

SOUTH AFRICA / JUDGMENT

Smith and Others v One Vision Investments 344 (Pty) Ltd (76711/2014)

[2020] ZAGPPHC 316 (25 June 2020)

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COURT
North Gauteng High Court, Pretoria

BEFORE
RG Tolmay

CASE / FILE NUMBER
76711/2014

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IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)
(1)

REPORTABLE: YES/NO
(2)
OF
INTEREST TO OTHER JUDGES: YES/NO
(3)
REVISED
Case
number: 76711/2014

Date: In

the matter between: RALSTON
EMMANUEL
SMITH
1st
Applicant
MONEY BOX
INVESTMENTS 225 (PTY) LTD
2nd
Applicant
CARL JACOBUS
POTGIETER
3rd
Applicant
MARIUS
NIEUWOUDT

4th
Applicant
LAURENCE
STEPHEN BIRD
5TH
Applicant
THEODORUS
BLEEKER
6TH
Applicant
SAREL JOHANNES
VAN HEERDEN
7TH
Applicant
FINISHING TOUCH
304 (PTY) LTD
8TH Applicant
MURAIBALL
INVESTMENTS (PTY) LTD
9TH
Applicant
DAVID GLEASON
DEVELOPMENTS (PTY) LTD
10TH
Applicant
GLOBAL SECURITY
INTERNET INFRASTRUCTURE
(PTY) LTD
11TH
Applicant
RAMESH SINGH
12TH
Applicant
and
ONE VISION
INVESTMENTS 344 (PTY) LTD
Respondent

JUDGMENT

TOLMAY, J:

- [1] The First Applicant (Mr Smith) filed an application for leave to appeal the judgment of this Court given on 7 February 2020. The parties agreed that written submissions will suffice and that no hearing virtual or otherwise is required.

- [2] Mr Smith, who appeared in person, instructed counsel to submit submission on his behalf. Both parties filed two sets of written submission, which the Court considered. Rather belatedly counsel for Mr Smith bemoaned the fact that he did not have the benefit of an oral hearing in his replying submissions. It must be pointed out that the Court gave the parties the choice of submitting written submissions or to attend to a virtual hearing and the parties agreed on written submission. No request for a virtual or oral hearing was ever received by the Court.
- [3] I must observe that it is not for a Court in an application for leave to appeal to rehash all the evidence led and the conclusions that the Court arrived at and I specifically refrain from doing so. The fact that the Court does not deal with each submission made by the parties does not imply that it was not considered. This judgment must be read with the judgment delivered. Unfortunately, Mr Smith appeared in person as he terminated the services of his legal team shortly before the trial was to commence. The Court assisted him as far as it could and warned him repeatedly regarding the presentation of his case, this is clear from a perusal of the transcript. The shortcomings in his case cannot be remedied at this stage.
- [4] Section 17 of the Superior Courts Act of 2013 states that leave to appeal may only be granted where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success, or when there is some other reason why the appeal should be heard.
- [5] It must be noted that much reliance was placed in the written submissions on the question of the fulfilment of the suspensive conditions. Mr Smith however actually limited his defence during the trial to a denial that he ever resigned as a director of Lahleni and that he signed his shares of the ninth, tenth and eleventh defendants in Lahleni over to One Vision. Due to the fact that the Court accepted that Mr Smith, appearing in person, may not realise the impact of this concession the Court dealt with the issue of the suspensive conditions in the judgment, in the light of the evidence led.
- [6] Despite the argument contained in the written submissions regarding the suspensive conditions, I am still of the view that, for the reasons set out in the judgment, that these conditions were fulfilled.
- [7] In any event, as argued by the Respondent, a condition in a contract can be performed in *forma specifica* or *per aequipollens* (i.e by an equivalent act). The Court must indeed gather from surrounding circumstances what the parties contemplated and must seek to determine what the parties would have wished, if their minds were directed to the question whether the conditions were to be fulfilled in *forma specifica* or by equivalent act.[1] The evidence led during the trial and set out in the judgment clearly indicates that the suspensive conditions were fulfilled. The actions of all concerned during the whole process support this conclusion.

