

REPUBLIC OF SOUTH AFRICA

HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

22/01/2016

CASE NO: 76408/2013

*Not reportable**Not of interest to other Judges*

In the matter between:

DANIEL FRIEDERICH BURMEISTER
LESEDING DEVELOPMENT LIMITEDFirst Applicant
Second Applicant

and

SPITSKOP VILLAGE PROPERTIES LTD
JOHAN FRANCOIS ENGELBRECHT N.O.First Respondent
Second Respondent**COMMISSIONER FOR THE SOUTH**
AFRICAN REVENUE SERVICE

Intervening Party

JUDGMENT – Leave to appeal

MAKGOKA, J

[1] This is an application for leave to appeal against the judgment of this court dismissing the applicants' application to order business rescue proceedings in respect of the first respondent. The application is opposed, on the one hand, by the first and second respondents, and the intervening party, on the other - the same parties who opposed the main application.

[2] The common law test in an application for leave to appeal has always been whether there are reasonable prospects that another court, given the same set of facts, might arrive to a different conclusion. That test has been codified by s 17 of the Superior Court Act 10 of 2013, in terms of which leave to appeal may only be given

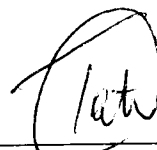
where a judge is of the opinion that the appeal would have reasonable prospects of success.

(My underlining for emphasis).

[3] I have had careful and dispassionate regard to the applicants' grounds of appeal, which amount to no more than a regurgitation of the arguments advanced in the main application. Each of the grounds has been dealt with fully in the judgment, and it would serve no purpose to repeat what is stated there. The applicants' insurmountable obstacles include, among others, the views of the main creditor, SARS, who opposed the application; the fact that both this court and the Supreme Court of Appeal have found that the substratum of the first respondent had disappeared; and the paucity of the information as to the reasons why the first respondent landed in financial difficulty; the lack of sufficient particularity as to the business rescue plan.

[4] For all the above considerations, I am not persuaded that any other court would come to a different conclusion. The application falls to fail, and in the result the following order is made:

1. The application is dismissed with costs, such costs to include the costs of two counsel where such counsel were employed, to be paid by the applicants jointly and severally, the one paying the other to be absolved.



F.M. Makgoka
Judge of the High Court

Heard: 19 January 2016

Judgment delivered: 22 January 2016

Appearances:

For the Applicants: Adv. L.K. Van der Merwe

Instructed by: Cawood Attorneys, Pretoria

For the First and Second Respondents: Adv. J Vorster

Instructed by: Leahy & Van Niekerk Inc., Pretoria

For the Intervening Party: Adv. H.G.A Snyman SC

Adv. C. Naude