

**IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT PRETORIA)**

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO.	YES /NO.
(2) OF INTEREST TO OTHER JUDGES: YES/NO.	YES /NO.
(3) REVISED.	
DATE: 04.02.2010	 SIGNATURE

04/02/2010
CASE NO.: 23085/09

In the matter between

MONEY SKILLS PROPERTY INVESTMENT Applicant
(in liquidation)

and

MONEY FOR JAM INVESTMENTS 7 (PTY) Ltd Respondent

JUDGMENT

MATOJANE, J

[1] This is an application for an order placing the respondent under final winding-up and that costs of the application be costs in the winding-up of the respondent.

[2] The applicant made a demand in terms of section 345(1)(a)(i) of the Companies Act, No. 61 of 1973 ("the Act") for payment of an amount

of R75 000.00 together with mora interest thereon being in respect of monies lent and advanced by applicant to the respondent on 13 February 2007, which amount is said to be repayable on demand and is now due, owing and payable.

[3] The respondent did not pay the claimed amount, or secure or compound for it within three weeks of receipt of the letter as required by the Act. The applicant relies on this neglect for its contention that the respondent is unable to pay its debts.

[4] The application based on s345 (1)(a) of the Act will generally fail where there is a bona fide dispute on reasonable grounds as to either the existence of the debt or that payment of it is due on the basis that winding-up proceedings are not appropriate for the resolution of such a dispute. See **Kalil v Decotex and Another** 1988(1) SA 943 (AD).

[5] In its opposing affidavit the respondent disputes that it is indebted to the applicant and that it is unable to pay its debts. The respondent has the duty to show that the indebtedness is disputed on bona fide and reasonable grounds.

[6] The respondent's version is that an oral joint venture agreement was concluded between the parties and a certain Blue Waves Investments (Pty) Ltd. in terms whereof an immoveable property (Erf 450) was sold by

the owner thereof to Blue Waves Investments (Pty) Ltd. It was agreed that the said property will be developed in a joint venture and that the respondent would undertake the work related to the development of the said Erf 450 and that applicant will advance the purchaser of the Erf, Blue Waves, the indebtedness in order for the transfer costs relating to the sale of the Erf to be paid.

[7] After registration of Erf 450 into its name, Blue Waves would register for VAT, claim the VAT paid in respect of the purchase agreement and would thereupon pay it over to the applicant. It is not clear from the opposing affidavit, as it is correctly contended by the applicant, that the VAT so reclaimed will discharge the indebtedness.

[8] The Respondent's version is substantiated by an affidavit by Carlo Venter, who was a financial director of the applicant at the time the said oral agreement was entered into. He states that he was personally involved in the negotiations between the various parties to the oral agreement and has personal knowledge of the terms thereof. He confirm the respondent's version that the amount of R75 000.00 was not a loan which the applicant made to the respondent and no loan agreement was entered into between applicant and the respondent.

[9] In the replying affidavit the applicant sought to rely on the evidence of the deponent to the founding affidavit, Mr Eloff, at the s 417 enquiry to

discredit the respondent's version deposed to in the opposing affidavit. The record of the proceedings in the enquiry is admissible in so far as its contents could serve to prove that the witness testified to that which was recorded at the enquiry. The record is not admissible to prove the facts obtained in the testimony, its evidential value is the matter to be determined by the court. See **Cordiant Trading CC v Daimler Chrysler Financial Services** 2005 (4) SA 389 at 397 E. It seems to me to be clear that Mr. Eloff's evidence at the s 417 enquiry can only be used against him as admissions and not against the respondent. **Simmons NO v Gilbert Hamer & Co Ltd** 1962 (2) SA 487 at 492 accordingly, whatever admissions he made at the enquiry are inadmissible in the present proceedings and are disallowed.

[10] In my view, the respondent is disputing the indebtedness on bona fide reasonable grounds. In the result, the application is dismissed with costs including the reserved costs.



MATOJANE, J
JUDGE OF THE HIGH COURT