- [8] Regarding the resignation of a director, there is nothing that prevents a director to resign by way of oral notice.[2] Such resignation takes effect when it is tendered.[3] Respondent correctly submitted that there exists no requirement in law that formal notification to the CIPC is a requirement for a valid resignation of a director vis-a-vis the company, the other directors and shareholders.
- [9] In the written submissions on behalf of Mr Smith, by the issue was also taken against the Court's alternative findings on estoppel and waiver. In my view the evidence pertaining to these aspects were clear and supports the finding that the Court arrived at.
- [10] Council for Mr Smith also took issue with the Court ordering One Vision to pay the amount of R14 809 625-11, to Mr Smith within 30 days of him paying One Vision's taxed costs and concluded that it boils down to the Court making an agreement for the parties. It must be noted that the amount was determined by the auditor and Mr Smith did not lead any evidence on this issue.
- [11] It was submitted, in my view correctly, by the Respondent that this ground of appeal also loses sight of the pleadings, in particular,

subparagraphs 14.3 to 14.6 of the amended declaration. One Vision pleaded that on a proper interpretation of the provisions

of clause 5.2 of the MOU, the mode of payment included payment in full, in one amount by it to Mr Smith and, alternatively that there was an implied term in clause 5.2 of the MOU to the effect that the amount determined by the auditor would be payable in one amount, by One Vision to Mr Smith.

- [12] An objective evaluation is required to determine vagueness.[4] It is only where a contract is not capable of any effective meaning in the circumstances that it would be too vague to be enforced.[5] Respondent is correct that there was at least an implied term in clause 5.2 of the MOU to the effect that the amount determined by the auditor would be payable in full by One Vision to Mr Smith. In any event the order is to the advantage of Mr Smith and it is only reasonable that the taxed costs, should be subtracted from the aforesaid amount, before the outstanding amount is paid.
- [13] In the replying submission Mr Smith bemoaned observations made in the Respondent's heads of argument to references to events that allegedly occurred after the suspensive conditions had to be fulfilled". The point was made that the duty to act cannot be based on events which occurred after the fact and that the context within which a written text may be interpreted does not include events which occurred after the text had been signed. A perusal of the judgment, specifically par 59 to 98 and 114 to 117 illustrates that there is no merit in this submission.
- [14] On a perusal of the judgment and consideration of the written submissions I am of the view that there exists no reasonable prospect that this appeal may succeed.

[15] I make the following order:

1. The application for leave to appeal is dismissed with costs.

RG TOLMAY

JUDGE OF THE HIGH COURT

DATE OF HEARING:

DATE OF

JUDGMENT:

25 JUNE 2020

ATTORNEY FOR APPLICANT: NEVILLE GAWULA ATTORNEYS

ADVOCATE FOR APPLICANT: ADV P F LOUW (SC)

ATTORNEY FOR DEFENDANT: VDT ATTORNEYS

ADVOCATE FOR DEFENDANT: ADV D VAN LOGGERENBERG (SC)

- [1] Wesels Law of Contract in South Africa, vol 1, par 1335, p 446; Christie Law of Contract in South Africa, 7th Ed , GB Bradfield par 43.1, pp 167-168
- [2] Harding & Others NNO v Standard Bank of South Africa Ltd 2004(6) SA 464 (C) at 469
- [3] Rosebank Television & Appliances CO (Pty) Ltd v Orbit Sales Corp (Pty) Ltd 1969(1) SA 300 T at 302 E- F
- [4] Namibian Minerals Corporation Ltd v Benguela Concessions Ltd 1997(2) SA 548 (A) at 563 A-B
- [5] Namibian Minerals, supra, at 557 E-F

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Prepared on 10 October 2026 · Esheria