ILVS

IN THE HIGH COURT'OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

DATE: 13 NOVEMBER 2007
CASE NO: 33254/07

UNREPORTABLE

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In the matter between:

RESEARCH AND DEVELOPMENT (PTY) L TD	**FIRST APPLICANT**
WARMAN AFRICA (PTY) LTD	**SECOND APPLICANT**
vs.	
GRAHAM ROBERTSON DOUGALL	**FIRST RESPONDENT**
PUMP AND ABRASION TECHNOLOGIES CC	**SECOND RESPONDENT**

JUDGMENT

BOTHA J:

The respondents apply for leave to appeal against an order made by me on 1 October 2007.

The order against which leave to appeal is sought was in essence the confirmation of a rule nisi in a so called Anton Piller application.

The original order was granted on 25 July 2007 by SOUTHWOOD J.

The return day was 30 August 2007.
The respondents opposed the confirmation of the rule and asked that it be set aside.

I confirmed the rule and ordered the respondents to pay the costs of opposition. Otherwise, in terms of paragraph 19.3 of the rule, the costs of the application were to be decided in proceedings, whether by way of action or motion, to be instituted by the applicants within 30 days. Such proceedings have now been instituted.

At the hearing of this application, the application for leave to appeal, Mr Bester, who appeared for the applicants, took the point

in *limine* that the order made by me was not appealable.

nevertheless allowed Mr Wynne, who appeared for the respondents, to argue the application for the leave to appeal as well.

In support of his submission that my order was not appealable, Mr Bester referred me to Hall and Another v Heyns and Others 1993(1) SA 523 1991(1) SA 381 Cat 385 D-E, Zweni v Minister of Law and Order A at 532 J to 533A, and an as yet unreported judgment of the Supreme Court of appeal in the case of Marius van Niekerk and Another v Gerhard Albertus van Niekerk and Another, case number 460/06, delivered on 21 September 2007.

In my view the judgement of van Niekerk case *supra* is clear authority that a judgment granting an Anton Piller order, as opposed to one refusing it, is not appealable because it is interlocutory and does not determine the disputes between the parties.

Mr Wynne argued that the order has a final effect in the sense that it gives the applicants a procedural advantage. He pointed out that

basis of the judgment in Tsosane and Others v Minister of Persons and Others 1982(3) SA 1075 C.

It would not be possible for the respondent to challenge the court's findings in respect of the execution of the order.

For all these reasons the application should be dismissed.

The application for leave to appeal is dismissed with costs.

C.BOTHA
JUDGE OF THE HIGH COURT

As was appreciated in **Cronshaw and Another v Fidelity Guards Holdings (Pty) Ltd 1996(3) 686 AD at 696 B- 691** F interim interlocutory orders may have irreversible effects but that does not make them appealable. The order confirmed by me was interlocutory and it did not determine the issues between the parties. It was in essence an order *ad servandam causum,* aimed at preserving evidence.

I agree that the confirmation of the rule nisi is not appealable.

Mr Wynne argued that the order for costs, which merely related to the costs of the opposition, was final in effect and therefore appealable. That may be so, but it is not the subject matter of the notice of appeal.

In any event assuming that it was possible to ask leave to appeal against the order for costs, I am of the view that it should be refused. The order did not cover all the costs, only the costs of opposition. Otherwise leave to appeal should be refused on the