

SOUTH AFRICA / JUDGMENT

Van Zyl and Another v Kolsch (23207/2014) [2018] ZAGPJHC 115 (18 April 2018) [2018] ZAGPJHC 115

COURT

South Gauteng High Court, Johannesburg

BEFORE

C.H. Nicholls

CASE / FILE NUMBER

23207/2014

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

CASE

NO: 23207/2014

In the

matter between:

CHRISTOPHER

PETER VAN ZYL

N.O. First

Plaintiff

ZIMKITHA

HONJISWA NGOGODO

N.O. Second

Plaintiff

[In

their capacities as the duly appointed joint

liquidators

of Pinnacle Point Investments

(Pty)

Limited (in liquidation)]

and

MARIE-MAY

KOLSCH Defendant

JUDGMENT

NICHOLLS J:

- [1] This is an action in terms of section 26(1) of the Insolvency Act 24 of 1936 (the Act) in which the liquidators of Pinnacle Point Investments (Pty) Limited (in liquidation) (PPI) seek to set aside various payments made by the defendant as dispositions without value. They also seek repayment of these amounts by the defendant.
- [2] The Defendant, Marie-May Kolsch (Kolsch), was the consul-general of the Seychelles at the time the payments were made. Some of the payments were made in her personal account and others into the account of the consul-general. Repayment is sought only against her in her personal capacity.
- [3] Up until the afternoon before the trial commenced Kolsch was legally represented. The plaintiff's attorneys were served with a notice of withdrawal as attorneys of record on 13 March 2018. On the same day an email was sent by Kolsch's erstwhile attorneys confirming that she was aware that the trial would be proceeding the following day. Further, that she was persisting in her stance that she had consular immunity and was accordingly not liable for any payments made. It is recorded in the email that Kolsch's view is that "she acted on behalf of the Seychelles government with the Seychelles company that received the loans from the liquidated pinnacle point companies and that she should not be held liable... after disclosure of her defence in the amended plea...". The amended plea raises the special plea of diplomatic immunity.
- [4] Kolsch made no appearance in court on the day of the trial and the trial accordingly proceeded in her absence. Because the primary relief sought against her is the setting aside of the payments made by PPI, the matter could not be dealt with as a simple default judgment and the liquidators were required to lead evidence to prove their claim. To this end they called one expert witness, Mr Terence Hatzkilson (Hatzkilson), a forensic auditor who confirmed the contents of his expert report and went through the accounts of PPI. He provided a background to the claim and dealt with email correspondence and other documentation in the possession of the liquidators.

Background

- [5] PPI was a company in the Pinnacle Group of companies (PPG) and was a wholly owned subsidiary of PPG. PPI's main business was property development, in particular the development of luxury golf estates. An island in the Seychelles was earmarked for such a development and two subsidiary companies in the Seychelles were formed pursuant thereto. The first was Ile Nouvelle (Seychelles) Ltd and the other was Ile Aurore Nouvelle Casino (Seychelles) Ltd (the subsidiaries).

[6] On or about 19 July 2007, the subsidiaries, represented by Ivor Stratford (Stratford), the chairperson of PPI, concluded three

agreements with the Seychelles government in respect of the island. One was a dredging and reclamation agreement as the island was partly submerged. Another was a framework for the development and the other a lease agreement. In terms of the lease agreement, PPI would pay the Seychelles Government US\$70 million (seventy million dollars) for a 99 year lease. The first payment of US \$1 million (one million dollars) was to be paid within 80 days of signature and a second payment of US\$5 million (five million dollars) was to be paid within 30 days of planning permission being granted. Planning permission was granted on 21 April 2010[1] but the US\$5million (five million dollars) was not paid by PPI within the required 30 days.

[7] On 28 May 2010 demand was made for payment of US\$5 million (five million dollars) by the Seychelles Ministry of National Development,

within 45 days. On 8 July 2010 the Ministry informed Stratford that his request for an extension had been denied. On 22 July 2010 the 99 year lease was cancelled by the Seychelles Government. This effectively put an end to the Seychelles development. The

cancellation is reflected in the 2010 annual report of PPG[2].

