

SOUTH AFRICA / JUDGMENT

Strydom N.N.O and Others v Africum Commodities (Pty) Ltd and Others (7817/2017) [2022] ZAGPPHC 976 (7 November 2022)

[2022] ZAGPPHC 976

COURT

North Gauteng High Court, Pretoria

BEFORE

N Janse Van Nieuwenhuizen

CASE / FILE NUMBER

7817/2017

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IN

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

REPUBLIC

OF SOUTH AFRICA

Case

Number: 7817/2017

REPORTABLE:

NO

OF

INTEREST TO OTHER JUDGES: YES

REVISED:

YES

DATE:

7 November 2022

In

the matter between:

PIETER

HENDRIK STRYDOM N.N.O First

Plaintiff

DEON

MARIUS BOTHA

N.N.O Second

Plaintiff

CAROLINE

MMAKGOKOLO LEDWABA N.N.O Third

Plaintiff

and

AFRICUM

COMMODITIES (PTY) LTD First

Defendant

SUIDWES
AGRICULTURE (PTY) LTD Second
Defendant
THE
STANDARD BANK OF SOUTH AFRICA LTD Third
Defendant
TECHNICHEM
CROP PROTECTION (PTY) LTD Fourth
Defendant
SILOSTRAT
(PTY)
LTD Fifth
Defendant
THE
LAND AND AGRICULTURAL DEVELOPMENT Sixth
Defendant
BANK
OF SOUTH AFRICA LTD

JUDGMENT

JANSE VAN NIEUWENHUIZEN J:

1. This is yet another legal skirmish in respect of the 2015 maize crop of one Frikkie Kirsten (“Kristen”), an erstwhile farmer in the Scheizer-Renecke district.

Role players

2 The first to third plaintiffs ("the trustees") are the duly appointed joint trustees in Kirsten's insolvent estate, Kirsten having been finally sequestered on 31 August 2016.

3 The first defendant, Africum Commodities (Pty) Ltd (Africum) purchased Kirsten's 2015 maize crop for an amount of R 64 710 612, 59.

4 The remainder of the defendant's are creditors of Kirsten and will be referred to only insofar as they play a role in the present proceedings. Only Africum opposes the relief claimed by the trustees and the trustees and Africum will, herein after, be referred to as "the parties"

Claim

5 The claim instituted by the trustees is based on an agreement entered into between Kirsten and Africum on 30 June 2015 in terms of which Kirsten sold his 2015 maize crop to Africum.

6 Africum failed to pay the purchase price to Kirsten and/or subsequent to his sequestration to the trustees.

7 The purchase price had to be paid to Kirsten no later than 21 September 2015.

8 In the result, the trustees claim the purchase price with interest and costs from Africum.

Stated case

9 The parties agreed to a stated case for purposes of the adjudication of the claim.

10 I deem it prudent to set out the facts contained in the stated case in full:

"1 The plaintiffs are the insolvency trustees of the estate of Mr Frikkie Kirsten ("Kirsten") whose estate was sequestrated

on 26 April 2016 ("the estate").

2 Prior to his sequestration, Kirsten was indebted to, inter alia, Land Bank, Suidwes, Standard Bank and Technichem.

3 As security for the debt owed to Technichem, Kirsten ceded the proceeds of his 2015 maize crop ("the maize crop") to Technichem on 5 October 2014. A copy of the cession appears in Plaintiffs' Trial Bundle pp. 010-291 to 010-292.

4 As security for the debt owed to Suidwes, Kirsten ceded the same crop proceeds to Suidwes on 28 October 2014. A copy of the cession appears in Plaintiffs' Summary Judgment Bundle, pp. 002-187 to 002-190.

5 Suidwes on-ceded its cession to Land Bank as security for the debt owed to Landbank by Kirsten.

6. Standard Bank asserted that the maize crop proceeds were ceded to it, on a date prior to the Technichem cession and the Suidwes cession, (which was on-ceded to Land Bank).

7 Standard Bank instituted an action claiming the proceeds of the maize crop.

8 This Court held, as confirmed by the SCA, that Standard Bank's cession conferred no claim in respect of the maize crop proceeds and that Technichem's cession is valid and predates the Suidwes cession, which was on-ceded to Land Bank. Plaintiffs' Trial Bundle, Judgment, pp. 010-181 to 010-234.

9 As at 8 May 2015, Land Bank had a second cession of the maize crop proceeds, which cession ranked behind Technichem's cession.

