

Sneller Verbatim/aj

IN THE HIGH COURT OF SOUTH AFRICA

(WITWATERSRAND LOCAL DIVISION)

JOHANNESBURG

CASE NO: 8854/04

2006-06-21

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FILING FEE/STAMP IS NOT APPLICABLE	
(1) JUDGE	<input checked="" type="radio"/>
(2) OF THE COURT TO LIAISON JUDGES	YES/NO
(3) SPECIAL	<input checked="" type="radio"/>
DATE	5/9/2006
SIGNATURE	

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In the matter between

CASH PAYMASTER SERVICES (PTY) LIMITED

Plaintiff

and

BESTCAST (PTY) LIMITED

Defendant

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### J U D G M E N T

WILLIS, J: These are two related matters in which the defendant had applied for security for costs. The defendant companies are related and/or associated companies. The two separate applications were argued together and for this reason I shall deliver a single judgment.

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It is common cause that the plaintiff is impecunious. This fact not only appears from the papers in the respective applications but became particularly apparent during the course of submissions in this court. It is common cause that the plaintiff will not be able to meet a cost order if such is made against it and will not itself be able to

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provide security for costs. Perhaps not insignificantly the plaintiff does not allege that it will not be able to find other sources of security in these matters.

In the one matter the trial proceeded in October last year and ran for some nine days when the judge in question's availability ended and the matter accordingly was postponed *sine die* that matter is therefore part heard. The plaintiff has not made any applications for the application for security to be referred to the judge who was seized of that particular matter namely the trial action.

The respective applications are brought in terms of section 13 of the Companies Act. Essentially the case of the plaintiff is that the defendant in the two respective actions has delayed unnecessarily and unreasonably and unfairly in bringing these applications for security for costs. To this the defendants have retorted that it had appeared to them from financial statements of the plaintiff for the year ending 2003 that the plaintiff was in fact in a strong position.

During the course of 2005 it started to have concerns as to the plaintiff's financial viability which concerns increased in severity until they reached a state of alarm which accordingly explains the late bringing of the application. It seems to me, without having to analyse in any great detail, that the defendants concerns are and were indeed justified. That much is apparent by reason of the fact that it is now common cause that the plaintiff is impecunious. Certainly the explanation for why it originally considered the plaintiff's financial position to be sound is an acceptable one and accordingly I do not believe that the defendant's explanation for why they brought the

applications when they did can be dismissed as being unreasonable, unduly delayed or unfair in all the circumstances.

Accordingly it seems to me that the only basis upon which the plaintiff has resisted the application has to fail and accordingly the defendants in the respective actions are entitled to succeed. The following order is, which is identical to both the matters is made in each matter.

1. The respondent is ordered to furnish security for the applicants in the above consolidated actions in such amount as may be determined by the registrar.
2. The respondent is directed to furnish security within 10 days from the date of determination of the amount of security by the registrar.
3. The proceedings in respect of the actions instituted by the respondent under the above case numbers are stayed until the respondent has furnished the security determined by the registrar.
4. The respondent is directed to pay the costs of the application including the costs of two counsel.

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