[8] It appears that PPI's difficulties commenced long before the cancellation of the lease took place. For example in September 2008 PPI owed rent in the Seychelles and faced eviction. One of the directors of the Seychelles subsidiaries, Rob McKee, had not been paid a salary for 7 months. According to an email dated 17 September 2008 from the PPI accountant to Steven Kruger, a director of PPI, there were significant outstanding payments, and the cash available was less than a third of the amount necessary to settle these debts. These amounts included PAYE, a withholding tax. In February 2009 Nedbank advised PPI that they had once again been obliged to dishonour payments due to insufficient funds in the account. They requested PPI to make adequate provision for their drawings in future. From the above as well as other internal correspondence in the possession of the liquidators, it is clear that from approximately mid 2008, PPI was in severe financial difficulty. (This may well be true of the entire group but for present purposes only PPI is relevant.) Nonetheless Stratford, the chairperson of PPI, continued with his payments to Kolsch.

[9] Over the period 27 July 2007 up until 1 March 2011 payments totalling R4 481 940 (four million four hundred and eighty one thousand nine hundred and forty rand) were made either to the account of the Seychelles Consulate or Kolsch's personal account. Email correspondence between Kolsch and Stratford was introduced into evidence by Hatzkilon. The exchanges, which became increasingly more intimate, took the form of a request for payment, which payment invariably took place a day or two after. The purported reason for the payments ranges from 'assisting the consulate' to the installation of telephone lines and payment of 'student fees'. In a request to Stratford for payment of R45 000 (forty five thousand rand) in July 2008 Kolsch asks Stratford whether Kruger was aware of their "arrangement" or "is it that you are not assisting me anymore". (my underlining)

[10] Kolsch in her plea denied that payments were made directly to her. However, PPI's financial records show that at least nine payments were made into her personal account. It should be noted that some of these payments were, on the face of it, consulate-related

payments. For example, five of the payments make a direct reference to the consulate in their description: 'Sey Consulate/Commission/Advt/M May'. Another is described as a payment for 'telephone lines'. From the email correspondence preceding this payment it appears that PPI paid for the installation of telephone lines at the Seychelles consulate in Johannesburg.

[11] If one has regard to the payments made and (where available) the corresponding emails setting out the ostensible reason for the payment, it is apparent that Kolsch used the Seychelles consulate account and her personal account interchangeably. For instance the request for student fees, which on the face of it was not related to the consulate, was paid into the consulate account. Whereas as a request for assistance to the consulate went into her personal account. One can only assume that she had sole control of the

consulate account.

[12] By 2010 the payments to Kolsch started to cause some concern within the group. Hennie Pretorius (Pretorius), PPI's CEO, expressed his view that the "payments that have been made, may be regarded as some form of "inducement" being made to a government official." This was in response to an email from Stratford dated 9 November 2010, complaining that the Seychelles consulate had not been paid for 3 months. By that stage the lease had been cancelled by the Seychelles government and the development was, to all intents and purposes, dead. Despite this Stratford had the following to say: "As you know, the payment to the Seychelles Consulate is for commission due a finder's fee and for ongoing lobbying of support that the Seychelles Consulate provides to PPG in dealing with governmental matters with regard to the development of the island....You as CEO are bound to take direction from the major board members, I hereby as acting chairman request you to make this payment of R50 000 (fifty thousand rand) as soon as such funds are received..." (my underlining)

[13] Hennie Pretorius wrote to Stratford pointing out that Kolsch had been unable to prevent the Seychelles Government from cancelling the lease, nor had she been able to set up meetings with the Seychelles Government. He expressed concern that despite requests no-one had been able to furnish him with any agreements between PPI and Kolsch.

