

IN THE SOUTH GAUTENG HIGH COURTJOHANNESBURGCASE NO: 1214/12DATE: 25/072012

In the matter between

10 ARGENTARIUS NO 1 [Pty] Ltd

APPLICANT

and

SOUTH AFRICAN FINANCIAL EXCHANGE

AND OTHERS

RESPONDENTS

20

J U D G M E N T

WILLIS J:

[1] For the sake of convenience I shall refer to the applicant in this application for security for costs as the respondent in the main application and I shall refer to the respondents, (in this application for security for costs), as the applicants in the main application. The

respondent in the main application has sought an order for security for costs in terms of rule 47 of the High Court rules. The applicants in the main application have sought an order for the liquidation of the respondent. At root, the basis of the dispute can be traced to the purchase of shares in the respondent in the main application.

[2] The respondent in the main application in this application for security for costs alleges that the applicants in the main application are being vexatious, alternatively (or in addition to that allegation) that there is
10 reason to believe that they will be unable to meet any order for security for costs that may be made.

[3] I consider it fair to record that I have a distinct sense of unease in this matter. I think it is also fair to record that, on the papers before me, this application may indeed turn out to be a vexatious one ultimately. Furthermore, I think it is fair to record that, on the papers before me, it may indeed ultimately turn out to be that the applicants in the main application will be unable to meet a costs order.

20 [4] I am, however, unable to find at this stage on the papers before me that the application is indeed vexatious. I am also unable to find that there is reason to believe that the applicants will rather than may be unable to meet a costs order. I have had regard to various judgments.

[5] I have had regard to various judgments. I would refer in particular to

the cases of *Zietsman v Electronic Media Network Ltd and others* 2008 (4) SA 1(SCA) at 4 A-F, *Haitas and others v Port Wild Props 12 [Pty] Ltd* 2011(5) SA 562 (GSJ) paragraph [13], *Exploitatie- en Beleggingsmaatschappij v Honig* 2012 (1) SA 247 (SCA), *Vumba Intertrade CC v Geometric Intertrade CC* 2001 (2) SA 1068 (W) and the as yet unreported judgment of Van der Merwe AJ in *Ngwenda Gold [Pty] Ltd v Precious Prospect Trading 80 [Pty] Ltd* [GSJ 2011/31664 dated 14 December 2011].

- 10 [6] I think it fair to observe that this question of security for costs is what is colloquially described as a “hot issue”. It also would appear that the academics D E van Loggerenberg and J Malan propose publishing an article in November 2012 (THR):

“Security for costs by local companies: back to 1909
in the Transvaal or not?”

in which they are critical of a too easy willingness by the courts to order security for costs.

- 20 [7] I think I can summarise the law fairly as follows: it is only with great reluctance and utmost care that a Court will order *incolae* in South Africa to provide security for costs. Accordingly, I do not think I can grant the order sought by the respondent in the main application but my sense of unease have remains. For this reason I shall leave the door open for the respondent in the main application to come again and to present further facts that may tilt the balance in its favour. The issue

is finely poised and I am conscious of the fact that one can easily make an order that could result in an injustice if one is not careful in this matter.

[8] I should record that the point made the respondent in the main application that the applicants, (in the main application), should provide full and adequate proof of the authority of the applicant's attorney to represent them in the proceedings under this case was ill founded and accordingly those costs will have to be met by the respondent (in the
10 main application).

[9] The following is the order of this court:

1. The application for security for costs is dismissed.
2. The applicant, (respondent in the main application), may approach the Court again to reconsider the matter by presenting further relevant facts before the Court.
3. The costs of this application are reserved.
4. The applicants' (in the main application), costs relating to the relief sought in prayer 2 of the Notice of Motion dated
20 5 April 2012 are to be paid by the respondent, (in the main application).

Counsel for the applicant, (respondent in the main application): Adv M

Graves SC

Counsel for the respondents (applicants in the main application): Adv
HBP *van Nieuwenhuyzen SC*

Attorneys for the applicants (in the main application): Carina van
Niekerk

Attorneys for the respondent, (in the main application): Ashley Slabbert
Attorneys.

Date of hearing: 25 July 2012

Date of judgment: 25 July 2012.