

Sneller Verbatim/lks

IN THE HIGH COURT OF SOUTH AFRICA

(WITWATERSRAND LOCAL DIVISION)

JOHANNESBURG

CASE NO: 4037/02

2002-12-03

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DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE	YES/NO
(2) OF INTEREST TO OTHER JUDGES	YES/NO
(3) REVISED	✓
DATE <u>17/2/2003</u>	<u>[Signature]</u> SIGNATURE

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In the matter between

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AIRLINK CARGO INTERNATIONAL

(PTY) Limited

Applicant/1st Defendant

and

STORGATE AFRICA (PTY) LTD

Respondent/Plaintiff

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J U D G M E N T

WILLIS, J:

This is an application by the first defendant in the main action that the court order that the plaintiff, who is respondent in this application, provides security for costs in the amount of R30 000 in terms of Rule 47(3) of the High Court Rules.

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The applicant essentially has based its application on the fact that the plaintiff has subrogated all its rights in respect of this particular action to Mutual and Federal Insurance Company Limited. There is no dispute that this in fact has occurred. Indeed, it would seem from a subrogation form addressed to Mutual and Federal Insurance Company Limited that the plaintiff did indeed agree to the company Mutual and Federal Insurance Company being subrogated to all the plaintiff's rights and remedies arising from an insurance claim. *Prima facie* it seems that what has in fact happened is that Mutual and Federal Insurance Company Limited has, as is its right, instituted the action against the defendant in the name of the plaintiff, although it itself will be funding the action.

As things stand at present, this will have the consequence that if it succeeds in the action, it would recover its costs by way of a court order. On the other hand, if Mutual and Federal Insurance Company Limited failed, it would not have to bear the costs order.

That in itself does not indicate that there is reason to believe that the plaintiff would not be able to pay the security called for. On the other hand, notwithstanding the fact of subrogation alluded to, no facts have been put before me to indicate that the plaintiff would be able to meet a costs order granted against it. There is not even a bald allegation that it would be able to do so, never mind any reference to its assets or its balance sheet.

Taking everything into account it seems to me that the applicant has indeed made out a case that there are reasonable grounds to believe that the plaintiff would not be able to meet a costs order in

this action in the event of it being unsuccessful.

In view of the fact that it would appear to be common cause that a subrogation has taken place with Mutual and Federal Insurance Company Limited being a party thereto, I propose to make an order which will in effect tell Mutual and Federal Insurance Company Limited to put its money where its mouth is.

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The following order is made:

1. In the event that Mutual and Federal Insurance Company Limited fail to furnish security for the applicant/first respondent's costs in this action to the satisfaction of the Registrar on or before 28 February 2003, the plaintiff/respondent is to furnish such security in an amount of R30 000 within 10 days from 28 February 2003. 10
2. This action is stayed pending compliance by either Mutual and Federal Insurance Company Limited or the respondent/plaintiff with this order. 15
3. The respondent/plaintiff is directed to pay the costs of this application.