

SOUTH AFRICA / JUDGMENT

Strydom N.O and Others v Le Roux - Reasons (2613/2022) [2023] ZAWCHC 244 (15 September 2023)

[2023] ZAWCHC 244

COURT

Western Cape High Court, Cape Town

BEFORE

Kusevitsky

CASE / FILE NUMBER

2613/2022

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FLYNOTES: COMPANY – Winding up – Disposition – Liquidators seeking repayment of monies contended to be dispositions without value – Alleged that company used deposits from investors to pay out other investors as dividends – Claiming that no monies received from defendant – But on own version monies only paid out after receipt of deposits – Onus regarding time periods – Plaintiffs could not be selective about time periods – Not making out a case for relief under section 26(1) – Insolvency Act 24 of 1936.

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

REPORTABLE

CASE NUMBER: 2613/2022

In the matter between:

PIETER HENDRIK STRYDOM N. O

FIRST PLAINTIFF

HAROON ABDOOL SATAT MOOSA N. O

SECOND PLAINTIFF

DEON MARIUS BOTHA N. O

THIRD PLAINTIFF

And

CECLILIA JACOBA LE ROUX

DEFENDANT

(Identity Number: 5[...])

REASONS

KUSEVITSKY J

Introduction

[1] On 9 June 2023 on the unopposed motion roll, an application for default judgment served before me in which the Plaintiffs, in their representative capacities as joint liquidators of Free Agape Enterprises (Pty) Ltd (In liquidation) (“Free Agape”), sought the repayment of monies from the Defendant in the amount of R 1 044 500.00 in terms of section 26(1) of the Insolvency Act, 24 of 1936, alternatively the amount of R 240 000.00 in terms of section 29 of the Insolvency Act.

3.1 she had paid monies to Free Agape as an investment (“belegging”) and had no knowledge that it was illegal for her to have done so;

3.2 she had already repaid some money.

[3] I granted judgment in favour of the Plaintiffs on the alternative claim in the amount of R 240 000.00 in terms of section 29(1), having been of the view that the Plaintiffs did not make out a case for relief sought in terms of section 26(1). The Plaintiffs have requested reasons as to why their claim under section 26(1) did not succeed. Here follows the reasons.

The summons

[4] The particulars of claim aver that on 12 June 2018, Free Agape was placed in final liquidation. In terms of s 348 of the Companies Act, 61 of 1973, the deemed date of commencement of the liquidation of Free Agape is 22 March 2018, which is the date when it is alleged that the application for winding up was presented to court.

[5] On 13 August 2019 under case number 11938/2019, an order was granted declaring that the investment scheme conducted under the name and style of Free Agape and various under trading names to be illegal, unlawful and void; and that all investment and related agreements entered into between Free Agape and third parties as investors, to be null and void.[1]

- [6] The averments furthermore state that Free Agape did no business other than taking deposits from clients/investors, which was utilised to repay deposits received from other clients and/or to pay out money, described as dividends to other clients; the liabilities of Free Agape exceeded its assets; and Free Agape was unable to pay its debts as contemplated in s 339, read with s 340 of the 1973 Companies Act.[2]

Plaintiffs' claim in terms of s 26(1) of the Insolvency Act

- [1] Particulars of claim para 5 and the sub-paragraphs thereof
- [2] Particulars of claim paras 6.1 to 6.3
- [3] the schedule of payments is reflected in para 7.1
- [4] Estate Jager v Whittaker 1944 (AD) 246 at 250
- [5] Goode, Durante & Murray Ltd. v Hewitt & Cornell 1961 (4) SA 286 (N) at 291E-F
- [6] subsection (a)
- [7] subsection (b)
- [8] Strydom N.O and Another v Snowball Wealth (Pty) Ltd and Others (356/2021)
- [2022] ZASCA 91 (15 June 2022) at para 31
- [9] Para 6.1 of the Particulars of Claim
- [10] of section 24 as it then was
- [11] Estate Wege at 84
- [12] Estate Jager v Whittaker and Another ibid at 247
- [13] Particulars of claim para 5.1.1
- [14] para 5.1.2
- [15] Strydom supra at para 36
- [16] at 250
- [17] at 251
- [18] at 252
- [19] Eckhoff N.O and Another v Hartshorne and Another (13640/2020) [2022] ZAWCHC 68 (29 April 2022) at para 29

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Prepared on 11 October 2026 · Esheria