

SOUTH AFRICA / JUDGMENT

Zuri Concepts and Projects CC v Infinite Travel and Tours (Pty) Ltd and Another (19629/16) [2016] ZAGPJHC 404 (24 June 2016) [2016] ZAGPJHC 404

COURT

South Gauteng High Court, Johannesburg

BEFORE

P L Carstensen

CASE / FILE NUMBER

19629/16

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REPUBLIC

OF SOUTH AFRICA

GAUTENG LOCAL DIVISION

JOHANNESBURG

CASE

NO: 19629/16

In

the matter between:

ZURI
CONCEPTS AND PROJECTS CC
Applicant
and
INFINITE
TRAVEL AND TOURS (PTY) LTD
First
Respondent
KOIKANYANG
INC.
Second
Respondent

JUDGEMENT

CARSTENSEN AJ:

1. The Applicant seeks an order that the First Respondent is interdicted and restrained, in any way, from using an amount of R370 000.00

which was deposited by the First Respondent into the Second Respondent's trust account.

2. The Applicant and First Respondent were members of a joint venture business which was known as Infinite Travel NC to provide travel solutions for the Northern Cape Premier.
3. The Applicant and First Respondent are now in dispute and it is common cause that the affairs of the joint venture require investigation and an audit, possibly a statement and debatement of account between the members of the joint venture and it is probable that further litigation will follow the application.
4. The Applicant contends that on the 2nd June 2016 the First Respondent withdrew the amounts of R170 000.00 and R200 000.00 out of the joint venture account and deposited this money into the trust account of the Second Respondent.
5. The First Respondent admits that the money belongs to the joint venture and contends that the money has been deposited for the sole purpose of litigation designed to safeguard the interests of the joint venture between the Applicant and First Respondent and that the monies are designed to protect the interests of the joint venture, and not the First Respondent.
6. The First Respondent also states that:
 - 6.1. between the period September 2015 and June 2016, the Applicant has drawn an amount of R6 089 127.44 without the First Respondent's consent; and
 - 6.2. the First Respondent requires a forensic audit to be conducted on the financial affairs of the joint venture;
 - 6.3. there was an unauthorised transfer by the Applicant in the amount of R1 646 216.76 from the account of the joint venture into the account of the Applicant.
7. In reply, the Applicant states vaguely that these funds were withdrawn for the benefit of the joint venture, for expenses of the joint venture, but provides no evidence in support thereof. In fact, in regard to the First Respondent's contention relating to the amount of R1 646 216.76, there is simply a bare denial. The Applicant also, in reply, contends that the Applicant has no objection to a proper audit.
8. In light of the above, it appears that both parties have withdrawn substantial amounts, for whatever reason, from the joint venture

account, that there is a irreconcilable breakdown of the relationship between the joint venture members, that litigation will ensure, and, that an audit of the joint venture account will be required.

9. However, in light of the manner in which both parties have conducted themselves, I do not believe that the retention of the funds in the account of the Second Respondent will cause irreparable harm to the Applicant.
10. The Second Respondent is obliged, as an attorney and the holder of a trust account, to give a proper accounting for the funds entrusted to him.
11. In the premises, I do not believe that the application is urgent or that the Applicant has met the requirements for an interdict.
12. Consequently, I make the following order:
 - 12.1. the application is dismissed;
 - 12.2. each party is to pay their own costs.

P L CARSTENSEN

ACTING JUDGE OF THE

HIGH COURT

HEARD: __ JUNE 2016

DELIVERED: 24 JUNE 2016

COUNSEL FOR APPLICANT:

INSTRUCTED BY:

COUNSEL FOR RESPONDENTS:

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