[14] At no time was a contractual obligation asserted by Kolsch. She seemed to view the payments as a favour and often prefaced the email requests for payment with the words "sorry to bother you again". The payments were described as a "private matter" between Stratford and herself.[3] This accords with the concern expressed by Pretorius that no agreement was forthcoming and that the payments could be viewed as an "inducement".

[15] What is more disturbing is that on 24 May 2010 Steven Kruger asked Kolsch to send a letter to the Pinnacle Point Group Ltd to provide some basis for the payments made to her. He requested Kolsch to address a letter to Hennie Pretorius in the following terms:

“I hereby confirm that I have been engaged by the Pinnacle Point Group Ltd to advise them on matters relating to their acquisition of the island development known as “Isle Aurore Nouvelle” in the Seychelles. The monthly retainer amounts to R50 000 (fifty thousand rand) for these services rendered.”

- [16] This contradicts Stratford who, in a letter to the Seychelles Minister of Foreign Affairs dated 14 March 2012, stated that “at no time did Madam Kolsch receive any fees for her assistance to the group.” The ineluctable conclusion is that PPI was trying to find justification for the payments made to Kolsch, well knowing that they were made without value.
- [17] In the same email, Kruger requested another letter from Kolsch to value the lease at “a minimum value of US \$70 million (seventy million dollars)”... “based on recent sales of similar parcels of land by Seychelles government to third parties.” According to Hatzkilson this letter was presented as an independent valuation for audit purposes, when in fact the valuation had been solicited from Kolsch by PPI, and was far from independent.
- [18] On 10 February 2011 Investec launched an application for the winding up of PPI on the basis that it was unable to pay its debts and its liabilities exceeded its assets by R410 million (four hundred and ten million rand). The final order was granted on 4 November
2011. By this time, according to the liquidators, PPI was hopelessly insolvent. The joint liquidators report to creditors in May 2012 anticipated a deficit of approximately R462 million (four hundred and sixty two million rand).
- [19] Summons in this action was issued against the defendant on 26 June 2014. The main claim was that the dispositions were made to the defendant without value at a time when PPI was insolvent. In addition it was alleged that both parties were aware that PPI was not indebted to Kolsch and the payments had the effect of preferring her over other creditors. Therefore the dispositions are liable to be set aside in terms of section 26 of the Insolvency Act. At the commencement of the trial counsel for the plaintiffs advised that the alternative claim of collusive dealings was not being pursued.
- [20] Regarding the financial position of PPI, Mr Hatzkilson testified that it was factually insolvent at all relevant times and traded under commercially insolvent circumstances over a protracted period. Commercial insolvency is a state of illiquidity where an entity is unable to pay its debts as they become due. Hatzkilson identified numerous instances which indicated that PPI was unable to pay its creditors over this time. PPI’s own financial statements from 2007 to 2011 revealed a deficit for every year other than 2009. As explained by Hatzkilson, this was deceptive and the true position was considerably worse. The reason for this is that the figures had to be adjusted to take into account that the inter-group loans were not recoverable, and therefore had to be ‘fairly valued’. The joint liquidators wrote off the stated value of PPI’s investment in its subsidiaries from over R20 million (twenty million rand) to nil and estimated that inter-group loans valued at R296 million (two hundred and ninety six million rand) would realise only R1million (one million rand).

- [21] Hatzkilson concluded that the factually solvent position of PPI, fairly assessed, worsened over the relevant period from a net liability position of approximately R9.3 million at 28 February 2007 to a net liability position of R50.5 million as at 28 February 2008; R158.5 million as at 28 February 2009; R210.9 million as at 28 February 2010; R212.2 million as at 28 February 2011; and R211.8 million at 2 November 2011, the date of liquidation. There were no intervening events to alleviate this position such as the issue of shares. At all times when the payments were made to Kolsch, PPI owed considerable sums to other creditors and she was accordingly preferred to other creditors.
- [22] Hatzkilson testified that the former directors of PPI, including Mr Stratford, Mr Hennie Pretorius and Mr Steven Kruger, the Chief Operating Officer of the Pinnacle Point Holdings (Pty) Ltd, are being sued by the liquidators for relief in terms of section 424 of the Companies Act for reckless trading.