10 On 8 May 2015 Kirsten's debts to Land Bank and Suidwes jointly amounted to R125.373,983.94.

11 On 1 July 2015, Technichem was the cessionary entitled to the payment of Kirsten's 2015 maize crop proceeds, even though Africum, Suidwes and Land Bank on 1 July 2015 had no knowledge of the Technichem cession.

12 On 7 August 2015 Kirsten's debt to Technichem amounted R6,958,804.71 together with interest at Absa's prime rate plus 2% per annum calculated from 25 July 2015.

13 Neither Kirsten, nor any other creditor, including the Standard Bank, had any right to the proceeds of the maize crop, as cessionary or otherwise after the date of the cession in favour of Technichem.

14 During the period 14 July 2015 to 21 September 2015, Kirsten sold and delivered the maize crop recorded in annexure "E" to the particulars of claim, to Africum at the prices also recorded in "E" (at p. 001-17).

15 The purchase prices recorded in the last column of annexure "E" in the total amount of R64,710,610.59, in respect of the maize crop so sold and delivered, became due by Africum to Technichem on the dates in the first column of annexure "E".

16 Africum was advised of Technichem's cession of the crop proceeds, on August 2016. See Plaintiffs' Trial Bundle, pp. 101-289 to pp. 010-294. Prior to that date, Africum was aware of the cession in favour of Suidwes which had been on-ceded to Land Bank.

17 Africum paid the following amounts to Suidwes before 7 August 2015:

17.1 R5 008 340.99; and

17.2 R8 999 520.00,

17.3 R3 071 682.82.

17.4 R6 935.39.

18 Africum paid the amount of R49 481 641.53 to Suidwes after 7 August 2015.

19 46rom the payments received by it from Africum, Suidwes paid the amounts of.

19.1 R5,008,340.99; and

19.2 R8,999,520.00

19.3 R3 071 682.82 in a total amount of R17 079 543.81, to Land Bank before 8 August 2015.

20 After 7 August 2015 Suidwes paid a total amount of R24 312 716.91 to the Land Bank.

21 After 7 August 2015, Suidwes credited R25 168 924.62 to Kirsten's accounts with Suidwes.

22 Payments prior to 7 August 2015 were made by Africum without knowledge of the Technichem cession and were bona fide.

23 Payments after 7 August 2015 were made by Africum with knowledge of the cession of Technichem.

24 When Africum made the payments after 7 August 2015, it did so in the mistaken belief that the Suidwes cession which had been on-ceded to Land Bank, outranked Technichem's cession as recorded in the letter of CDH dated 25 August 2015, a copy whereof appears in Plaintiffs' Trial Bundle, pp. 010-294 to 010-295.

25 Neither Suidwes nor Land Bank lodged or proved claims against the estate for the aforesaid amounts received by them.

26 The plaintiffs have the right and duty to claim, for the benefit of the insolvent estate, the ceded debt, should it be found that the aforesaid payments did not discharge Africum's liability to the cessionary entitled thereto, in casu Technichem.

27 Technichem's debt at the time of the aforesaid payments, had not been paid. It proved a claim in the insolvent estate and has to date hereof still not been paid.

28 Issues to be decided:

28.1 Whether the payments by Africum to Suidwes after 7 August 2015, were payments in discharge or partial discharge of the debt owed in respect of the purchase price of the maize.

28.2 If not, whether the payments by Africum to Suidwes after 7 August 2015, stand to be set off against the plaintiffs' claim in this action, or

part thereof.

29 The plaintiffs contend that the payments referred to herein did not discharge the debt as contemplated in 24.1 and do not stand to be set off as contemplated in 24.2.

30 Should both questions be decided in favour of the plaintiffs, the plaintiffs will be entitled to judgment in the amount of R49 481 641.53, plus interest and costs alternatively in the amount that the debt was not discharged.

31 Should only the first question be decided in favour of Africum, the plaintiffs' claim must be dismissed, alternatively must be reduced to the extent that the debt was not discharged.

Discussion

11 At the inception of the trial Africum indicated that it does not persist with its claim for set-off. In the result, only the question whether the payments by Africum to the second defendant, Suidwes after 7 August 2015, were payments in discharge or partial discharge of the debt owed in respect of the purchase price of the maize, remains in dispute.

12 In *Harrismith Board of Executors v Odendaal* 1923 AD 530 at 539, the Appellate Division held as follows in respect of the discharge of a debt:

"Payment, is the delivery of what is owed by a person competent to deliver to a person competent to receive. And when it operates to discharge the obligation of the debtor. (Grotius, 3.39.7; Voet, 64.3.1, etc). So that it cannot be forced by one whose receipt of the subject-matter will not operate to discharge." (own emphasis)

13 The question in casu is, therefore, which party was competent to receive payment in discharge of Africum's debt to Kirsten

14 In view of an earlier judgment by this court, it is common cause between the parties that the fourth defendant, Technichem, in its capacity as the first cessionary of the proceeds of Kirsten's 2015 maize crop, was the competent party to receive the purchase price.

