



IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

Case no: 13218/2009

CREDIT TEMPS (PTY) LTD

1st Applicant

DANIEL TERBLANCHE N.O. in his capacity as joint liquidator of
CR Solutions Cape Town (Pty) Ltd

2nd Applicant

E A BEDDY N.O. in his capacity as joint liquidator of
CR Solutions Cape Town (Pty) Ltd

3rd Applicant

v

YOUR MOVE PERSONNEL

1st Respondent

WADE NEVILLE JANION

2nd Respondent

HOLLY JANION

3rd Respondent

MISTRAL ANN JANION

4th Respondent

WEB-ACTIVE (PTY) LTD

5th Respondent

PREMIER ATTRACTION 426 CC t/a WEB-ACTIVE

6th Respondent

And

Case no: 14160/2009

CREDIT TEMPS (PTY) LTD

1st Applicant

DANIEL TERBLANCHE N.O. in his capacity as joint liquidator of
CR Solutions Cape Town (Pty) Ltd

2nd Applicant

E A BEDDY N.O. in his capacity as joint liquidator of
CR Solutions Cape Town (Pty) Ltd

3rd Applicant

CINDY SHAMLEY

4th Applicant

NEIL DORMEHL

5th Applicant

v

YOUR MOVE PERSONNEL

1st Respondent

WADE NEVILLE JANION

2nd Respondent

HOLLY JANION

3rd Respondent

MISTRAL ANN JANION

4th Respondent

WEB-ACTIVE (PTY) LTD

5th Respondent

PREMIER ATTRACTION 426 CC t/a WEB-ACTIVE

6th Respondent

LEANDRIE LE ROUX

7th Respondent

Court: Acting Judge J I Cloete

Heard: 6 June 2012

Delivered: 6 June 2012

JUDGMENT

Application for Leave to Appeal

CLOETE AJ:

I have carefully considered the notice of application for leave to appeal and the arguments of counsel. I would also like to thank counsel for their submissions.

It is trite that in order for leave to appeal to be granted, an applicant must show that there is a reasonable prospect of success on appeal: see *inter alia* Pharmaceutical Society of South Africa & Others v Tshabalala-Msimang & Another NNO 2005 (3) SA 238 (SCA) at 262D. The test is not whether the case is arguable or fairly arguable, unless the word "arguable" is used in the narrow sense that there is substance in the argument advanced on behalf of the applicant: see *inter alia* Rood v Broderick Properties Ltd 1962 (2) SA 434 (T) at 435C-F.

In my view the respondents have not raised anything new of substance in their application for leave to appeal. I have already dealt in detail with my findings and the reasons therefor in my judgment in the court *a quo* in relation to the grounds advanced by the respondents, save for one ground which I deal with hereunder. My views remain unchanged and I have nothing further to add.

In regard to the ground not dealt with in my judgment, namely that the restraint against the fourth respondent is in any event unenforceable since it is alleged to be vague as to its geographical area of operation, this was neither raised by the respondents in their papers nor was it raised in the respondents' heads of argument filed on their behalf. It was raised for the first time in the court *a quo* during argument by their counsel, who was of the view that his submissions were not only to be made on the cases put forward by the parties in their papers. I made it clear to him that I disagreed with that approach, not least since the applicants had not been afforded the opportunity to deal therewith. He thereafter did not pursue that submission or his contentions relating to the geographical area of the restraint with any degree of conviction. It was for these reasons that I did not consider it necessary to deal in my judgment in the court *a quo* with this ground now advanced.

That having been said, I am satisfied that the respondent has no reasonable prospect of success on appeal and that there is no substance in the arguments advanced on their behalf for this purpose in the sense set out in the Rood case.

In the result the application for leave to appeal is dismissed with costs, including the costs of two counsel.

A handwritten signature in black ink, appearing to read "J. Cloete", written over a horizontal line.

JICLOETE