Inferential Evidence led by the Plaintiffs

- [23] The liquidators request this court to draw inferences from the evidence presented which they contend will prove their case on a balance of probabilities. The Supreme Court of Appeal had the following to say about inferences to be drawn where the court had to decide the intention to prefer one creditor over another:

“It is not incumbent upon the party who bears the onus of proving an absence of an intention to prefer to eliminate by evidence all

possible reasons for the making of the disposition other than an intention to prefer. This is so because the court, in drawing

inferences from the proved facts, acts on a preponderance of probability. The inference of an intention to prefer is one which is, on a balance of probabilities, the most probable, although not necessarily the only inference to be drawn...If the facts permit of more than one inference, the court must select the most ‘plausible’ of probable inference. If this favours the litigant on whom the onus rests he is entitled to to judgment...”[4]

‘Plausible’ in this context means ‘acceptable, credible, suitable’.[5]

- [24] For obvious reasons the liquidators have not been able to procure direct evidence on many of the issues they are required to prove. They relied heavily on email correspondence between the Kolsch and Stratford and internal PPI emails which were introduced into evidence by Hatzkilson. Many of the facts contained therein are within the exclusive knowledge of the defendant. In the absence of Kolsch’s own testimony, this is the only evidence that this court can rely on. In such instances less evidence will suffice to establish a prima facie case. The failure of the Kolsch to explain the evidence led weighs heavily against her.[6]

Immunity Defence

[25] Kolsch's evidence or lack thereof, also has serious implications for her immunity defence. The onus of proving a defence

raised by way of special plea rests with the defendant.[7] By failing to testify as to her claim that the payments arose from acts performed in the course of her consular duties, Kolsch has failed to prove her defence on a balance of probabilities. The plaintiffs deny she was acting in her official capacity when

receiving the payments but, in any event, bear no onus in this regard. Notwithstanding the above, and for the sake of completeness,

I will deal with the question of immunity.

[26] In her special plea Kolsch relies on the provisions of the Vienna Convention on Consular Relations of 1961 (the Convention) to allege that this court has no jurisdiction over her. This is on the basis that she was appointed as a consular officer in terms of Article 1 of Schedule 2 of the Convention.

[27] Article 43 of the Convention sets out the circumstances under which consular officers are immune from jurisdiction. It provides:

"Article 43

Immunity from Jurisdiction

1. Consular officers and consular employees shall not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of consular functions.
2. The provisions of paragraph 1 of this Article shall not, however, apply in respect of a civil action either:
 - (a) arising out of a contract concluded by a consular officer or a consular employee in which he or she did not contract expressly or impliedly as an agent of the sending State; or
 - (b) by a third party for damage arising from an accident in the receiving State caused by a vehicle, vessel or aircraft.

[28] Consular functions are defined in Article 5 which provides as follows.

"Article 5:

Consular functions consist in:

- (a) protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law;

- (b) furthering the development of commercial, economic, cultural and scientific relations between the sending State and the receiving State and otherwise promoting friendly relations between them in accordance with the provisions of the present Convention;
- (c) ascertaining by all lawful means conditions and developments in the commercial, economic, cultural and scientific life of the receiving State, reporting thereon to the Government of the sending State and giving information to persons interested;
- (d) issuing passports and travel documents to nationals of the sending State, and visas or appropriate documents to persons wishing to travel to the sending State;
- (e) helping and assisting nationals, both individuals and bodies corporate, of the sending State;
- (f) acting as notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature, provided that there is nothing contrary thereto in the laws and regulations in the receiving State;
- (g) safeguarding the interests of nationals, both individuals and bodies corporate, of the sending State in cases of succession mortis causa in the territory of the receiving State, in accordance with the laws and regulations of the receiving State;
- (h) safeguarding, within the limits imposed by the laws and regulations of the receiving State, the interests of minors and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons;
- (i) subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests;
- (j) transmitting judicial and extrajudicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending State in accordance with international agreements in force or, in the absence of such international agreements, in any other manner compatible with the laws and regulations of the receiving State;
- (k) exercising rights of supervision and inspection provided for in the laws and regulations of the sending State in respect of vessels having the nationality of the sending State, and of aircraft registered in that State, and in respect of their crews;

