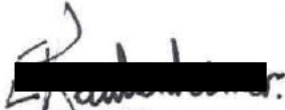




**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2024/120994

(1)	REPORTABLE: YES / ☒ NO
(2)	OF INTEREST TO OTHER JUDGES: YES / ☒ NO
(3)	REVIEWED: YES / ☒ NO
6 February 2025 DATE	 SIGNATURE

In the application by

FONTANA DI PUREZZA (Pty) Ltd

Applicant

And

**THE TRUSTEES FOR THE TIME BEING OF
ZYZZYVA TRUS**

Respondent

JUDGMENT

Raubenheimer AJ:

Order

[1] In this matter I make the following order:

1. The application is dismissed with costs on scale B

[2] The reasons for the order follow below.

Introduction

[3] The matter came before me on 5 November 2024 in urgent court. The application was launched on 23 October and served on 24 October. The annexure containing the list of assets to be removed in terms of the Notice of Motion was served on 30 October. The answering affidavit had to be delivered on 28 October and was delivered in unsigned and not commissioned format on 31 October.

[4] Apart from costs of application the relief claimed were as follows:

- 4.1 Interdicting and restraining the respondent from using all or any "Manzi" display signs at the premises situate at 22 Rosebank Road, Dunkeld, Johannesburg and from trading as "Manzi" or "Manzi Water"
- 4.2 Authorising the applicant to remove all "Manzi" display signs from the business premises, at the applicant's cost, alternatively authorising the Sheriff of the court to remove all "Manzi" display signs from the business premises;
- 4.3 Directing the respondent to allow the applicant to remove and take possession of the movable assets referred to in Annexure "X" of the Notice of Motion alternatively authorising the Sheriff to remove the assets and to deliver same to the applicant;

- 4.4 Alternatively to 4.3 above: directing the respondent to allow the applicant to remove and take possession of the assets against the applicant providing written proof that it has paid R200 000,00 (two hundred thousand Rand) into the trust account of Biccari Bollo Mariano Inc ("BBMLaw") as substitute security for the value of the assets, alternatively directing the Sheriff to remove the assets against such security and to deliver same to the applicant;
- 4.5 Directing that the substitute security referred to in 4.4 shall remain in place pending the outcome of legal proceedings to be instituted by the applicant against the respondent for, *inter alia*, the following relief, within 30 (thirty) days of the date of this order:
- 4.5.1 An order that no partnership business existed between the parties, alternatively, and in the event of it being found that a partnership business existed between the parties, declaring that the assets are assets which were at all material times exclusively owned by the applicant and not co-owned by the parties in partnership;
- 4.5.2 An order for payment by the respondent to the applicant of the sum of R 37811,74 (Thirty-seven thousand nine hundred and eleven Rand and seventy four cents);
- 4.5.3 Interest on the aforesaid amount at 11.75% per annum, a *tempore morae*, to date of payment;
- 4.6 Further alternatively to 4.4 and 4.5, interdicting and restraining the respondent from using any of the assets pending the outcome of an action to be instituted by the applicant for the relief referred to in 4.5.1 and 4.5.2 above;
- 4.7 Directing the respondent to allow the applicant to take a meter

reading in respect of sales of prepared water from the assets at the premises before same are removed.

The parties

[5] Manzi Water (Pty) Ltd (Manzi Water) is the owner of the intellectual property rights including the brand and trademark of "Manzi" and operates as a franchisor. The applicant obtained user rights to the brand and trademark from Manzi Water and is a franchisee of Manzi Water and owns a number of Manzi franchises.

[6] The applicant is also the owner of water purification equipment and supplies Manzi branded purified water and rebottled products to end users.

[7] The Respondent is a trust that occupies premises in Rosebank.

The factual background

[8] The respondent was desirous to open a Mzansi store in Rosebank on premises owned by a company of the trustee of the respondent. The trustee, Mr Wolpe initially approached Manzi Water in November 2023 and after the latter withdrew from the negotiations the applicant, represented by Mr Frese.

[9] The parties concluded an agreement dealing with the opening of the mentioned store as well as the operation of the store.

[10] The nature and content of the agreement is the subject of contention between the parties and need not be dealt with in this judgement.

[11] The agreement was terminated on 9 August 2024 due to irreconcilable differences between the parties and had the applicant indicated as early as 28 August 2024 that it would launch an application for the relief as stated above.

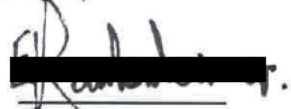
[12] The applicant relied on the following factors for urgency:

- 12.1 The premises from which the respondent is operating is not safe and as such renders the equipment at risk of being destroyed. The respondent had been operating from these premises for seven months after converting it as approved by the applicants' representative to accommodate the equipment and concluded a lease agreement for the premises;
- 12.2 The respondent uses the equipment without employing suitable experts to monitor and maintain the equipment. This equipment had been operated by staff trained by the applicant and employed by the respondent since the inception of the agreement towards the end of 2023.
- 12.3 The respondent obtained a further site in terms of a lease agreement concluded in May 2024 to expand its operations further. The financial viability of this operation was dependent on the revenue generated from the operation by the respondent. Due to the dispute between the parties this revenue did not materialise. The new operation is consequently at risk.

[13] Despite the mentioned factors not constituting urgency the applicant created its own urgency by approaching the court after 2 months on an extremely urgent basis, thereby creating its own urgency.

Conclusion

[14] For all the reasons as set out above I make the order in paragraph 1.


E Raubenheimer

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

**GAUTENG DIVISION
JOHANNESBURG**

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **6 February 2025**

COUNSEL FOR THE APPLICANT:

Mr Christophrou

INSTRUCTED BY:

Biccari Bollo Mariano Inc

COUNSEL FOR THE RESPONDENT:

Adv Bhima

INSTRUCTED BY:

Tracey Lomax Attorneys

DATE OF ARGUMENT: 05 November 2024

DATE OF JUDGMENT: 06 February 2025