

THE REPUBLIC OF SOUTH AFRICA



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

Case no: 2022/17070

2022/17071

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.
01 NOVEMBER 2023

DATE

SIGNATURE

In the matter between:

CAMP DISCOVERY (PTY) LTD
WOUTER LOUIS VAN DEVENTER

And

PHAKAMA BIG 5 GAME LODGE (PTY) LTD

In re:

PHAKAMA BIG 5 GAME LODGE (PTY) LTD

and

CAMP DISCOVERY (PTY) LTD

First Applicant
Second Applicant

Respondent

Applicant

First Respondent

WOUTER LOUIS VAN DEVENTER

Second Respondent

And in the matter between:

SHEFA INVESTMENTS No 2 (PTY) LTD

First Applicant

WOUTER LOUIS VAN DEVENTER

Second Applicant

REYNARD WOUTER VAN DEVENTER

Third Applicant

And

SHEFAS REST (PTY) LTD

Respondent

In re:

SHEFAS REST (PTY) LTD

Applicant

and

SHEFA INVESTMENTS No 2 (PTY) LTD

First Applicant

WOUTER LOUIS VAN DEVENTER

Second Applicant

REYNARD WOUTER VAN DEVENTER

Third Applicant

J U D G M E N T

MAKHOBHA, J

- [1] Both counsel in case number 17070/2022 also appear in case number 17071/2022 which are numbered 14 and 15 in the opposed roll for 16 October 2023. Both matters were argued before me.
- [2] For the purpose of this application the parties agreed that the court may hear and give a single judgment in respect of both matters.

- [3] Mr J.A Nel is the director of Ivubu Investment (Pty) Ltd. *Ivubu* provided credit in the form of a bridging loan to the first applicant under case number 17070/2022 and also to the first applicant under case number 17071/2022.
- [4] The immovable properties under case number 17070/2022 and 17071/2022 were then used as security for the loan agreements. The security was in shares of the applicants.
- [5] It is common cause that Ivubu Investment (Pty) Ltd is not registered with the National Credit Regulator as a credit provider.
- [6] First Mr. J A Nel sued out action under case number 2023-067104 for payment of certain amounts of money. That action is opposed and a plea was served and filed, that action will now proceed to trial.
- [7] A second action was sued out by the first applicant in case number 17070/2022 as plaintiff under case number 2023-101419 for the return of the shares that acted as security for the bridging loan provided, and in essence setting aside the transaction against payment of the amount of money. That action is also now pending and will also proceed to trial.
- [8] The argument and submissions furnished by the applicant under case number 17071/2022 are similar to the argument and submissions furnished under case number 17070/2022. Both

applicants argue that the actions pending are between the same parties, and on the same issues which is the ownership held through the shareholding in the property-holding entities and in respect of the same subject matter.

[9] In a nutshell it is submitted on behalf of the applicants that the subject matter and the parties in both the action proceedings and the opposed motion proceedings are the same.

[10] It is further argued on behalf of the applicants that the pending action is the determination about the true agreement between the parties, the money loan and security for repayment by putting up shareholding for transfer as security and this has an impact in the motion proceeding currently before this court.

[11] On behalf of the respondents in both matters it is submitted that even if these actions succeed, it will have no effect on the relief sought in the opposed motions because the shareholding of the respective companies has nothing to do with the ultimate submission that the respondents in this application are the owners of the immovable properties.

- [12] It is argued that the underlying facts in the opposed motion and the underlying facts in the action proceedings have no bearing on each other.
- [13] The power to stay proceeding by our court is exercised sparingly and only in exceptional cases¹.
- [14] In *Caesarstone Sdot-Yam v The World of Marble and Granite*² the court stayed the proceedings because it found that the dispute between the parties is being litigated else where and therefore it was inappropriate for the other court to entertain it.
- [15] In paragraph 2 of the judgment the court said, "*The courts are also concerned to avoid a situation where different courts pronounce on the same issue with the risk that they may reach differing conclusions.*"
- [16] The court further referred to *voet* and said there are three requirements to satisfy namely:
- (i) The litigation must be between the same parties.
 - (ii) The cause of action must be same
 - (iii) The same relief is sought in both matters.

¹ Hudson v Hudson 1927 AD 259 at 267.

² [2013] 4 All SA 509 (SCA).

[17] In my view the two applications before me and the pending actions fulfills the requirement mention in *Caesarstone*³.

[18] I make the following order:

18.1 The applicant to stay the proceedings in matters 17070/2022 and 17071/2022 is granted.

18.2 The counter-application is dismissed with costs.

18.3 the draft orders marked "X1" and "X2" uploaded on CaseLines are made the orders of this court.



MAKHOBA J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD AND RESERVED JUDGMENT: 18 OCTOBER 2023

JUDGMENT HANDED DOWN ON: 01 NOVEMBER 2023

Appearances:

For the Applicant: Adv J C Klooper (instructed by) Maritz Smith Inc. ATTORNEYS
For the Respondent: Adv A B Rossouw SC with Adv M Louw (instructed by) Jaco Roos Inc. ATTORNEYS.

³ Supra.