- (l) extending assistance to vessels and aircraft mentioned in subparagraph (k) of this Article and to their crews, taking statements regarding the voyage of a vessel, examining and stamping the ship's papers, and, without prejudice to the powers of the authorities of the receiving State, conducting investigations into any incidents which occurred during the voyage, and settling disputes of any kind between the master, the officers and the seamen in so far as this may be authorized by the laws and regulations of the sending State;
- (m) performing any other functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the receiving State or to which no objection is taken by the receiving State or which are referred to in the international agreements in force between the sending State and the receiving State.

What is significant is that the day to day running and administration of the consulate does not constitute consular functions as contemplated in Article 5.

[29] Article 44 deals with the circumstances under which a consul may be required to give evidence. It is apparent that consular officials are compellable witnesses except in the circumstances set out in paragraph 3 of the Article, namely those relating to the exercise of their official duties. Even then, although they may not be compellable witnesses they are certainly competent witnesses. The Article provides:

"Article 44:

Liability to give evidence

1. Members of a consular post may be called upon to attend as witnesses in the course of judicial or administrative proceedings. A consular employee or a member of the service staff shall not, except in the cases mentioned in paragraph 3 of this Article, decline to give evidence. If a consular officer should decline to do so, no coercive measure or penalty may be applied to him.
2. The authority requiring the evidence of a consular officer shall avoid interference with the performance of his function...
3. Members of a consular post are under no obligation to give evidence concerning matters connected with the exercise of their functions or to produce official correspondence and documents relating thereto. They are also entitled to decline to give evidence as expert

witnesses with regard to the law of the sending State.

[30] Also of relevance is Article 57 which deals with consular officials engaged in activities for personal gain. This further limits the scope of immunity. It provides:

"Article 57:

Special provisions concerning private gainful occupation

1. Career consular officers shall not carry on for personal profit any professional or commercial activity in the receiving State.
2. Privileges and immunities provided in this Chapter shall not be accorded:
 - (a) to consular employees or to members of the service staff who carry on any private gainful occupation in the receiving State;
 - (b) to members of the family of a person referred to in sub-paragraph (a) of this paragraph or to members of his private staff;
 - (c) to members of the family of a member of a consular post who themselves carry on any private gainful occupation in the receiving State.

[31] In short, by electing not to testify, Kolsch disqualified herself from raising the immunity-based special plea in absentia. But even if this had not been the case, it is difficult to conceive of how the payments could have amounted to acts performed in the course of her consular functions, affording her protection under the Vienna Convention. Even if it were to be accepted that the payments were made, not for her personal gain, but in her capacity as the consul-general, to be utilised for the general running and administration of the consulate, this would not bring her under the rubric of consular immunity. The special plea falls to be rejected.

[32] What remains is whether the liquidators have shown on a balance of probabilities that the dispositions should be set aside in terms of section 26 of the Insolvency Act.

[33] By virtue of section 340(1) of the Companies Act 61 of 1973 read together with Item 9 of Schedule 5 of the Companies Act 71 of 2008, section 26 of the Insolvency Act applies to liquidations of companies. The section provides that dispositions without value can be set aside by a court if the disposition was made:

- (1) more than two years before the sequestration (in this case the liquidation) and it is proved that, immediately before the disposition, the liabilities of the insolvent exceeded the assets; or
- (2) within two years of the sequestration, and the person who benefitted from the disposition is unable to prove that the insolvent's assets exceeded the liabilities.

