

**IN THE HIGH COURT OF SOUTH AFRICA  
WESTERN CAPE HIGH COURT, CAPE TOWN**

CASE NO: 27355/2010

In the matter between:

**INVESTEC BANK (MAURITIUS) LTD**

Applicant to Intervene

and

**HOHETE TSEHAYE (PTY) LTD**

First Respondent in Applicant to Intervene

**LYDIA GRUNITZKY**

Second Respondent in Applicant to Intervene

In re: the Ex Parte Application of:  
**HOHETE TSEHAYE (PTY) LTD**

Applicant for Winding-up

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**J U D G M E N T**

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Weinkove A.J.

1. For convenience Applicant will be referred to as Investec, First Respondent, Hohete Tsehay (Pty) Ltd, will be referred to as the company and Second Respondent, Lydia Grunitzky, will be referred to as Grunitzky.
2. This matter came before me as the return day of a provisional order of liquidation granted at the instance of the company. Investec sought leave to intervene in these proceedings and at the same time, in the event of

such leave being granted, filed affidavits in support of its opposition to the grant of a final liquidation order.

3. The company and Grunitzky agreed to Investec being permitted to intervene but in doing so made no concessions in respect of the question of costs, which issue was argued before me.
4. Investec's first ground of opposition is that the application is technically defective in that the special resolution of the company was not registered at the date of the bringing of the application and was thus of no force and effect in terms of section 203(1) of the Companies Act.
5. Investec argues that the application for a winding-up was based on the special resolution taken by Grunitzky in her capacity the sole director and sole shareholder. That resolution was passed ostensibly on 15 December 2010 but was not registered within 1 month of the resolution being passed. The obligation to register that special resolution is set out in section 200 of the Companies Act. Section 203(1) provides that until the special resolution has been registered by the Registrar under section 200, it shall not take effect. There was no proof before the Court that the special resolution was indeed registered and there is no provision in the Act which allows such special resolution to have retrospective effect.
6. I am advised that since this time the resolution has been registered but it is common cause that at the time that the application was brought it had

not been registered and that such registration in any event was not effected within 1 month.

7. Counsel for Applicant concedes that this is a highly technical complaint and were it not for the fact that there are in these papers more compelling reasons to set aside the provisional order of liquidation I would not have allowed this technical complaint to unduly interfere with my discretion as to whether to allow a final order of liquidation or not. As it is and for the reasons hereinafter set forth, I do consider this fact should be taken into account and should influence my discretion to grant a final order of liquidation.
8. Counsel for Investec has pointed out that Grunitzky has made various efforts to stay the sale in execution of the property by Investec which had been bonded to it as security for the loan furnished by it to acquire that property.
9. In fact, Grunitzky brought an urgent application on Friday, 19 November 2010, on a mere 2 days notice to Investec and the Sheriff to stop the sale in execution.
10. The application was brought on the basis that Grunitzky sought to be allowed time to raise money in order to salvage control over the property of the company. This application failed and the affidavit showed that on the morning prior to the sale taking place she accosted Mr Sanchez



Investec's attorney and she and her male friend adopted an aggressive and threatening attitude towards him. It became necessary for the auctioneer to call security guards to monitor the proceedings. Grunitzky advised Sanchez during an exchange that if he knew what was good for him he would back off and call off the sale. Grunitzky and her male friend then threatened Sanchez that she had a tape recording which she alleged revealed that Sanchez was accepting a bribe of R1 million for allowing the sale in execution to proceed. Grunitzky also threatened that she was going to sue him in his personal capacity for his part in bringing about the sale.

11. Thereafter, Grunitzky throughout the day sent various text messages to various persons including the Deputy Chairman of Investec making false allegations against Sanchez and calling upon Investec to stop the sale and threatening to go to the press. Sanchez was sent copies of these messages and they are part of the opposing papers in this matter. Grunitzky then, true to her threats, approached a Cape Town newspaper and was able to get them to print an article about the sale in execution in terms of which Investec was maligned and defamed with false facts. A copy of that article is also part of these papers.
12. Immediately after the auction sale the purchaser, Szymonowicz, duly paid the deposit as well as the Sheriff's charges. Grunitzky and Sanchez were present when this occurred. The purchaser then spoke to Grunitzky and she informed him that she needed 2 weeks to remove her belongings from

the property. He apparently agreed on condition that she paid occupational rental. She refused. Grunitzky however agreed with the purchaser that a valuer (his builder) could visit the property on 23 November 2010 in order to value same and inspect and determine the extent and costs of building works which were needed to make the property habitable. She then reneged on this arrangement and refused to allow access. She has remained on this property ever since, stating that she intends to institute proceedings against Investec, Sanchez, the Sheriff and other interested parties in relation to the property.

