

REPUBLIC OF SOUTH AFRICA



IN THE GAUTENG HIGH COURT
(LOCAL DIVISION JOHANNESBURG)

CASE NO: 467/2015

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED

10 FEBRUARY 2015

FHD VAN OOSTEN

In the matter between

JAMEYA INVESTMENT PROJECTS CC

APPLICANT

And

THE MAGISTRATE MR NAIDOO

FIRST RESPONDENT

FIRST RAND BANK LTD

SECOND RESPONDENT

JAMES ROBERT GALLOWAY & RAPHAEL

GRANT BRINK

THIRD RESPONDENT

MASTER OF THE HIGH COURT

FOURTH RESPONDENT

Practice – Applications - Urgent application - for suspension of liquidation proceedings pending finalisation of an application for rescission of winding-up order - rule 49(11) - application for rescission automatically suspended the winding-up order - no counter application for liquidation proceedings to continue - confirmation of suspension of winding-up order granted

J U D G M E N T

VAN OOSTEN J:

[1] This application came before me by way of urgency on 12 January 2015. When the matter was called I was informed that it had become opposed. I granted the

respondents the opportunity to file an answering affidavit and stood the matter down for hearing to 15 January 2015. The respondents' answering affidavit was duly filed and the hearing proceeded although the applicant had not availed itself of the right to reply thereto.

[2] The applicant is a close corporation which was finally wound up by order of this court, on 19 September 2014. In this application the deponent to the founding affidavit (the deponent) refers to himself as a director of the applicant but I shall assume that this is merely a misnomer and that he in fact is a member of the applicant. This is confirmed by the fact that the third respondent, the appointed liquidators of the applicant in liquidation, addressed an email to the deponent requiring his attendance at the first meeting of creditors, which was held on 21 November 2014, at the Germiston Magistrate's office before the first respondent. In this application the applicant seeks an order in effect suspending the liquidation proceedings in respect of the applicant, pending the finalisation of an application for rescission of the final winding-up order, which is to be heard in this court on 27 February 2015. The application is opposed by the second and third respondents (the respondents) and no counter application was filed. At the conclusion of the hearing I granted an order suspending the liquidation proceedings pending finalisation of the rescission application and that the costs of the application be costs in the rescission application. A request by the attorneys acting for the respondents for the furnishing of reasons for my order was filed with the Registrar on 23 January 2015 but only brought to my attention on 9 February 2015. What follows are those reasons.

[3] It is common cause between the parties that a first meeting of creditors in the liquidation of the applicant, was convened on 21 November 2014. The deponent attended the meeting and asked for a postponement in order to enable him to arrange for legal representation. The meeting was thereupon postponed for one week until 28 November 2014. At the resumed hearing the applicant's legal representative applied for a stay of the liquidation proceedings on the ground that an application of rescission of the final winding-up order had been launched and was pending. The application was refused and the meeting was postponed to 28 January 2015. I interpose to mention that the rescission application was launched on 23 September 2014, that it is opposed and to be heard in this court on 27 February

2015.

[4] The respondents challenged the urgency of the application. This aspect need not detain me for long. The applicant indeed at the very first opportunity to do so, applied for a stay of the liquidation proceedings which, as I have mentioned, was refused. The next meeting was imminent and it follows that the application indeed was of sufficient urgency to be heard that week.

[5] As for the merits, counsel for the respondents submitted that the scheduled meeting of creditors should be allowed to proceed in the interests of creditors of the applicant. I should mention that the applicant is a property owning entity and that the second respondent is a bond holder over the property. The assurance was given on behalf of the respondents that the property which is the applicant's only asset, will not be sold in execution pending finalisation of the rescission application. In my view the contentions raised on behalf of the respondents run counter to the legal position prevailing which is that the liquidation proceedings in terms of rule 49(11) were automatically suspended upon launching of the rescission application.

[6] In *Peniel Development (Pty) Ltd and another v Pietersen and others* 2014 (2) SA503 (GSJ) Vally J held that a rescission application, in terms of rule 49(11), without the necessity of an application therefore, in itself suspends the order in respect of which the rescission is sought. The same reasoning was adopted by Notshe AJ in *Khoza and others v Body Corporate of Ella Court* 2014 (2) SA 112 (GSJ). I find myself in respectful agreement with both judgments. The party in whose favour the judgment was granted, in this case the second respondent, of course was entitled by way of counter-application, in this application, to seek an order allowing the liquidation proceedings to continue. That was not done and it follows that the applicant was entitled to an order in effect confirming the suspending the liquidation proceedings pending finalisation of the rescission application. I accordingly made such an order.

FHD VAN OOSTEN
JUDGE OF THE HIGH COURT

COUNSEL FOR APPLICANT

ADV F MATIKA

APPLICANT'S ATTORNEYS

SB GUMEDE ATTORNEYS

**COUNSEL FOR SECOND AND
THIRD RESPONDENTS**

ADV C COTHILL

RESPONDENTS' ATTORNEYS

SMIT JONES & PRATT

DATE OF HEARING

15 JANUARY 2015

DATE OF ORDER

15 JANUARY 2015

DATE OF REASONS

10 FEBRUARY 2015