

SOUTH AFRICA / JUDGMENT

Xanadu Properties 234 (Pty) Ltd v Absa Bank Limited (12069/2012) [2015] ZAGPPHC 376 (20 May 2015) [2015] ZAGPPHC 376

COURT

North Gauteng High Court, Pretoria

BEFORE

K.E Matojane

CASE / FILE NUMBER

12069/2012

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NO: 12069/2012

DATE:

20 MAY 2015

In

the matter between:

XANADU

PROPERTIES 234 (PTY)

LTD.....Applicant

And

ABSA

BANK

LIMITED.....Respondent

JUDGMENT

MATO JANE, J

Introduction

[1] The applicant seeks an order in terms whereof the default judgment granted by this court on 30 July 2012 be rescinded and set aside.

Background

- [2] The Registrar of Companies deregistered applicant as a result of poor administration on 14 July 2010.
- [3] On or about 23 July 2011 Pecanwood Estate Homeowners Association launched an application for the winding-up of the applicant. The winding-up application was served on the applicant on 16 August 2011.
- [4] The applicant was re-registered on 5 October 2011.
- [5] On 28 February 2012 the respondent issued simple summons for payment of the arrear premiums on a mortgage bond in the sum of R776 542.09. A provisional winding-up order was subsequently granted on the 27 July 2012 after Pecanwood Homeowners Association had failed to give notice of the date of hearing to the applicant.
- [6] On 30 July 2012 default judgment was granted against the applicant for the payment of R776 542.09. The court order declared Portion 116 (a portion of Portion 115) of the farm Hartebeesthoek 303, Registration Division JR, Gauteng specially executable.
- [7] The respondent arranged for the sale in execution of the property and on 12 June 2014 the court set aside the sale in execution.
- [8] The applicant contends that the respondent was precluded by Section 359(1) of the Companies Act, 1973 from proceeding with an application for default judgment against the applicant who was already under winding-up.
- [9] The respondent for its part, submits that when the application for the liquidation of the applicant was launched on the 23 July 2011 and when the liquidation application was served on the 16 August 2011, the applicant was deregistered with the result that such proceedings and the provisional order that was granted are a nullity and section 359(1) of the Companies Act could not have been a bar to the respondent applying for a default judgment.
- [10] In *Newlands Surgical Clinic v Peninsula Eye Clinic*[1] the

Supreme Court of Appeal brought certainty in the proper construction of Section 82 and 83 of the Companies Act, 71 of 2008 in respect of restoration of registration of a company removed from the register by the Company and Intellectual Property Commission in terms of Section 82(3). The court held that reinstatement of deregistered company by virtue of s 82(4) has complete retrospective effect - including validation of corporate activities during period of deregistration.

[11] It follows that the default judgment was granted at the time when applicant was already under winding up contrary to the provisions of section 359(1) of the Act which provides that when a court has made an order for a winding up of a company all legal proceedings by or against the company are suspended until the appointment of a liquidator.

[12] In the result the default judgment was not valid and stands to be rescinded.

Order:

1. The default judgment granted on 30 July 2012 in favour of the respondent is rescinded and set aside.
2. The respondent is ordered to pay the costs

K.E MATOJANE

JUDGE OF THE HIGH COURT

[I] (086/2014)[2015] ZASCA 25 (20 March 2015).

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