



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

Case No.: 22109/2014

In the matter between:

ANVA PROPERTIES CC

Applicant

and

END STREET ENTERTAINMENT ENTERPRISES CC

Respondent

JUDGMENT: 14 APRIL 2015

Schippers J:

[1] The applicant seeks an order authorising it to terminate the electricity supply to premises in a building situated at 34-36 Riebeeck Street, Cape Town. The applicant owns the building and the respondent is one of the tenants occupying it. The applicant pays electricity to the City of Cape Town (“the City”) and recovers that cost from the tenants.

[2] The basic facts are uncontroversial. The respondent has occupied the basement of the building (“the premises”) since 2012, from where it conducts business as a bar and nightclub. It is common cause that the respondent uses electricity for its air-conditioning, refrigeration and lighting facilities; that it has not paid its electricity bill since September 2014; and that it is in arrears in excess of R300 000.

[3] The respondent has raised essentially two defences. First, it contends that on the applicant’s own showing, the respondent was finally deregistered in 1998, long before it purportedly entered into a lease agreement with the applicant on 7 May 2012 to hire the premises. Second, the applicant has no *locus standi* to claim payment of any debt from the respondent because it has ceded all its rights (*in rem suam*) to Nedbank Limited. Consequently it has no right to recover any amount under the ceded debt.¹

[4] It is settled law that deregistration puts an end to the existence of a corporate entity.² No steps have been taken to restore the respondent to the register of close corporations, and even if these had been taken, the restoration of a close corporation under the Close Corporations Act 69 of 1984,³ read with the Companies Act 71 of 2008, does not necessarily mean that all of its

¹ *Picardi Hotels Ltd v Thekwini Properties (Pty) Ltd* 2009 (1) SA 493 (SCA) para 3.

² *Miller and Others v NAFCO Investment Holding Co Ltd and Others* 2010 (6) 390 (SCA) para 11.

³ See section 26 of the Close Corporations Act.

activities during the period when it was deregistered are automatically validated.⁴

[5] It follows that no valid lease agreement was entered into between the parties, and the applicant's claim for the relief based on a lease purportedly entered into between the parties cannot succeed.

[6] Given that the respondent has been deregistered and that the lease agreement purportedly concluded is invalid, it is unnecessary to deal with respondent's second defence.

[7] The next question is whether, apart from reliance upon a lease agreement, the applicant has made out a case in the founding affidavit for the relief sought.

[8] The founding affidavit states that the applicant is required to pay the City for all services rendered in respect of the building, including electricity. The cost of electricity is then prorated to all tenants in the building. If the applicant does not pay for its electricity, the City will cut the supply to the building, which will cause other tenants in the building to be without electricity. At present the applicant is effectively subsidising the respondent's business, which

⁴ *Peninsula Eye Clinic (Pty) Ltd v Newlands Surgical Clinic (Pty) Ltd* [2012] 3 All SA 183 (WCC) para 22.

cannot be allowed to continue. The applicant wishes to mitigate its losses by terminating the power supply to the premises.

[9] The applicant however cannot take the law into its own hands by simply cutting off the respondent's power supply, hence this application.⁵ In order to terminate the electricity supply to the premises, an electrician will have to disconnect and seal off that supply, so that the power supply to the other tenants in the building remains unaffected.

[10] The applicant has thus laid a factual foundation for the relief sought, which has been dealt with by the respondent.

[11] What remains is the question of costs. Mr Wille, for the respondent, is correct in his submission that no costs order can be made against a corporate entity which does not exist. Indeed, no order at all may be made against such entity. Mr De Waal, who appeared for the applicant, however submitted that the respondent had opposed the application and its members adopted a resolution to that effect, and had the applicant known that the respondent was deregistered these proceedings may have taken a wholly different course.

⁵ *City of Cape Town v Strumpher* 2012 (4) SA 207 (SCA) at 214A-B.

[12] It appears from the papers that the parties were unaware of the respondent's deregistration, both at the time when the lease was concluded and when the application was launched. This fact came to light for the first time in the replying affidavit. There is no reason why the applicant could not have established this sooner and it seems to me that this is a complete answer to the point that the proceedings may have taken a wholly different course, had that been done. That there is a purported resolution to oppose the application does not change the fact that the respondent has been deregistered. It would also be unfair in the circumstances to hold the persons who purported to be members of the respondent liable for costs, without hearing them on this issue.

[13] For these reasons there will be no order for costs.

[14] I make the following order:

- (a) The applicant is authorised to terminate the supply of electricity to the premises which the respondent occupies, situated at 34-36 Riebeeck Street, Cape Town, and from which the respondent conducts a bar and nightclub known as Decodance Underworld Nightclub ("the premises").

- (b) The occupant/s of the premises shall grant an electrician, appointed by the applicant, access to it in order to disconnect the electricity supply to the premises.
- (c) The occupant/s of the premises is/are prohibited from tampering with any seal installed by the electrician, so as to reconnect the power supply to the premises.
- (d) There is no order as to costs.



SCHIPPERS J