



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

Case number: 70273/2009

Date: 5 May 2011

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: <u>YES</u> /NO	
(2) OF INTEREST TO OTHERS JUDGES: <u>YES</u> /NO	
(3) REVISED ☒	
<u>5/5/2011</u> DATE	<u>[Signature]</u> SIGNATURE

In the matter between:

JACOB JOHANNES VAN ZYL

Intervening Party

In re:-

PAUL DANEEL KRUGER N.O.

1st Applicant

ERNEST LODEWYK BERMAN N.O.

2nd Applicant

THEODOR WILHELM VAN DEN HEEVER N.O.

3rd Applicant

(In their capacities as the joint liquidators of
Spitskop Village Properties Limited (in liquidation))

and

BLUE DOT PROPERTIES (PTY) LTD

Respondent

JUDGMENT

PRETORIUS J.

This is an application for leave to appeal against the court's judgment which refused the application for intervention in the winding-up application of Blue Dot Properties (Pty) Ltd by the present applicant, Mr. JJ van Zyl.

Rule 12 provides:

"Any person entitled to join as a plaintiff or liable to be joined as a defendant in any action may, on notice to all parties, at any stage of the proceedings apply for leave to intervene as a plaintiff or a defendant. The court may upon such application make such order, including any order as to costs, and give such directions as to further procedure in the action as to it may seem meet."

The court had indicated that Mr HC Lamprecht did not have *locus standi* to oppose the application as he was an unrehabilitated insolvent and that the HCL Family Trust had been sequestrated. The applicant launched an application to intervene as a respondent in the winding-up of Blue Dot Properties (Pty) Ltd. The application to intervene was dated the same day of the winding-up, but was only served and filed the afternoon after argument for the winding-up had been heard. Mr Puckrin, for the liquidators, as well as Mr Badenhorst for the trustees, opposed the application to intervene as being an opportunistic application to intervene as the applicant did not set out facts to establish a *prima facie* case in the main application.

Mr van Zyl, the applicant, stated:

“Ek is voorts geadviseer en meegedeel dat dit noodsaaklik is dat ek toetree tot die verrigtinge onder Saaknommer:70273/09 hierbo na verwys ten einde toe te sien dat die belange van die Respondent na behore beskerm word. Voorts is dit van uiterste belang vir die regverdige en billike beregting van die aansoek van die Applikante en die opponering van die Respondent dat die verwere soos waarna verwys word in die Beantwoordende Beëdigde Verklaring afgelê deur Mnr HC Lamprecht voordat hy voorlopig gesekwestreer is, behoorlik beredeneer en geargumenteer word voor die Hof ten einde 'n billike beregting van die aansoek daar te stel.”

In **Shapiro v SA Recording Rights Association Ltd 2008 (4) SA 145 W**

Gautschi AJ found at p 152:

“[17] In Minister of Local Government v Sizwe Development White J held that an applicant for intervention has to satisfy the court that:

- (i) (H)e has a direct and substantial interest in the subject-matter of the litigation, which could be prejudiced by the judgment of the Court. . . ;*
- (ii) the application is made seriously and is not frivolous, and that the allegations made by the applicant constitute a prima facie case or defence - it is not necessary for the applicant to satisfy the court that he will succeed in his case or defence. . . .*

This passage is quoted with approval in Ex parte Sudurhavid (Pty) Ltd.

Both those cases concerned an application for leave to intervene as a

defendant or respondent. Whilst this test applies to persons wishing to intervene as respondents or defendants, it is too limited, and will be generally inapplicable, for persons wishing to join as applicants or plaintiffs.” (Court’s emphasis)

This is applicable in the case of a respondent who wants to intervene as is presently the case.

In **Ex parte Moosa: In Re Hassim v Harrop-Allin 1974 (4) SA 412 (T)** Bliss AJ held at 416 G:

*“In my opinion, at the leave to intervene stage, it is sufficient for the party seeking leave to **intervene to rely on allegations which, if they can be proved in the main action, would entitle him to succeed.** This is in my opinion the criterion which should be applied at this stage and it is the same criterion which constitutes a bona fide defence as required by a defendant who wishes to stave off an application for summary judgment in terms of Rule 32 of the Supreme Court Rules”*
(Court’s emphasis)

In **Shapiro (supra)** Gauthschi AJ further found at para 19 p 153:

“[19] It is furthermore required that an applicant for intervention show that he or she has a prima facie case, that the application is seriously made and is not frivolous.”

No allegations are set out in the application to intervene which could be

proved in the main application which would entitle him to success in the main application. The applicant failed to deal with this in his affidavit.

It is clear from the affidavit of the applicant that he relies on hearsay evidence and does not make out a *prima facie* case at all. There are no allegations or submissions in his application that the application is seriously made and that it is not frivolous. He does not set out that if he is not allowed to intervene that he will be prejudiced at all in any way.

It was clear that the application was brought as an afterthought after the court had indicated that a final order will be granted on the next day as the court wanted to provide written reasons for the final winding-up.

In the leave to appeal application the applicant makes no mention that the court erred in any way in granting the final winding-up order. There is no attack on the judgment on the merits of the winding-up or any reasons set out to establish a *prima facie* case that warrants the intervention. The applicant does not aver that he will be prejudiced if he is not allowed to intervene.

The court finds that it is highly unlikely that under these circumstances another court may come to a different conclusion.

The following order is made:

1. The application for leave to appeal is dismissed with costs;
2. Costs to include the costs of two counsel for the respondent and costs of counsel for the trustees.


Judge Pretorius

Case number	: 70273/2009
Heard on	: 21 April 2011
For the Applicant	: Adv CE Puckrin SC
	: Adv MA Badenhorst SC
	: Adv J Hershensohn
Instructed by	: Schabort INC
For the Intervening Party	: Adv B Pretorius SC
	: Adv J Gouws
Instructed by	: Lombard en Vennote ING
Date of Judgment	: 11 May 2011