

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 030448/2022

**REPORTABLE
OF INTEREST TO OTHER JUDGES
REVISED
DATE: 28/02/2024**

In the matters between: -

HENNING WEIDLICH

PLAINTIFF

And

**GEO-X (PTY) LTD BAL LOGISTIC
(PTY) LTD**

FIRST RESPONDENT

BAL LOGISTIC (PTY) LTD

SECOND RESPONDENT

GOLDPLAT RECOVERY (PTY)LTD

THIRD RESPONDENT

KAYMAC (PTY) LTD

FOURTH RESPONDENT

ESKOM SOC (PTY) LTD

FIFTH RESPONDENT

JUDGMENT

BAQWA, J

Introduction

[1] The applicant seeks an order placing the first respondent under business rescue proceedings in terms of section 131 of the Companies Act 71 of 2008 (the Act), as well as an order for the payment of R3 278 027.63 to the Business Rescue Practitioner arising out of an alleged settlement between the first applicant and the fifth respondent.

[2] The application is being opposed by the fifth respondent but only in regard to prayer 3 of the notice of motion relating to the settlement agreement claim.

The Parties

[3] The applicant is Henco Weidlich, a managing director and employee of the first respondent with business address of Reedbuck Crescent, Corporate Park South, Rondjespark, Midrand.

[4] The first respondent is Geo X (Pty) Ltd, a private company incorporated in term of the law of the Republic of South Africa with registration number 2013/19974/07 with registered address 1[...] R[...] C[...], C[...] P[...] S[...], M[...] where it carries on business as civil engineers and designers, suppliers of infrastructure such as roads, dams, canals and reinforced walls.

[5] Second respondent is Bal Logistics (Pty) Ltd, a private company incorporated in terms of the Laws of the Republic with registration number 2015/389344/07 and registration address at 2[...] F[...], 1[...] I[...] Road, Durban.

[6] The Third Respondent is Goldplat Recovery (Pty) Ltd, a private company incorporated in terms of the Laws of the Republic with registration number 1979/007102/07 and registered address at Davyston Road, Benoni, Gauteng.

[7] The Fourth Respondent is Kyamac (Pty) Ltd, a private company incorporated in terms of the Laws of the Republic with registration number 1966/07044/07 and registered address at 1[...] C[...] S[...], P[...].

[8] The Fifth Respondent is Eskom SOC (Pty) Ltd, a state-owned company with registration number 2002/015527/06 with its principal place of business at Megawatt Park, Maxwell Drive, Sunninghill, Sandton, Johannesburg.

Financial Distress

[9] It is manifest from the following events that the first respondent is financially distressed as envisaged in term of section 128 (1) (f) of the Act:

- 9.1. It received a letter from Pearson Attorneys on behalf of the second respondent demanding payment of R577 268.34 on 9 September 2022 and another letter of demand from Fluxman Attorneys on behalf of third respondent on 20 September 2022 demanding payment of R2 625 105.00.
- 9.2 The first respondent also finds itself in financial distress in part due to the covid-19 pandemic which crippled various industries and brought work to a standstill through supply chain disruption, shortage of sub-contractors and materials and the termination of contracts to control expenses.
- 9.3 The applicant alleges that first respondent is further distressed because its single biggest customer, the fifth respondent, has not paid invoices issued in term of a written NEC contract for R 5 127 966.63 in terms of which the fifth respondent had agreed to pay R 3 278 027.63.
- 94 The first respondent also owes monies to numerous other creditors such as Plastic-Weld (R 467 736-00), African Logistic Systems (R582 507-16) AKS Lining System (R2 183 964-66). A Smit Homes (R 7 000) CCS Mining and Industries (Pty)Ltd (R5 658-00) and Kaytech (R445 159-87) to name but a few.
- 9.5 Additionally the first respondent has various employees who are also independent creditors as defined in section 128 (1) (g) of the Act due to the first respondent's inability to pay their salaries. These include

Anthony Baloyi, Jacob Joseph, Patrick Mthiyane, Lungelo Shendu, Coleen Kennedy, Patience Moyo and Solly Sedimedi amongst others.

[10] The first respondent has tendered for new projects of approximately R150 000 000.00 and this opens up a prospect of a reasonable possibility that the first respondent may be rescued.

[11] Mr Henco Kruger, a duly registered and licenced, experienced `business rescue practitioner, has stated that he is available and that he will accept the appointment if so ordered by this court.

The Fifth Respondent's Case

[12] The fifth respondent filed an answering affidavit raising a number of points in *limine* such as *locus standi* of the applicant to claim monies on behalf of the first respondent and jurisdiction of this court in light of referral of the claim to adjudication in term of the NEC 3 agreement.

[13] At the hearing of this matter the fifth respondent raised the plea of misjoinder in that it was not the party the first respondent had contracted with. I allowed the point in *limine* through misjoinder to be raised as this was a legal point which could be raised even at that stage of the hearing. Further, I allowed it to be raised as it could potentially be dispositive of the issues raised in pursuit of prayer 3 in the notice of motion.

[14] It is clearly stated in paragraph 32 of the answering affidavit that the fifth respondent vehemently denies that it and the first respondent concluded a settlement agreement as recorded in annexure C of the founding affidavit.

[15] It is further stated that the first respondent is aware that the compensation events and indebtedness to the first respondent are disputed. Reference is made in this regard to copies of letters sent to the first respondent dated 17 and 24 February 2021 marked "EK4" and "EK5" respectively.

[16] It is quite apparent that the said letters “EK4” and “EK5” were exchanged between the first respondent and the entity described as Eskom Rotek Industries Soc Ltd and not between the fifth and first respondents.

[17] Equally self-evident is that the NEC Supply Contract (SC3) annexed as “EK1” was between Eskom Rotek Industries Soc Ltd and the first respondent which is described as Geo-X (Pty)Ltd in the NEC contract.

[18] Counsel for the fifth respondent has argued that these documents speak for themselves and that there is no “lis” between the fifth and first respondents and that the fifth respondent ought not to have been joined as a party in these proceedings. I am compelled to accept and agree with these submissions. Consequently, in my view the other points in *limine* fall by the wayside.

[19] In light of the above I have come to the conclusion that:

19.1. The first respondent is financially distressed.

19.2. The first respondent has failed to adequately meet its financial obligation in that it has failed to pay its debts.

19.3. It is just and equitable that it be placed under supervision and commence business rescue proceedings in terms of section 131 of the Company Act 71 of 2008.

19.3. The joining of the fifth respondent in these proceedings constitutes a misjoinder.

ORDER

[24] In the result, I make the following order:

24.1. The first respondent is placed under supervision and is ordered to commence business rescue proceedings in terms of section 131 of the Companies Act 71 of 2008.

24.2. That Mr Henco Kruger, a major male, duly registered and licenced Business Rescue Practitioner be appointed as an interim Business Rescue Practitioner.

24.3. The late filing of the answering affidavit is condoned.

24.4. Prayer 3 of the notice of motion is dismissed with costs on an attorney and client scale which shall include the employment of counsel.

SELBY BAQWA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of hearing: 06 February 2024

Date of judgment: February 2024

APPEARANCES

For the Applicants

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