

NOT REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA

(NORTH GAUTENG HIGH COURT, PRETORIA)

Case no: 23133/09

DATE: 12/10/2010

IN THE MATTER OF:

GEORGE DA SILVA RAMALHO NO

FIRST PLAINTIFF

AMORE YEUN NO

SECOND PLAINTIFF

ANNA FRANCINA VENTER NO

THIRD PLAINTIFF

(in their capacity as the duly appointed liquidators of Money Skills Limited (in liquidation))

And

JUNE MURIEL POTGIETER

DEFENDANT

JUDGMENT

BAM AJ

[1] The plaintiffs in this matter are the liquidators of Money Skills Limited in liquidation. The plaintiffs in their capacities as such sued the respondent for the payment of a total amount of R330,250,00

representing separate amounts as it appears in the particulars of claim to wit R4 050,00, R7 750,00, R7 750 and R3010,00.

[2] The plaintiffs averred that the aforesaid four amount were payments made, respectively on 30-5-2006, 31-07-2006, 30-08-2006 and 1-9-2006, by Money Skills before the final winding-up of the company on the 22nd of March 2007. It is alleged by the plaintiffs that the said amounts were payments constituting disposition of Money Skill's property within the meaning of section 2 of the Insolvency Act, Act 24 of 1936 as read with section 340(1) of Act 61 of 1973, the Companies Act.

[3] It was further averred by the plaintiffs that the said dispositions:

- (a) were not made for value;
- (b) were made within two years of the winding-up of Money Skills;
- (c) fall to be set aside in terms of the provisions of section 26(1)(b) of the Insolvency Act as read with section 340 of the Companies

Act, in that Money Skills has been wound-up and is unable to pay all its debts.

- [4] The defendant, in a plea, denied that this court has jurisdiction to hear and to adjudicate this matter. It was pleaded that the defendant did not ordinarily reside within jurisdiction of this court and that the cause of action did not arise within its jurisdiction.
- [5] The defendant further denied all the averments made by the plaintiffs save for pleading that in the event of this court finding that monies were in fact paid to her by Money Skills, that those monies were paid to her for no other purpose than “the discharge of a lawful obligation by Money Skills Limited to the defendant; alternatively that it constituted payment by Money Skills to the defendant on behalf of a third party.”
- [6] This matter came before me on 6 August 2010¹. Mr Pretorius, appearing for the plaintiffs informed me that there was no appearance for the defendant and that the defendant was clearly in default. My attention was drawn to the notice of withdrawal, signed by the defendant’s attorneys of record, which was purportedly filed on 4 August 2010 but

which bore no official date stamp of the registrar. In referring me to the bundle of notices as well as the documents pertaining to the preparation for trial, including the Rule 37 notice, Mr Pretorius urged me to rule that the plaintiff is entitled to proceed with the matter in view of the fact that all the relevant documents in the court file indicated that the respondent knew quite well that the plaintiffs intended to proceed with the matter and in view of the fact that there is no excuse whatsoever why the defendant is absent. Mr Pretorius's argument included the submission that the plaintiffs would in the circumstances be extremely prejudiced if the matter would not proceed.

- [7] The submissions made by Mr Pretorius seemed to me to be correct, I ruled accordingly and the matter proceeded.
- [8] Mr George da Silva Ramalho, in his official capacity, first plaintiff, testified on behalf of the plaintiffs. Mr Ramalho testified about the situation pertaining to Money Skills, as on the final date of the winding-up, when the said company was totally insolvent. The liquidation did not realise even a cent for distribution amongst the creditors. According to this witness the business of Money Skills, without doubt,

amounted to the fraudulent and prohibited so-called pyramid scheme. Money was invested by mostly *bona fide* investors putting their hope on an extremely profitable interest return on their investments. As it happens in this type of cases the money invested by Peter was used to pay Paul.

[9] According to Mr Ramalho the amounts in question as reflected in the particulars of claim were amounts paid to the defendant by Money Skills which were not done in terms of the provisions of the Insolvency and Companies Acts.

