

IN THE HIGH COURT OF SOUTH AFRICA

(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO:

18997/2008

DATE:

21 NOVEMBER 2008

5 In the matter between:

STANDARD BANK

Applicant

and

ERF 289 BANTRY BAY

Respondent

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J U D G M E N T

GAUNTLETT, AJ:

15 [1] In this matter there is an opposed application for a provisional winding-up order. I have read the papers which have been filed on both sides, and considered the oral submissions which have been advanced by counsel for the applicant and respondent respectively.

20 [2] It is not customary in matters of this kind to seek to hand down full reasons for a ruling of this nature, but it seems to me desirable in the circumstances of this matter that I should do so, at least in brief outline.

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SP

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[3] I am satisfied that the requirements for a provisional winding-up order are made, and that it is an appropriate case in my judgment for such an order to issue. In this regard, it is important to note that the debt in question is not disputed, and that, as far as I read the papers, there is no proper defence made out to the contention that the respondent is commercially insolvent. It is further important that the notice in terms of section 345 of the Act was served as long ago as 22 October 2008, and elicited at that stage, without proper explanation, no adequate response at all.

[4] This notwithstanding, objection was made this morning in argument on the basis that the matter is not urgent. It seems to me that this misconceives the position. As was explained in the Supreme Court of Appeal decision in Commissioner, South African Revenue Services v Hawker Air Services (Pty) Ltd (approximately 2006), the question of urgency is a matter for the discretionary determination by the Court hearing the matter. It affords no basis, as appears to have become the unfortunate practice in certain courts, for the matter not to be entertained at all, and even (in the circumstances of that particular case) to be dismissed.

[5] In the present case, it is quite clear from the procedural history outlined in the papers, that some considerable forbearance has been exercised in relation to the collection of the debt – for that, as counsel for the applicant squarely acknowledged, is the applicant's intention, as it is permitted to do, in instituting these proceedings. The position moreover is as I have indicated, there has been no response, without explanation, to the section 345 notice, nor is there any adequate explanation as to why this application served on 11 November 2008 elicited no evident reaction until today.

[6] In the circumstances, it seems to me that the attempt to procure a postponement of the matter is not well founded, and is calculated to delay. I am not impressed by the argument that there is a web of other litigation relating to the position of tenants. There is no contractual privity between the applicant and those entities, and the proceedings in relation to eviction against them is patently *res inter alios acta* as far as they are concerned.

[7] As regards the merits of the matter, as I have indicated, in my view a good case is made out and I have

accordingly that a provisional winding-up should issue in the terms indicated in the draft marked "X".



GAUNTLETT, AJ