15 Although Africum admits that payment should have been made to Technichem, it submits that the payments after 7 August 2015 was made in the mistaken, but bona fide and reasonable belief that the Suidwes cession which had been on-ceded to Land Bank, outranked Technichem's cession.

16 In the result and relying on the following passage at 1381 - 139 C in *Momentum Group Ltd v Van Staden NO and Another* 2010 (2) SA 135 SCA, Mr Daniels SC, counsel for Africum, contended that the payment to Suidwes discharged its debt to Kirsten:

"[13] The legal principles applicable to the present appeal are cogently stated by PM Nienaber as follows:

Performance by the debtor, more particularly payment, to the cessionary, the new creditor, discharges the debt. It should follow as a corollary that payment to the cedent ought not to release the debtor. Yet it is a well-established rule, based on the palpable need to protect a blameless debtor who rendered performance to the party he or she genuinely believed to be the true creditor, that payment to the cedent absolves or at least releases the debtor, provided that he or she was unaware of the earlier cession or, if aware thereof, that he or she nonetheless acted in good faith, in effecting the payment. The debtor's prior knowledge of the cession, however gained, would normally exclude good faith and defeat the payment. But it has been said that the debtor will be released from liability if such debtor can show that, notwithstanding his or her prior knowledge of the claim of the cessionary, he or she nevertheless paid the cedent in good faith. The rule is essentially based on the blamelessness of the debtor. It may thus be refined, so it is suggested, to read that the debtor will be deemed to be absolved by performance or any other form of discharged rendered to the cedent if, at the time thereof, he or she genuinely and reasonable believed the cedent to be his or her true creditor."

17 Mr Terblanche SC, counsel for the trustees, did not agree. In support for the trustees' contention that the payment to Suidwes did not release Africum from its debt to Kirsten, Mr Terblanche referred to paragraph 175 in *LAWSA, Cession*, Volume 3, third edition. The author, having discussed the legal principle relied upon by Africum, proceeds as follows:

"Does the same consideration apply when performance is rendered not to the cedent but to an outsider whom the debtor erroneously believe to be the cessionary? The debtor is entitled to assume, at the expense of a cessionary and till he or she is notified to the contrary, that the cedent is still the true creditor even when, as a result of the cession, he or she no longer is. But the debtor, it is suggested, is not similarly entitled to assume, at the expense of the creditor (when there was no cession) or of a first cessionary (when there was one) that an imposter who claims to be a cessionary is the true creditor. In the latter situation the debtor ought not to be protected against a claim from the creditor or the first cessionary unless he or she can raise estoppel. The estoppel against the first cessionary will be that, by not notifying him or her of the cession, he or

she caused the debtor to render performance to someone who was not his or her true creditor. Failing a riposte of estoppel, the debtor must look for satisfaction to the party to whom he or she wrongly rendered performance.

18 An imposter is described as a person to whom the cedent cedes his right after the cedent had ceded his right to the first cessionary. At paragraph 174 in LAWSA, supra, the legal principle pertaining to double cessions is discussed and the author with reference to various authorities, explains that, once there has been a complete cession, a subsequent cession cannot confer any right on the second cessionary.

19 In casu Technichem was the first cessionary and notified Africum of its cession on 7 August 2015. Notwithstanding the notification, Africum continued to make payment to Suidwes, the second cessionary and imposter.

20 Africum did not raise a plea of estoppel and would in the circumstances have been hard pressed to do so.

21 Consequently, the payment made by Africum to Suidwes did not release it of its debt to Kirsten and the trustees are entitled to judgment in the amount agreed upon by the parties.

ORDER

The first defendant is ordered to pay to the plaintiffs:

1 The amount of R 49 481 641, 53.

2 Interest on the aforesaid amount at 10,5% per annum from 15 February 2017 to date of payment.

3 Cost of suit, which costs include the costs of two counsel and any reserved cost orders.

N. JANSE VAN NIEUWENHUIZEN

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DATE HEARD: 26

October 2022

DATE DELIVERED: 7 November 2022

APPEARANCES

For the Plaintiffs: ADV FH TERBLANCHE SC

ADV HR FOURIE SC

Instructed by: LE

GRANGE INC

For the 1st Defendant: ADV JP DANIELS SC

ADV JE SMIT

Instructed by: CLIFF

DEKKER HOFMEYR ATTORNEYS

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