshold of being so serious as to justify depriving Sneeche of his constitutional right to have his action determined in a court of law. This is particularly so given the fact that the very exercise by Nobre of his procedural rights which have as their purpose the alleviation of such prejudice have contributed to the delay.

[42] Sneeche is profoundly aggrieved by the turn of events relating to the Midas lease. The action is born of an attempt to assuage this aggrievement. I cannot find on the facts that the action is brought not for the legitimate purpose of furthering the administration of justice but rather to cause injustice.

[43] It would, in my view, not be in the interests of justice to dismiss the action.

Costs

[44] The relief sought is extraordinary. This has been readily acknowledged by the applicants. It seems to me that no case has been made for a departure from the default position that the costs should follow the result.

[45] The nature of the matter is such that it was worthy of the employment of two counsel.

Order

[46] In the circumstances I order as follows:

The application is dismissed with costs such costs to be in terms of scale C and to allow for the costs of two counsel where employed.

JUDGE OF THE HIGH COURT

JOHANNESBURG

This Judgment was handed down electronically by circulation to the parties/their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be 20 August 2024.

Heard:

10 June 2024

Delivered:

20 August 2024

APPEARANCES:

Applicant's counsel: Adv A Gautschi SC Adv R Willis Applicant's Attorneys: Kampel Kaufmann Attorneys Respondent's Counsel: Adv A Mundell SC Adv D Milne. Respondent Attorneys: Mary Jardim Attorneys

[1] Cassimjee v Minister of Finance 2014 (3) SA 198 (SCA) at paras 8 and 10.

[2] Id at para 11.

[3] Molala v Minister of Law and Order 1993 (1) SA 673 (WLD) at 677 C-F

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Prepared on 10 October 2026 · Esheria