

Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Magistrates:	YES / NO
Circulate to Regional Magistrates:	YES / NO

IN THE HIGH COURT OF SOUTH AFRICA (Northern Cape Division)

Case Nr: 108/07
Heard: 21/09/07
Delivered: 19/10/07

In the matter between:

VENESKA BELEGGINGS BK
REG. NR. 1998/020988/23

Applicant

And

HENDRIK SCHALK SNYMAN

1st Respondent

ADRIAAN JOHANNES CLOETE

3rd Respondent

JUDGMENT

Mokgohloa A J:

1. The applicant brought an urgent application on 21 September 2007 for an order in the following terms:
"1. dat afgesien word van die vorms en betekening deur die hofreël voorgeskryf en dat hierdie aansoek as 'n dringende aansoek bereg word;

2. *dat die respondente beveel word om die besigheid wat te Hoofstraat 37, Postmasburg, as 'n hotel en 'n buiteverbruik bedryf word onder die naam van POSTMASBURG HOTEL ("die besigheid") aan mev Engela Magrieta Richards ("Richards") namens die applicant terug te handig voor of op 08:00 Maandag, 24 September 2007;*

3. *dat die adjunk balju, Postmasburg gemagting word om, indien die respondente sou versuim om paragraaf 2 van hierdie bevel na te kom, die besigheid op Maandag 24 September 2007 in besit te neem en aan Richards te oorhandig;*
 4. *dat die adjunk balju gemagtig word om, indien nodig, die hulp van die Suid-Afrikaanse Polisiediens in te roep ten einde hierdie bevel uit te voer;*
 5. *dat die respondente gesamentlik en afsonderlik beveel word om die applikant se koste van hierdie aansoek te betaal, die een betaal die ander kwytgeskeld te word;*
 6. *dat daar aan die applikant verdere en/of alternatiewe regshulp verleen word.”*
2. The application was opposed. I struck the matter from the roll with costs for want of urgency and reserved my reasons. This judgment serves to convey to the parties the reasons for my decision.
 3. The background of this application can be summarized as follows:
 - 3.1 The applicant, Vaneska Beleggings Bk was the owner of the Postmansburg Hotel business (“the business”) which was managed by Ms Engela Richards and her husband Mr Willem Richards.
 - 3.2 On 16 August 2006 the applicant entered into a written sale agreement with the respondents in respect of the business for a purchase price of R2 012 000.00. In terms of the agreement the respondents were to pay a deposit of R500 000-00 and the balance thereof payable in monthly installments of R63 000.00. It was a further term of the agreement that should the respondents fail to make payment of any

installment due, the whole balance will become due and payable immediately and the applicant may issue summons for the payment thereof.

3.3 The respondents paid the deposit and commenced operating the business. However, the respondents fell in arrears with their monthly installments. The applicant exercised its rights in terms of the sale agreement and issued summons against the respondents. Judgment by default was granted against the respondents in the amount of R151 200.00 on 4 December 2006.

3.4 Although the applicant had given notice to the respondents of cancellation of the sale agreement, the parties nonetheless entered into a written addendum to the original sale agreement in terms whereof the respondents offered to make increased monthly installments to the balance outstanding. The parties further agreed to ignore the notice of cancellation of the original sale agreement.

3.5 Regrettably, the respondents failed to honour the written addendum agreement. At that time the respondents advised the applicant that the bottle store which formed part of the business was not operating due to bad business and that this led to their financial downfall.

4. These events led to the applicant bringing an urgent application against the respondents on 9 February 2007 for the relief on the following terms:

“2.1 dat verklaar word dat die sluiting deur die partye van die addendum gedateer 16 Januarie 2007 ‘n nuwe ooreenkoms tussen die partye daar gestel het gestaande uit

die ooreenkoms gedateer 16 Augustus 2006 soos gewysig en aangevul deur die addendum ("die nuwe ooreenkoms");

2.2 dat verklaar word dat die applikant die nuwe ooreenkoms op 31 Januarie 2007 regsgeldiglik kanselleer het;

2.3 dat respondente en elke persoon wat deur hulle in okkupasie van die besigheid en onroerende eiendom bekend as die Postmasburg Hotel geleë te Hoofstraat 37, Postmasburg, ("die hotel") is, beveel word om die hotel onmiddellik te ontruim en die besit en okkupasie daarvan aan mev Engele Magrieta Richards ("mev Richards") namens die applikant te oorhandig MET DIEN VERSTANDE dat hierdie bevel nie op enige bona fide gas wat by the hotel ingeboek mag wees van toepassing is nie;

2.4 dat indien die respondent of enige ander persoon soos bedoel in paragraaf 4 van hierdie bevel wat die hotel onregmatig okkupeer, weier om die besit daarvan onmiddellik na die uitreiking van hierdie bevel aan mev Richards te oorhandig, word die Baljue, Postmasburg gemagtig en beveel om die hotel te betree, die ongemagtigde persone van die perseel te verwyder, en mev Richards in besit daarvan te plaas;

2.5 dat die applikant beveel word om volledig boek te hou van die uitgawes en inkomste van die hotel vanaf die stadium dat hy na aanleiding van hierdie bevel besit daarvan verkry totdat hierdie aansoek finaal bereg is;

2.6 dat die respondente beveel word om die koste van hierdie aansoek te betaal;

2.7 dat verdere en/of alternatiewe regshulp aan die applicant verleen word.

3. Dat die bedes vervat in paragrawe 2.1 to en met 2.5 van onmiddellike krag sal wees hangende die finale beregting van hierdie aansoek."

5. The application was opposed and was subsequently postponed to 9 March 2007 for trial. On 9 March 2007 the matter was postponed per agreement between the parties to 4 May 2007. The parties further agreed that the applicant will pay the wasted costs for the postponement in the amount of R3 000.00 payable on or before 4 May 2007. On 4 May 2007 the application was further postponed to 22 June 2007 for trial.
6. On 22 June 2007 the matter came before Williams J. At that time the applicant had already abandoned prayers 2.3 and 2.5 of the Notice of Motion. The first respondent had in the meantime withdrawn his opposition and the second respondent consented to the granting of prayers 2.1 and 2.2 of the applicant's Notice of Motion.
7. Rule 6(12) of the Uniform Court Rules provides that in every affidavit filled in support of any urgent applications, the applicant shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course.
8. In *casu*, the applicant relied on the summary of facts as outlined in paragraph 3 *supra* and the fact that the respondents are in a precarious financial stage as they have many debts which they cannot satisfy.
9. These circumstances which the applicant avers render the matter urgent existed in February 2007 when the matter was set down for the first time. In the interim the matter was postponed thrice. In the process the status *quo* has now changed in that the bottle store which was closed during February 2007 is now opened and in operation with no goodwill lost.

Quite logically the financial status of the respondents is likely to have improved. I am of the view that this matter has since lost its urgency as a result of the many postponements and interim arrangements made between the parties. See Venture Capital Ltd v Mauerberger 1991 (1) SA 96 (W). Therefore this matter will have to be enrolled in accordance with the Rules in the normal opposed motion roll.

I therefore reiterate that this matter is struck from the roll of the urgent court with costs.

**F E MOKGOHLOA
ACTING JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION**

**For the Applicant: Adv. B Knoetze SC
Instructed by: Elliot, Maris, Wilmans & Hay
For the Respondents: Adv. Van Niekerk SC
Instructed by: Mjila & Vennote**