[10] Accordingly, according to Mr Ramalho, to summarise, the payments were not made for value, were made within two years of the winding-up of Money Skills, and fall to be set aside in terms of the provisions of the Insolvency and Company's Acts.

[11] I have endeavoured to summarise the evidence of Mr Ramalho and I therefore do not in detail repeat his evidence. I was, however, satisfied that Mr Ramalho's evidence was clear and satisfactory, explaining the case of the plaintiffs.

- [12] Mr Pretorius further referred me again to the bundles of documents including the bundle pertaining to the liquidation of Money Skills which Mr Ramalho has referred to in his evidence.
- [13] The only issue in dispute was the reason and circumstances pertaining to the payment of the amounts in question by Money Skills to the defendant.
- [14] Admitting that she has in fact been paid the said amount, the respondent was in fact obliged to adduce evidence proving that the said amounts were paid lawfully to her.
- [15] Mr Pretorius referred me to two recent judgments in connection with the same issues; the plaintiffs being the plaintiffs in this matter regarding the liquidation of Money Skills, but with different defendants.
- [16] The first matter (not reported) is case number 08/4999 South Gauteng High Court, Johannesburg; dated 3rd of March 2010; *Ramalho NO and two others (the plaintiffs in casu) v Mullah Ebrahim*; (the matter has not

yet been reported) case number 08/4898 South Gauteng High Court Johannesburg (dated 25th of June 2010); *Ramalho (and two others) the plaintiffs (plaintiffs in casu) v Lengane Bolokang*. These two matters were dealt with on trial by respectfully Jajbhay J and Masipa J.

[17] The facts of these two matters and the law issues are similar to the issues *in casu*.

[18] Mr Ramalho, the plaintiff's witness *in casu*, testified in both the above named matters, regarding *inter alia* the fraudulent pyramid scheme conducted by Money Skills.

[19] In both matters the learned judges considered the issues regarding the dispositions of money. Reference was made to various decisions in that regard and on page 12 paragraph 16 of the decision of Mulah Ebrahim, Jajbhay J made the following remark:

"In my view, it cannot be said that a disposition took place in the normal cause of business where in the determination of such a disposition one is confronted with an unlawful and a tainted

scheme. Here, the evidence clearly establishes that current investors were being paid by drawing in third party investors. This is a classic pyramid scheme which cannot be countenanced” and on page 13: “The conduct of the company in affecting payment to the defendant in circumstances which are dishonest if not fraudulent, could not possibly constitute disposition in the ordinary course of business:”

[20] I am in respectful agreement with the learned judge in this latter matter. My finding in this regard is based on the evidence of Mr Ramalho referred to above, which is clearly in accordance with his evidence in *Ebrahims* case.

[21] In the *Lengane Bolokang* matter *supra*, Masipa J, dealing with, as I have said, similar facts, pointed out what obligation rests on the defendant in such circumstances. The defendant has to prove *inter alia* that the payments were indeed made for value, as pleaded *in casu*.

[22] I am satisfied that the undisputed evidence of the plaintiffs *in casu* proves the averments made in the particulars of claim. I am accordingly ruling in favour of the applicants.

[23] The jurisdiction point falls away by virtue of the defendant's default in pursuing the issue.

I make the following order:

(1) It is ordered that the following dispositions are set aside in terms of the provisions of section 26(1)(b) of the Insolvency Act, as reads with section 340(1) of the Companies Act, in the following amounts:

1.1 30 May 2006 – R4 750,00

1.2 31 July 2006 – R7 750,00

1.3 30 August 2006 – R7 750,00

1.4 1 September 2006 – R310 000,12.

(2) The defendant is ordered to pay the following amounts to the plaintiffs:

2.1 R4 750,00

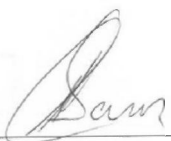
2.2 R7 750,00

2.3 R7 750,00

2.4 R310 000,12;

(3) The defendant is ordered to pay interest on the aforesaid amount, calculated at the rate of 15,5% from the date on which each and every disposition was made.

(4) Costs of suit.


AJ Bam
Acting Judge of the High Court