

**IN THE HIGH COURT OF SOUTH AFRICA
[CAPE OF GOOD HOPE PROVINCIAL DIVISION]**

Case No: 33/2007

In the matter between:

ANTONIO MANUEL DA COSTA SILVA

Applicant/Plaintiff

and

CHARLISE SILVA (born NAUDE)

Respondent/Defendant

JUDGMENT DELIVERED: 29 JULY 2008

FOURIE, J:

1. The applicant, plaintiff in the action, applies for leave to appeal against the whole of my judgment delivered on 13 March 2008. The application is opposed by respondent (defendant).
2. It is trite that in an application of this nature an applicant has to show that there is a reasonable prospect of success on appeal.
3. As appears from my written judgment, I was required to interpret two clauses in the antenuptial contract concluded by the parties prior to their marriage.

4. Firstly, in regard to clause 3.4.6, I had to decide whether applicant's shares and member's interest in a private company and two close corporations should be taken into account for the determination of the accrual of his estate. At the trial it was applicant's case that his interest in the aforesaid legal entities should, in terms of clause 3.4.6, be excluded from the accrual of his estate, by virtue of the fact that he is employed by these legal entities. Respondent, on the other hand, maintained that applicant was not employed by the legal entities and his interest should accordingly be included in the accrual of his estate. I found that applicant was not employed by these legal entities and that his said interest is to be taken into account for the determination of the accrual of his estate.
5. I am satisfied that on the evidence before me, the only reasonable conclusion to be drawn is that applicant was not employed by the said legal entities and, in my view, there is no reasonable prospect of another court coming to a different conclusion in this regard.
6. It is, however, now submitted on behalf of applicant that clause 3.4.6 may be interpreted in a manner which could result in the

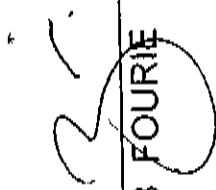
exclusion of applicant's interest in these entities from the accrual of his estate, without applicant having to show that he is employed by the entities. In short, applicant maintains that the reference to employment in clause 3.4.6 should be interpreted as only relating to "*other business*" and not to a company or close corporation in which a party may hold shares or a member's interest. If construed in this manner, applicant submits that his shares in the company and interest in the close corporations should have been declared not to be part of the accrual of his estate.

7. I am not persuaded that clause 3.4.6 should be interpreted in the manner now suggested by applicant, but cannot rule out the possibility that another court may come to a different conclusion in this regard. As the interpretation now suggested by applicant had not been debated at the trial, it appears to be practical to allow same to be argued on appeal.

8. In regard to the interpretation and application of clause 3.4.8 of the antenuptial contract, applicant maintains that the right conferred in terms thereof should be construed as part of applicant's maintenance obligations and can, as such, be replaced by a proper maintenance order. In my view respondent is, for the reasons

furnished in my judgment, entitled to enforce the right conferred in clause 3.4.8. I am doubtful whether applicant has shown that he has a reasonable prospect of success on appeal on this issue, but as I am inclined to grant leave in regard to the interpretation of clause 3.4.6, I believe that it would be convenient to also grant leave in respect of the issue regarding clause 3.4.8.

9. In the result, applicant is granted leave to appeal to the Full Court of this Division, against the whole of my judgment delivered and orders made on 13 March 2008. The costs of this application are to stand over for determination by the court of appeal.


P B FOURIE

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