



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 2024-087450

(1)	REPORTABLE: No
(2)	OF INTEREST TO OTHER JUDGES: No
(3)	REVISED.
04/09/2024	
DATE	SIGNATURE

In the matter between:

SATIN ROCK (PTY) LTD

Applicant

And

RUSSELL LOFTUS

Respondent

JUDGMENT

MAHOMED AJ

- [1] The applicant requires an urgent hearing of its matter, for the payment of monies which the respondent holds in its trust account. It claims the matter is urgent because it has made commitments to Standard Bank, and needs the money to pay over.

- [2] Advocate Van Heerden appeared for the applicant and submitted that the respondent has ignored her client's various calls to release its monies, which is held pursuant to an arrangement between the parties.
- [3] The arrangement has endured over several decades, but is no longer viable as the parties have fallen out. The respondent received monies on behalf of the applicant and on instructions of the applicant, issued undertakings to its various business partners.
- [4] The Respondent issued an undertaking/guarantee for R485 000, to one De Gouveia. The applicant proffered that the transaction regarding this creditor was no longer alive, the monies were no longer payable to him and that monies ought therefore to be paid over to the applicant. Counsel explained that there were two transactions and the respondent retained monies from the second transaction which ought rightly to have been paid over the applicant.
- [5] The respondent argued that this creditor has not been joined and he cannot pay over monies, without a court order, given the undertaking he made on the applicant's instructions, the evidence is that Gouveia claims payment from the respondent.
- [6] Mr Sethaba appeared for the respondent and submitted that the matter is not urgent and that this is an abuse of the court process. The test is would the applicant obtain relief at a hearing in due course. Counsel submitted that it would, there is only the applicant's say so and nothing is before this court to support its urgency. The applicant could easily have supported its application with confirmation from its creditors of the harm or danger which was looming.
- [7] It was further argued that there is a material non joinder of De Gouveia, who has a direct and substantial interest in the matter and the applicant seeks to enrich himself

by claiming funds which on the common cause facts are due and payable to De Gouveia.

URGENCY

- [8] In **East Rock Trading 7 (Pty) Ltd And Another v Eagle Valley Granite (Pty) Ltd And Others¹**, the court sets out the test, as “the main inquiry is if the applicant will obtain substantial redress at a hearing in due course.”
- [9] I am of the view that it will, there is no evidence of the imminent threat of harm, the applicant could easily have put up agreements, confirmatory affidavits and the like from creditors, before this court, for the relief, only his say so will not suffice, particularly in motion proceedings, it is trite that the facts and the evidence must be placed before the court on papers.
- [10] There is no evidence that the respondent will appropriate the funds, and the respondent's business is governed by a regulatory body that provides the necessary safeguards of the funds. There is furthermore no evidence that the respondent himself will not be in a position to reimburse the applicant if ordered to do. There is no evidence that the applicant instructed for the withdrawal of the undertaking, the respondent appears to hold valid concerns in the absence of a joinder and submissions from De Gouveia.
- [11] On its own version, the applicant is a well-resourced business and in all probability will be able to manage its business affairs until a hearing in due course.
- [12] The application must fail, for lack of urgency. The costs must follow the course.

¹ 2011 ZAGPJHC 196

[13] Accordingly I make the following order,

1. The application is dismissed for lack of urgency.
2. The applicant shall pay the costs of this application, on scale B.



S MAHOMED
ACTING JUDGE OF THE HIGH COURT

Delivered: *This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date and for hand-down is deemed to be 04 September 2024.*

Date of Hearing: 29 August 2024

Date of Judgment: 4 September 2024

Appearances

For Applicant: Advocate K van Heerden

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For Respondent: Advocate M Sethaba

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