IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT. CAPE TOWN)

CASE NO: 7027/07

DATE: 1 December 2010

In the matter between:

MITTAL STEEL SOUTH AFRICA LTD

t/a VEREENIGING STEEL Applicant

and

PIPECHEM CC 1st Respondent

MICHAEL LANE N.O. 2nd Respondent

JUDGMENT

CLEAVER. J

This is an application to join the second defendant as a party to the action in which the first respondent is the defendant and the applicant is the plaintiff. The application stems from an order made by Acting Judge Schippers in this division on the 23rd of October 2009.

The order was to the effect that the plaintiff, that is the applicant before me, was directed to join Mr M Lane N.O. and the liquidator of Bell Engineering (Pty) Limited, that is the second respondent before me, as a necessary party to the above action by not later

than Friday 20 November 2009.

The order followed on an analysis by the judge of some very inexact pleadings which had been placed before him on behalf of the first respondent, who at all times in the action between the plaintiff and the defendant had been represented by the managing member of the first respondent. I mention this because I note from the rather voluminous files that the first respondent was advised on more than occasion by judges of this division to employ legal representation, as it was apparent that the pleadings which had been filed on behalf of the first respondent were prolix, unnecessary and by no means of assistance in establishing precisely what claims the first respondent intended to make.

The judge, in analysing pleadings of this nature concluded that the first respondent, as defendant in the main action, had established a counter claim which in his view was for the return of the goods against either the plaintiff, the insolvent company as represented by its liquidator. Lane, or both, and it was on that basis that he concluded that the liquidator had a legal interest in the subject matter of the litigation and might be prejudicially affected by any order which might be made.

I have examined the counter claim once more, and I regret that in my view it is not apparent from the counter claim that the defendant was seeking the return of the goods in question from either the plaintiff or the liquidator. The counter claim is to the effect that the first respondent, as defendant, is entitled to claim the return of goods said to be subject to reservation of ownership in favour of the defendant, from the plaintiff, because the plaintiff

allowed these goods to be installed in its plant when it was aware of the fact that the defendant claimed ownership of the goods. The fact that the defendant avers that the second respondent knew of its claim to the ownership of the goods does not mean that the defendant has claimed against the second respondent for return of the goods, and in fact the counter claim makes it clear that the counter claim is against the plaintiff.

In any event the defendant has also made it clear that it is counterclaiming against the plaintiff because it says it cannot claim the goods from the second respondent, as the goods are no longer in the possession of the second respondent.

Counsel for the second respondent is accordingly correct, when he resists the application to join the second defendant on the basis that no case or claim has been made out against the second defendant.

In the circumstances the application must fail, and all that remains is to decide on an appropriate order as to costs.

The applicant and the first respondent are in agreement that the cost of the application should stand over for later consideration. Counsel for the second respondent submits that his client was brought to court unnecessarily, that he has no wish to be joined, that he is not involved in the dispute between the applicant and the first respondent. This is perfectly correct. There may be something to be said for the view that the second respondent could have adopted the view that there was no need for him to object to being joined as he would not be prejudiced thereby since he was not involved in the matter. That would have been an

approach which he could have adopted had the papers merely been served on him. He could then have decided whether to abide or to join. The position is somewhat different here; here he is being brought to Court and obliged to become a party to an action against his will, and where no claim has been made out against him.

I consider therefore that he is entitled to resist the application.

I have some sympathy also for both the applicant and the first respondent. The first respondent filed the application in order to comply with the court order. While the first respondent did not ask for the order which was granted on 23 October that order was the direct result of the first respondent's managing member continuing to represent the first respondent personally, instead of obtaining proper legal advice which the first respondent could well afford. In doing so he had extended the course of the trial unnecessarily and produced a series of totally inadequate and sometimes un-understandable pleadings.

While a Court would perhaps be guarded in making a costs order against an individual who has sought personally to protect his interests in a court the time has passed in this particular matter where that should be a consideration. In any event the first respondent has had legal representation for some considerable time and it seems clear that proper consideration was not given to the ambit and effect of the order which had been granted previously. I consider therefore that the second respondent is

entitled to his costs.

In the result I make the following order:

1) The application to join the second respondent is dismissed and the first respondent is ordered to pay the second respondent's costs in opposing the application;

2) As between the applicant and the first defendant the question of costs will stand over for determination at a later stage.

CLEAVER, J