



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

DATE: 20/02/2007

CASE NO: 31108/06

UNREPORTABLE

In the matter between:

LOKASIA ENVIRONMENTAL  
CONSULTING (EDMS) BPK

Applicant

and

PROJEX AFRISED (EDMS) BPK &  
AFRISED TELECOM (EDMS) BPK

Respondent

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JUDGMENT

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ISMAIL AJ:

- [1] The applicant in this matter initiated two applications. Firstly against Projex Afrised (Pty) Ltd (hereinafter referred to as Projex) under case No 31108/06 and against Afrised Telecom (Pty) Ltd ((hereinafter referred to as Projex) under case No 31109/06.

[2] The crux of the application being that the respondents were unable to pay their respective debts, notwithstanding the applicant having given notice in terms of section 345 of the companies Act of 1973 (The Act).

[3] I propose to deal with both applications in the course of this judgment as the action is based on the same *causa* namely that the applicant rendered services on behalf of both respondents and for that reason the respondents were indebted to it. The applicant submitted that despite demand of payment in terms of section 345 of the Act the respondents have failed to pay the debt which was due and owing. It therefore sought an order in the following terms:

1. The respondents be liquidated and be placed in the hands of the Master of the High Court Pretoria.
2. That the costs of the application be costs in the liquidation.

[4] The respondents opposed the application for their liquidation on the grounds that they were not insolvent and in the

matter of Telecom submitted that MTN was indebted to it in the sum of R3, 2 m. MTN undertook to pay the sum of R800 000 on the 7 December and a further sum of R800 000 during January 2007.

- [5] The respondents also submitted that they did not act as a joint venture when they dealt with the applicant. Projex and Telecom independently dealt with the applicant and never as a Joint Venture.
- [6] In response to the notice in terms of section 345 which was addressed by the applicant's attorneys on the 25 May 2004 demanding payment in the amount of R720 962, 03 against the joint venture (projex & Telecom) together with interest at a rate of 15, 5% calculated from 31 March 2006 until payment of the debt.
- [7] The respondents through one of its employees Lynette Bruce addressed an e-mail to christo  
  
20 July 2006 stated:

*"Subject: Lokasia v Projex Afrisedj Afrised Telecom*

*Reconcile this amount and concluded with the following:*

*"Due now R425, 067 172. "*

- [8] Several letters were exchanged between the applicants' attorneys, De Wet Du Plessis Inc and Lynette Bruce on behalf of Projex. The gist of which was that the amount of R425.067.72 was to be paid to the applicant which would be held in trust as security until the issue of the capital amount was resolved. It must be emphasized that the applicant denied that this amount was due. It maintained that the amount of R720 962,03 was outstanding and due by the joint venture

A fax dated 15 August 2006 to applicants attorney from Lynette Bruce reads as follows:

*"Soos reeds aan u genoem is ons nie by magte om tans die bedrag eenmalig aan u kliënt oor te betaal nie, en wens ons u te versoek om met u kliënt te fasiliteer ten opsigte van 'n*

*gewysigde betalingsooreenkoms waarin 6 paalemente ten bedrae R72 045.28 by wyse van vooruitgedateerde tjeks, waarvan die eerste betaalbaar op 31 Augustus 2006 te aanvaar. "*

[9] The post-dated cheques alluded to above were not given to the applicant. This culminated in the applicant launching these applications during in August/September 2006.

[10] It was submitted on behalf of the applicant that the joint venture (projex and Telecom) be liquidated in terms of the provisions of s 344 (f) as it was the joint venture which was incapable of paying its debts.

[11] It was submitted on behalf of the respondents that the applicant was not entitled to liquidate the two companies as the section 345 demand was not sent to the registered address of the company. This point was conceded by Mr Greyling appearing on behalf of the applicant, however, he submitted that the court had discretion to condone such service.

[12] Mr Pelser se submitted on behalf of the respondents that the applicants accounts were not in order and in order to overcome this problem the applicant maintained that Projex and Telecom traded as a Joint Venture.

From the papers and particularly the minutes of meetings held with Vodacom and MTN, Lynne Van Vuuren represented the applicant at these meetings. She was aware that Telecom dealt with MTN whereas Projex dealt with Vodacom. These entities Telecom and Projex operated independently even though the applicant rendered services to both of them, for example on annexure GG7 ( page 91 of the papers) on a letterhead of Telecom a minute is recorded where Lynne Van Vuuren was present.

Furthermore the applicant invoiced Telecom separately (see GG 11 and 12 -on page 104 and 105) and Projex independently (see GG 13 on page 106). This clearly indicates that the applicant knew that it was dealing with

two separate companies and had to account to each independently.

Mr Pelser submitted that there is not a scintilla of evidence whereby the court could infer that Telecom and Projex operated as a Joint Venture when dealing with the applicant.

[13] Whilst it is true that monies are owing to the applicant it is not clear what the amount outstanding is, and which company owes what amount to the applicant. There is a dispute regarding the outstanding debt. The applicant maintained that an amount of R720 962, 03 is due to it whilst Lynnette Bruce by means of reconciliation to of Projex maintained that an amount of R425 067.72 is due.

[14] Mr Greyling submitted that the court should grant a final order to the liquidation of the respondents alternatively a provisional order with a return date, with a provision that the provisional order be advertised in the Beeld Newspaper.



[17] In the circumstances it would be inappropriate of me to

Mohamed A. A. stated:

grant an order for the liquidation of the respondents on

these facts particularly where the accounting of the applicant

"According to the practice manual of the Transvaal Provincial

Division, a Judge of that Division appears to have a wide

If I were to liquidate Telecom for the debts of Projex I would

discretion to grant a provisional or a final winding up order

possibly put an end to a viable entity which is solvent.

as the case may require, and is under no constraint to issue

a provisional order as a matter of course."

[18] I am persuaded by the argument raised by Mr Pelser that

the applicant had not shown that Projex and Telecom traded

[15] On the facts before me it appears that monies are due to the

as a Joint Venture. On the contrary the papers seem to

applicant. What the indebtedness is, is not clear. Whether

indicate the contrary.

Projex is indebt on its own admissions in the sum of R425

R67,77 is also uncertain. Whether this amount is due by

[19] For this reason I make the following order:

Projex and Telecom is also uncertain.

(1) The application is dismissed with costs.

[16] It appears that an amount of R3,2 m is owed to Telecom by

MTN of which R1.6 m ought to have been paid by 7 January

2007. This clearly indicates that Telecom is capable of paying

its debts.