13. In light of Grunitzky's bizarre behaviour it was necessary for the purchaser to launch an urgent application on 20 December 2010 in terms of which he sought an order that Grunitzky be ordered to provide him and certain representatives access to the property and that she be ejected therefrom.
14. Grunitzky then, in her personal capacity and on behalf of the company, opposed the application of the purchaser essentially on the basis that she had tendered access. She signed her answering affidavit on 21 December 2010 which was the day on which the provisional order was taken.
15. This particular application was never served on Investec or the purchaser.
16. Grunitzky's application abounds with false statements and deliberate omissions. She falsely informed the Court that she had paid the ongoing



expenses of the company. She neglected to inform the Court that Investec had, since about June 2010, been paying such expenses including settling arrear amounts due to the Municipal authorities which had been outstanding since February 2010. In fact, Investec had paid expenses in the amount of over R230 000.00. The papers also show that at the time that Investec took over the property the water had been cut off and was only reconnected when Investec paid an outstanding water bill in excess of R150 000.00.

17. Investec points out that, as at the date upon which the founding affidavit for the winding-up order was made, i.e. on 15 December 2010, Grunitzky was aware of the fact that she had already undertaken to remove her belongings from the property within a period of 2 weeks. She had also undertaken to allow access to the property at the request of the purchaser. She had also frustrated the valuation of the property by the purchaser by deliberately denying access and accordingly frustrating the possibility of transfer being effected. She falsely pretended to the Court that transfer was imminent. She also did not remove her belongings in terms of her undertaking to do so.
18. Grunitzky has been squatting on this property since she initiated her attempts to prevent the sale and transfer thereof.
19. When Investec took a judgment against her in respect of debts owing on her credit card and the loan of over R9 million that had been advanced to

her, the Sheriff found a great deal of movable property including a Mercedes Benz motor vehicle in Grunitzky's possession. This property is listed in annexure "RA1" at **p.184 of the Record**. Two hundred and seventy seven (277) items are listed, having a value, according to the Sheriff, of about R115 000.00.

20. In order to prevent the Sheriff from attaching this property, Grunitzky said that it belonged to the company but was faced with the embarrassment of having declared under oath in the winding-up application that the only asset of the company was the property itself, omitting to mention the 277 items attached by the Sheriff. Grunitzky then brought an interpleader application to prevent the Sheriff from keeping this property and to get past the statement that she had made in the winding-up application. On 15 December 2010 she said at **p.196** (paragraph 9) of this application that when she said that the only asset of the company was its immovable property **"this information was incorrect and I apologise unreservedly for the oversight and any confusion and inconvenience that it may have caused"**. She went on to assert that these movables belonged to the company, including the motor vehicle. This remarkable statement is then supported by the provisional liquidator in an affidavit filed by him. See **Record pp.204, 206, 281**.

21. In her founding affidavit in the winding-up application, Grunitzky stated that she is permanently resident in the property and that she had been away on business. In fact, she is a resident of Equatorial Guinea. She is



a Tongalese citizen and has no resident status in South Africa at all. She is only here on a temporary entrance visa.

22. The papers show that Grunitzky did not pay the expenses relating to the property and that Investec was called upon by desperate employees of the company to fund and maintain that property. Essentially she abandoned the property and it was necessary for Investec to make payment of the basic expenses necessary to preserve it, including settling amounts in arrears due to the Municipal authorities. Prior to bringing the application to prevent the sale of the property in execution, Grunitzky had not visited the property for more than 2 years. In fact, she had only visited South Africa twice since she brought the property in 2006.
23. Grunitzky also pretended that the purchase price of the property was R13 375 000.00. This figure was used to demonstrate that the sale in execution realised less than the true value of the property. What she failed to inform the Court was that when she bought the property in 2006, she bought it as a going concern which encompassed goodwill and other movable assets.
24. Since the purchaser brought this property, Grunitzky has purposely and deliberately frustrated access to the property in order to avoid a valuation of the property. Furthermore, it is clear that when she bought the property it was substantially furnished and the furniture and effects formed an



integral part of the purchase as did the liquor licence, the web site and the goodwill of the business.

