

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

Case Number 25792/93

In the matter between

11/8/2014

SNYMAN EN VENNOTE (JHB) (PTY) LTD

Applicant/Defendant

and

MAJOLICA POTTERY (VENDA) (PTY) LTD Respondent/Plaintiff

JUDGMENT

BAM J

1. This matter has a long history. The respondent instituted action against the applicant in December 1993 claiming payment of R226 470.47 plus interest and costs. The action was defended. On 17 January 1995 this Court ruled upon the separation of issues between the parties holding that the applicant was mandated by the respondent to collect the respondent's debts and to take action against the respondent's debtors. Between 1993 and 2001 certain interlocutory issues between the parties were addressed. Thereafter, however, until November 2012, no further steps were taken by the respondent. The applicant also did not deem it expedient to set the matter down for trial.
2. In November 2012 the respondent served a Notice of Appointment of its present attorneys of record and a Notice to attend a pre-trial. It transpired that the applicant company in 2012 was acquired by the present owners, the Nimble Group (Pty) Ltd. The applicant now applied

for an order that the action be dismissed on the basis of prejudice caused by the inordinate delay to prosecute the matter.

3. The issue to be adjudicated is whether this Court, in its discretion, should allow the respondent to proceed with its action despite the long delay, or dismiss the action summarily.
4. Mr Zazeraj, appearing for the applicant, argued that the respondent failed to provide an acceptable explanation for the inordinate delay. The only explanation advanced by the respondent is that there was a lacking of funds at the time to prosecute the matter. In this regard it was pointed out that the respondent had several costs orders against the applicant in its favour but it had taxed only one of them. Mr Zazeraj further submitted that the applicant, for the following reasons, will be severely prejudiced if the respondent is allowed to proceed with its action:
  - (a) The applicant's directors have been substituted in the meantime and they have no knowledge of the matter;
  - (b) The respondent is unable to provide the applicant with a full set of pleadings;
  - (c) The contents of the court file have not been found;
  - (d) The applicant could not locate documentation relevant to the case;
  - (e) The applicant is not in a position to determine how the respondent derives the amount it claims;
5. It was therefore submitted by Mr Zazeraj that this Court, in exercising its discretion, should find that the respondent's intended prosecution of its case after so many years constitute abuse of court process and should not be allowed. Mr Zazeraj relied on several reported authorities,


including *Golden International Navigation SA v Zeba Maritime Co Ltd* 2008 (3) SA 10 (CPD).

6. Mr Scheepers, appearing for the respondent, whilst conceding that the delay in prosecuting the matter is substantial, contended that there is no evidence of any abuse of court process by the respondent. With reference to *Kuiper and Others v Benson* 1984 (1) SA 474 (W)M AT 477 C-D, Mr Scheepers submitted that the Court's power to strike out the claim should only be used in exceptional cases. In relying on what was stated *Molala v Minister of Law and Order and Another* 1993(1) SA 673 (W), at 677C-E, Mr Scheepers further argued that the issue of possible prejudice of the applicant has to be considered against the situation that it was not the respondent's intention to cause or increase the applicant's difficulties.
7. It is appreciated that the applicant will indeed find it difficult to get hold of all documentation relevant to the case and that there will surely be some prejudice. However this may be a two edged sword. It must be kept in mind that the respondent would on all probabilities bear the onus to prove its case. The practical issues pertaining to the onus of proof and the quality and evidential value of the evidence the respondent, or the applicant, may adduce, are something that would squarely fall within the ambit of what the trial court would be called upon to consider. This Court cannot be concerned about any one of the parties' possible difficulties that may be experienced with evidence or evidential material at the trial, presently it will surely be a matter of conjecture. For the purposes of this application it suffices to say that it appears that the respondent is adamant that it will be in a position to proceed with the trial, at least in view of the fact that it has been stated by the respondent that it would be able to adduce the evidence of 4 witnesses.

8. The respondent's action did proceed to the point where an order of this court was granted in respect of the separation of issues. The case involves a monetary claim. It does not appear from the available information that it can be said that the claim is frivolous or vexatious, or that the respondent has a weak case.
9. Accordingly, whilst appreciating that the prosecution of the matter may cause some prejudice to the applicant, mainly due to the long delay, this is not a case where the respondent should be deprived of its right to proceed with the matter.
10. Concerning the costs of this application I am not prepared to order the applicant to pay the costs at this point in time. In my view it would be reasonable and fair in the circumstances to reserve that order until the proposed trial.

#### ORDER

1. The application is dismissed.
2. Costs reserved.



A J BAM JUDGE OF THE HIGH COURT

7 August 2014