



IN THE HIGH COURT OF SOUTH AFRICA

(NORTH GAUTENG PRETORIA DIVISION)

CASE NO. 55263/2008

In the matter between:

GEORGIA AVENUE INVESTMENTS 11
(PTY) LTD.

Applicant

and

KOPERFONTEIN MEULE (PTY) LTD.

First Respondent

THE SHERIFF OF MALMESBURY

Second Respondent

THE SHERIFF OF HOPEFIELD
/MOORREESBURG

Third Respondent

CORAM: EBERSOHN AJ

DATE HEARD: 8 July 2009

DATE JUDGMENT HANDED DOWN: 5th August 2009

JUDGMENT

EBERSOHN AJ:

[1] In this matter the applicant applied on an urgent basis for the stay of a writ of execution which the first respondent issued after obtaining a default judgment in matter 55263/2008 against the applicant in an amount of R199 810,03 with interest and costs.

[2] The writ was executed on the 11th June 2009 by the Sheriff of Malmesbury in terms of which he attached a certain account no 020837/001 in the name of Georgia Ave Investment 11 (Pty) Ltd. at Kaap Agri Ltd's head office in

Malmesbury. The attachment also included the wheat of the applicant which was held under that account no. by Kaap Agri Ltd.

[3] On the 15th June 2009 the Sheriff of Moorreesburg under the same writ attached three vehicles, a trailer and a milling plant and its attachments and also 4 tons of wheat meal.

[4] The attachment brought the operations of the applicant to a standstill.

[5] In the simple summons issued by the first respondent against the applicant it was alleged that the amount was the balance owing in regard to a wheat and maize mill sold by the first respondent to the applicant.

[5] It appears that the cause of action was set out incorrectly in the summons as the applicant in fact purchased a milling business with certain assets for a purchase price of R2 500 000,00.

[6] According to the applicant he defaulted on several payments whereupon the first respondent took the law into its own hands and removed a Dyna truck, a Mercedes Benz truck and a high speed trailer from the applicant's undisturbed possession. The parties thereafter agreed that the balance owing by the applicant to the respondent would be R350 000,00. The applicant made a further payment of R165 000. The first respondent then caused the summons to be served on the applicant.

[7] On the 30th April 2009 the applicant wrote to the first respondent to facilitate a meeting to discuss the return of the two trucks and trailer to the applicant after set-off of the value of the trucks and trailer.

[8] A dispute thereafter arose because the first respondent did not return the trucks and trailer and also did not set-off the value thereof against the amount of R199 810,03 allegedly owing. It is the case of the applicant that the first respondent thus repudiated the agreement regarding the trucks and trailer.

[9] The first respondent thereafter alleged that the Dyna Truck was sold for R149 122,80 and the Mercedes Benz truck for R198 038,67 and the first respondent retained and appropriated the proceeds of those sales.

[10] Thereafter the second respondent in terms of the writ attached 84 tons of wheat valued at R222 708,00 as is set out above.

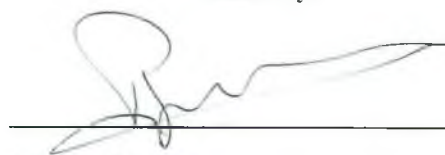
[11] Adding insult to injury the third respondent attached the goods referred to above, apparently effectively preventing the applicant from doing business. I find it strange that the first respondent saw it fit to attach all these vast assets.

[12] The applicant intends bringing an application to set aside the default judgement therefore this application to stay the execution of the writ.

[13] I have listened to the arguments advanced by Mr. Botes, the counsel for the first respondent, as to why the relief should not be granted but I am unconvinced that the applicant does not have good prospects of success with an application to set the default judgment aside. I am also convinced that it would be a travesty of justice to keep the assets of the applicant under attachment pending the finalization of the proposed application to have the judgment set aside.

[14] I accordingly make the following order:

1. Pending the final determination of the applicant's application for the rescission of the default judgment, which application must be issued on or before the 17th August 2009, the operation of the writ issued in consequence of the default judgment which was granted in matter 55263/08 on the 11th May 2009, is suspended and the second and third respondents are ordered to release the assets of the applicant which they have attached, to the applicant.
2. Costs of this application is reserved and the matter may be enrolled again before Ebersohn AJ to have costs argued on the papers duly supplemented as far as may be necessary.



P.Z. EBERSOHN

ACTING JUDGE OF THE HIGH COURT

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