25. Investec has made the point that Grunitzky's erratic conduct and her neglect of this property has significantly diminished its value. She has partially altered the property and demolished parts of it, leaving it in a state of disrepair.
26. The papers show that as far as the sale in execution is concerned, Investec went to considerable lengths to engage the services of professional property agents and auctioneers and aggressively and extensively marketed and advertised the property. This was not a property that had been sold at an insignificant value through the offices of the Sheriff. Investec points out that there is a real risk of losing the sale of the purchaser and that Grunitzky's real motivation is to prevent the sale of the property and she has used every device available to her to attempt to do so. The company earns no income and the property cannot be maintained whilst it is subject to a winding-up order. To leave it as it is will only result in it falling in further disrepair and devaluation.
27. Taking these factors into account, it seems to me that this application for a winding-up order was obtained by Grunitzky by furnishing false information to the Court and by withholding material information and deliberately failing to give interested parties notice of the application.

28. This Court in these circumstances has a discretion to set aside the provisional order of liquidation or discharge it. Our Courts have frequently pointed out that *ex parte* applications must be brought in good faith and must contain all the relevant facts and, it goes without saying, wherever possible to give proper notice to interested parties. I am satisfied that the company is really the alter ego of Grunitzky. She owns all its shares and is its only director. She treats its property as if its her own and she seeks to serve her own interests and preserve control over the company at all costs. She has been guilty of abusing the Court's process and it would be extremely dangerous to rely on her mere say-so in the face of unaudited financial statements as to what the assets and liabilities of the company are. She has already given false information in this connection and it is impossible to determine where the lies end and where the truth begins. She does not furnish any details concerning the creditors whom she mentions in the winding-up application and it is difficult to imagine who these creditors can be if regard is had to the fact that Investec had taken over the management of this property due to Grunitzky's neglect. I feel satisfied that Counsel for Investec is correct in submitting that the purpose of the winding-up application is to obtain a delay so that Grunitzky can continue to keep the property within her grasp. She probably intends to keep it as long as possible and ultimately perhaps even buy it in at a substantially reduced price at a forced sale.
29. In the application for a stay of execution she declares that it was always her intention to renovate and develop this property into an up-market



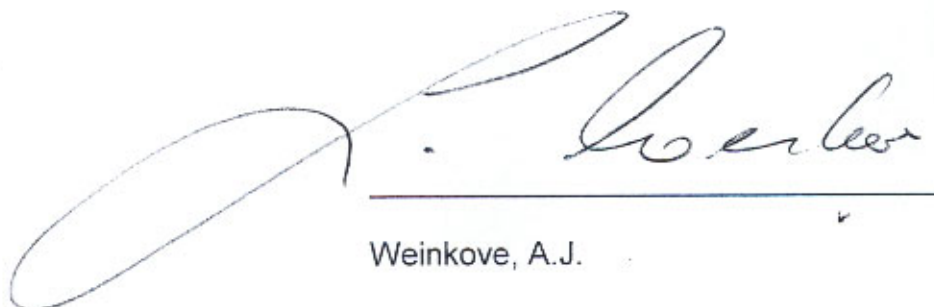
boutique hotel. She claimed in that application to have spent a considerable amount of money on renovating the property and she said that a liquor licence had recently been acquired. She further stated that there was about R400 000.00's worth of marble on the premises and that she has been in the hotel industry for the past 15 years and currently owns two other up-market hotels in Togo and Ethiopia.

30. On a reading of that application it is not surprising that the application for a stay of execution was refused.
31. It is common cause that this Court's power to grant a winding-up order is discretionary irrespective of the ground upon which it is sought. Furthermore, this Court has an inherent jurisdiction to prevent abuse of its process and will refuse an application for liquidation which is not brought on a *bona fide* basis. The onus to provide sufficient information to enable the Court to exercise its discretion in favour of the application rests on Grunitzky. She has failed miserably in this respect. I do not believe that the rights of the unknown creditors would be served by winding-up the company. It seems that their interests and rights (if these creditors exist at all) would be better served if the property were sold in terms of the sale in execution which was arranged by Investec in a proper manner so as to realise a realistic return for that property.
32. It is significant that Grunitzky has not produced a current motivated valuation for the property on admissible evidence in order to establish the



main reason for her claim that the property has not been sold at its true value.

33. In the result, I consider that in the exercise of my discretion and for the reasons set out above, the application for a final order of liquidation should be refused and the provisional order should be set aside. It is so ordered.
34. As far as the costs are concerned, it is manifest to me that the costs of this application were unnecessarily incurred as a direct consequence of the misconduct of Grunitzky. I therefore order that she pay Investec's costs *de bonis propriis* as between attorney and client. I further direct that these costs also be paid jointly and severally, the one paying the other to be absolved, with the company. In this respect, I remain satisfied that the company is the alter ego of Grunitzky and that she too glibly pretends that assets belong to the company when they belong to her and *vice versa*.



Weinkove, A.J.