[34] In order to succeed the liquidators must prove:

- (i) that there was a disposition of property;
- (ii) that it was made by the insolvent entity;
- (iii) when it was made;
- (iv) for whose benefit it was made; and

(v) value was not received.[8]

[35] A disposition in terms of the Act means “any transfer or abandonment of rights to property and includes a sale, lease,

mortgage, pledge, delivery, payment, release, compromise, donation or any contract therefor, but does not include a disposition in compliance with an order of the court, and ‘dispose’ has a corresponding meaning.” In her plea Kolsch admits that the payments were made to the Seychelles Consulate by PPI but denies that they were for her benefit.

[36] If the disposition is made more than two years before the date of sequestration, the trustees or liquidators have to prove that immediately after the disposition, the liabilities of the insolvent entity exceeded its assets. If it is made less than two years prior to sequestration, the onus to prove that the assets exceeded its liabilities immediately after the disposition was made rests upon the person to whom the disposition is made. Thus if the disposition was made without value and within the two years of the liquidation, on proof of this fact alone it will be set aside unless the person benefitting can show that immediately after the disposition the insolvent’s assets exceeded its liabilities. Whether the assets exceeded the liabilities is decided on a balance of probabilities[9]. Reliance may be placed on the insolvent’s books and records insofar as they provide prima facie evidence of its liabilities. [10]

[37] Many of the payments were made more than two years prior to the liquidation and some within the two year period. The financial

records and evidence of Hatzkilson show conclusively that PPI was insolvent at the time every disposition was made. While these of necessity deal with the figures as at the financial year end, it is inconceivable that the situation was any different on the exact date that the disposition was made. As Hatzkilson testified, there was no ‘intervening event’ that could have changed the general trend. That PPI remains insolvent is evidenced by the two liquidation and distribution accounts which show a deficiency of R407.3 million (four hundred and seven million and three hundred thousand rand).

[38] Whether an insolvent received value for a disposition must be decided with reference to all the circumstances under which the payment was made. A payment in discharge of an obligation to pay is a disposition for value within the meaning of the Act. A disposition made not for value occurs when no adequate benefit or value is, or has been, received or promised as a quid pro quo.[11] Regard must be had to the substance of the transaction and not merely the form. The person who benefitted need not necessarily be the person to whom the disposition was made.[12]

- [39] All the liquidators have to show is that PPI did not received value for the payments, irrespective of whether the payments were received in the exercise of Kolsch's consular functions, as she alleges. In her plea on the merits she claims that all payments were made to secure "the authorities and rights from the Seychelles Government in favour of Pinnacle Point Investments and the Pinnacle Point Group were therefore made for value.[13]"
- [40] The payments were invariably made after emails from Kolsch requesting "assistance", couched as doing her a favour. This is indicative that there was no contractual obligation on PPI to pay Kolsch, which is bolstered by the differing versions given by PPI for the payments. The dispositions were described by Stratford as a commission for a finders' fee; as a monthly retainer in the letter solicited by Kruger; and in a letter to the Seychelles Minister of Foreign Affairs dated 14 March 2009 Stratford denies that Kolsch ever provided any assistance to PPI. The payments continued even after the Seychelles development had been halted by the cancellation of the lease. Kolsch herself referred to the payments as "a private matter" between herself and Stratford. I am satisfied that although the emails do not cover every payment, a pattern has emerged showing, prima facie, that PPI did not receive value for any of the dispositions made.
- [41] In conclusion the facts of this case allow for no other inference than that PPI made the dispositions when it was insolvent and received no value for the dispositions. The onus of proving that PPI was insolvent in respect of the dispositions were made after 10 February 2009 was that of Kolsch. No evidence was led by her in the discharge of her onus. That PPI was insolvent when the dispositions made between 2 February 2007 to 2 February 2009 has to be proved on a balance of probabilities by the liquidators. In my view they have discharged this onus. In addition the liquidators have shown, in the absence of evidence to the contrary by Kolsch, on a balance of probabilities that PPI did not receive value for the dispositions.
- [42] In the event that the Seychelles Government may want to comment on the payments made into the account of the Seychelles consulate,

