

IN THE SOUTH GAUTENG HIGH COURT OF SOUTH AFRICA

JOHANNESBURG

CASE NO: 3338/2011

DATE: 2011-08-04

In the matter between

BHAMBATHA INVESTMENTS PTY LTD

Applicant

10and

ALBERT NDELENI DU PREEZ VILAKAZI

First Respondent

DAPHNE SIBONGILE NENE

Second Respondent

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J U D G M E N T

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WILLIS; J:

[1] This is an application in terms of which the applicant seeks an order that the first and second respondents are jointly and severally liable to pay the applicant the sum of R176 400; interest on the aforesaid sum from 27 May 2010 to date of payment at the rate of 15,5% per annum and costs of suit on an attorney and client scale. The order is sought against the first and second respondents on the basis that they are jointly and severally liable the one paying the other to be absolved. I pause here to mention that I have not debated with counsel the question of costs, and I shall invite them to do so at

the end of the judgment.

[2] The second respondent has not opposed the application. There has been much huffing and puffing and hot air in this matter, but the following facts are incontestable and are common cause on the papers before me:

1. The respondents were removed as directors of the applicant on 14 May 2010.

2. On the very same day they were sent by telefacsimile a letter informing them not only that they were dismissed on their positions as directors of the applicant, but also that they had no authority to effect any 10payments on behalf of the applicant or to deal with the applicant's property.

3. That on the very next day (i.e. on 15 May 2010) the first respondent at least and perhaps the second respondent as well gave an instruction to Nedbank to pay from the account of the applicant the sum of R176 400 to the Zenzele Family Trust.

[3] This instruction to the bank was clearly unauthorised and, accordingly, unlawful. On this basis alone the applicant must succeed. Accordingly, an order is made against the first and second respondents jointly and severally the one paying the other to be absolved in terms of Prayers 1 and 2.

20POSTEA:

[4] Earlier in delivering judgment I indicated that I was unsure as to which would be the appropriate cost order (i.e. an ordinary order on a party and party scale or on an attorney and client scale). I had not had the benefit of hearing argument from counsel on the issue. I am now narrowly persuaded that the conduct of the respondents in deliberately going to a bank and

instructing them to make a payment when they must have been aware that they were prohibited by the applicant to do so, is sufficiently reprehensible to justify a cost order on an attorney and client scale, even if they may have believed that the Trust should have received this money by reason of an earlier resolution passed at the beginning of May. Accordingly, an order is made that the costs of suit are to be paid by the respondents on an attorney and client scale. The liability is obviously joint and several, the one paying the other to be absolved.

10 Counsel for the applicant: Adv H P Jeffreys SC.

Counsel for the first respondent: Adv B M Gilbert.

No appearance for the second respondent.

Attorneys for the applicants: Bossert and Jaskokla.

Attorneys for the first respondent: Strauss Daly Inc.

Date of hearing 4 August 2011.

Date of judgment 4 August 2011.