



IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

CASE NO 1410/2023

In the matter between:

ISLANDSITE 180 (PTY) LTD

FIRST APPLICANT

RONICA RAGAVAN N.O.

SECOND APPLICANT

and

KURT ROBERT KNOOP N.O.

FIRST RESPONDENT

JOHAN LOUIS KLOPPER N.O.

SECOND RESPONDENT

DINESH APPAVOO N.O.

THIRD RESPONDENT

HUGH VINCENT COOKE

FOURTH RESPONDENT

Judgment by: VAN RHYN J

Heard on: 14 JUNE 2024

Delivered on: 14 JUNE 2024

- [1] This is an application by Islandsite 180 (Pty) Ltd (in Business Rescue) (Islandsite), the first applicant and Mrs Ronica Ragavan (Mrs Ragavan), the second applicant, collectively referred to as the applicants, for leave to appeal against the whole of the

order handed down by this court 5 December 2023 and the reasons, delivered on 20 February 2024. The application for leave to appeal is opposed by the first and second respondents, the business rescue practitioners (the BRPs). The application for leave to appeal is to the Supreme Court of Appeal.

- [2] The application for leave to appeal was enrolled to be heard virtually on 14 June 2024. A directive was issued that the parties are to submit heads of argument. Heads of argument on behalf of the applicants were filed on 27 May 2024 and on behalf of the BRPs on 30 May 2024. The fourth respondent filed a notice to abide by the decision of the court. The third respondent did not participate in the matter during the initial hearing on 5 December 2023 nor in the application for leave to appeal.
- [3] This matter pertains to an opposed application (Part B of the main application) wherein the applicants sought to take the decision of the BRPs to sell the property of Islandsite situated at Constantia, Cape Town on review. In Part A, the applicants obtained an interim interdict preventing the sale of the property pending the determination of Part B. The applicants further more sought an order in terms whereof Islandsite be taken out of business rescue. At the hearing of the matter on 5 December 2023 the court was furthermore presented with three interlocutory applications:
- (a) a Condonation application;
 - (b) a Rule 30 application to set aside the notices of set down; and
 - (c) a postponement/stay application by the BRPs for the postponement or stay of Part B pending the Supreme Court of Appeal's determination of Part A.
- [4] The applicants' grounds for leave to appeal can succinctly be summarised as follows:
- (a) That the applicants did not have a fair hearing, given that the main application was not before the court when it was dismissed;
 - (b) That the court possessed the required jurisdiction to adjudicate Part B of the main application;
 - (c) That the applicants:
 - Had already obtained leave under section 133 of the Companies Act¹;
 - That such leave was not necessary; and

¹ Act 71 of 2008.

- That the absence of such leave is not fatal to an application.

(d) That the board of Islandsite has standing in its own right and could pursue the litigation with or without the company as a co-applicant.

[5] The application for leave to appeal is opposed by the BRPs on the basis that the core issue, which according to the BRPs dealt the fatal blow to Part B of the main application, has not been identified or addressed by the applicants. It is argued by the BRPs' that Part B of the main application could only be entertained by the court on one of two alternatives:

- (a) Firstly, if the court possessed the required jurisdiction to adjudicate Part B of the main application.
- (b) Secondly, and only if the court determined that it possessed the necessary jurisdiction, whether the applicants, specifically Mrs Ragavan, had standing to claim any relief sought in Part B of the main application.

[6] The legislation dealing with the circumstances upon which leave to appeal may be granted is set out in section 17(1) of the Superior Courts Act². In **Ramakatsa and Others v African National Congress and Another**³ the Supreme Court of Appeal, in paragraph 10 of its judgment regarding the various judgments at high court level debating whether the use of the word "would" as opposed to "could" possibly mean that the threshold for granting leave to appeal has been raised, held as follows:

"If a reasonable prospect of success is established, leave to appeal should be granted. Similarly, if there are some other compelling reason why the appeal should be heard, leave to appeal should be granted. The test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a court of appeal could reasonable arrive at a conclusion different to that of the trial court. In other words, the appellants in this matter need to convince this court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exists."

[7] In respect of the first ground of appeal, namely that the applicants did not have a fair hearing on 5 December 2023, in that the applicants' arguments relevant to Part B of

² Act 10 of 2013.

³ Case No. 724/2019) [2021] ZASCA 31 delivered on 31 March 2021.

the main application were not heard at all, I am in agreement with the contention on behalf of the applicants that the specific arguments relevant to Part B were not addressed at the hearing on 5 December 2023. What Mr Hellens SC, counsel on behalf of the applicants, essentially raised now is that the procedure followed by this court in its decision-making process was flawed. I agree with the contention by Mr Hellens SC that the Rule 30 and the postponement/stay applications were identified as the first set of disputes to be argued and resolved where after the merits of Part B of the main application will be addressed.

[8] Mr Hellens SC, with reference to section 34 of the Constitution and **Lane and Fey NNO v Dabelstein and Others**⁴, argued that the first ground of appeal is not concerned with the correctness of the court's decision but is concerned with the fairness of the court proceedings as it developed on 5 December 2023. The result of the procedure followed by this court, was that the applicants' relief as sought in Part B of the main application had not yet been addressed when the order dismissing the relief sought in Part B was delivered.

[9] In order to succeed, therefore, the applicants must convince this court on proper grounds that they have reasonable prospects of success on appeal. I have reconsidered the order delivered on 5 December 2023 as well as the procedure followed at the hearing of the matter and dispassionately considered the application for leave to appeal.

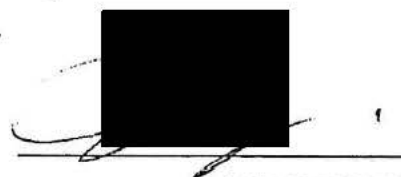
[10] I am of the view that a reasonable prospect of success has been established by the applicants and leave to appeal should be granted.

[11] **ORDER:**

1. The applicants are granted leave to appeal to the Supreme Court of Appeal, against the whole of the judgment and order by this court on 5 December 2023 and 20 February 2024.

⁴ 2001 (2) SA 1187 (CC) at 1190C.

2. The costs of the application for leave to appeal shall be costs in the appeal.



I VAN RHYN

JUDGE OF THE HIGH COURT,
FREE STATE DIVISION, BLOEMFONTEIN

On behalf of the Applicants:

ADV. M HELLENS SC

Instructed by:

ADV B PRINSLOO

HONEY ATTORNEYS

BLOEMFONTEIN

On behalf of the First and Second Respondents:

ADV. L VR VAN TONDER

Instructed by:

MCINTYRE VAN DER POST ATTORNEYS

BLOEMFONTEIN