even though repayment is not sought against the consulate but against Kolsch personally, I intend to afford them an opportunity to do so. Finally, I would like to express my gratitude to counsel for plaintiffs, Ms Reynolds, who went out of her way to assist the court in regard to the question of diplomatic immunity. In the absence of counsel for the defendant, her input was invaluable.

In the result I make the following order:

1. The dispositions marked 'N1' and 'N2' on annexure POC1 to the plaintiffs' particulars of claim (a copy of which annexure is attached to this judgment) are set aside.
2. The defendant is ordered to pay to the plaintiffs:
 - 2.1. the amount of R1 030 000 (representing the total sum of the dispositions marked N2)
 - 2.2. interest on that amount a tempore morae.

3. A rule nisi is issued, returnable on 19 June 2018 calling upon all interested persons to show cause why an order should not be made in the

following terms:

The defendant in her personal capacity is ordered to pay to the plaintiffs:

3.1 the amount of R3 451 940 (representing the total sum of the dispositions marked N1

3.2 interest on that amount a tempore morae.

4. This order shall be published once in English in an English daily newspaper circulating in Gauteng.
5. The plaintiffs' attorneys shall notify the Seychelles High Commission of this order by delivering a copy thereof to the Commission by registered post (at Delmondo Office Park, Block C, Positano, Ground Floor; 169 Garsfontein Road; Ashlea Gardens; Pretoria) and by email (at sez@seychelleshc.co.za).
6. A copy of this order will be served by sheriff on the offices of the Seychelles consulate with immediate effect.
7. The defendant shall pay the plaintiffs' costs.

_____C.H.NICHOLLSJUDGE OF THE HIGH COURT

Appearances

Counsel for the Applicants

: Adv. K Reynolds

Instructing Attorneys

: Edward Nathan Sonnenburgs

Respondent

: No appearance

Date of hearing

: 16 March 2018

Date of

judgment

: 18 April 2018

- [1] Letter from Seychelles Ministry of National Development dated 28 May 2010 addressed to Aurore Nouvelle (Seychelles) Ltd.

- [2] CEO's Report under 'Operational Review'
- [3] Email dated 25 August 2008 addressed to Rob Mckee, the director of the subsidiaries.
- [4] Cooper and Another NNO v Merchant Trade Finance Ltd 2000
- (3) SA 1009 (SCA) at [7] majority judgment of Zulman JA
- [5] Jordan v Bloemfontein Transitional Local Authority 2004 (3) SA 371 (SCA) at para [20]
- [6] Union Government (Minister of Railways) v Sykes 1913 AD 156 at 173; Strut Head Natal (Pty) Ltd v Burns [2007] 3 All SA 190 (D) at 197-198
- [7] G4S Cash Solutions (Sa) (Pty) Limited v Zandspruit Cash & Carry 2017
- (2) SA 24 at paragraph [11]; Gericke v Sack 1978 (1) SA 821 (A) at 827H; Masuku and Another v Mdlalose and Others 1998 (1) SA 1 at 11B-C
- [8] Rousseau NO v Visser 1989
- (2) SA 289 (C) at 307
- [9] P M Meskin Insolvency Law and its Operation in Winding-up 49 Ed (1990) ; Nicholls and Whitelaw NO v Akoo 1948
- (4) SA 197 (N)
- [10] Lipschitz and Another NNO v Landmark Consolidated (Pty) Ltd 1979(2) SA 482 at 494
- [11] Estate Jager v Whittaker 1944 AD 246 at 250
- [12] Reynolds NO v Mercantile Bank Ltd 2004 (5) SA 220 (SCA) para [10]
- [13] Plea para 16.4

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