IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ***NO***
(2) OF INTEREST TO OTHER JUDGES: ***NO***
(3) REVISED: **YES**

Date: ***29th APRIL 2016*** Signature: _____

CASE NO: 2015/31003

In the matter between:

PURE EVENT GEAR CC Applicant

And

ORATILWE CONSULTANTS CC t/a

EXCLUSIVE MANAGEMENT SERVICES

(REG NO: 2003/050904/23) Respondent

JUDGMENT

ADAMS AJ:

[1]. This is an application for the final winding – up of the respondent. The application is in terms of the provisions of section 69(1)(a) of the Close Corporation Act 69 of 1984 *('the Act'),* read with section 66(1) and item 9 of schedule 5 of the Companies Act 71 of 2008, as well as section 344(f) and 345(1)(a)(i) of the Companies Act 61 of 1973.

[2]. The main dispute between the parties relates to whether a debt owing by the respondent to the applicant was due and payable at the time when the applicant commenced liquidation proceedings against the respondent.

[3]. As and at the 1st June 2015, the respondent was indebted to the applicant in an amount of R814,970.00, with the most recent invoice debited by the applicant on the 24th of February 2014 and the last payment having been made by the respondent to the applicant on the 4th June 2014.

[4]. The respondent opposed the application for its liquidation on the basis that, whilst it admits that the aforesaid amount is owing by it to the applicant, it denies that the said sum was due and payable by the time the applicant commenced liquidation proceedings. The respondent relies for this contention on a trade usage, alternatively, on an implied term in the contractual arrangement between the parties. The respondent claims that there was an agreement in place between the parties that the invoices

rendered to the respondent would only become due and payable on receipt of payment by the respondent from its clients.

[5]. The respondent also opposes the application on the basis that it constitutes an abuse of the court processes. There is a *bona fide* dispute between the parties, as alleged by the respondent, and despite this dispute, the applicant launched the application for liquidation.

[6]. The respondent concedes that procedurally the applicant has complied with the relevant legislative and regulatory provisions, notably those relating to the requisite service of notices on interested parties. The application is opposed on the basis that the respondent is not commercially insolvent.

APPLYING THE PRINCIPLES TO THE FACTS *IN CASU*

[7]. All things considered and applying basic logic, I find it hard to believe that the applicant would have agreed to payment terms as alleged by the respondent. It makes no sense that the applicant would agree to an arrangement in terms of which it would only be paid for services rendered and materials supplied to the respondent once the latter had been paid by its clients for these services rendered and materials supplied. This is the most sensible interpretation. In that regard, I have had regard to the

following principle enunciated in *Natal Joint Municipal Pension Fund v Endumeni Municipality*, 2012 (4) SA 593 (SCA): *'A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document'.*

[8]. I am, therefore, of the view that the amounts due to the applicant became due and payable by the respondent to the applicant within a reasonable time from the date on which the invoices are presented to the respondent, and I reject, as far – fetched the respondent's contention that payment is only due once the respondent had received payment from its clients.

[9]. The point is that, if one applies the *'sensible meaning'* approach, as against one which leads to an unbusinesslike result, the inescapable conclusion is that the parties agreed that payment of accounts are due within a reasonable time from the date on which the invoices are presented.

[10]. I therefore find that there is no merit in the contention on behalf of the respondent that payment of the amount claimed by the applicant, although owing, was not due and payable by the time the applicant commenced the liquidation proceedings.

[11]. For the same reasons, notably an approach based on a sensible meaning of a contract, I reject the respondent's submission that there was in place a trade usage which supports the contention by the respondent that the amount was not due and payable. In any event, the respondent tenders no evidence in support of this claim.

[12]. The said submission is unsustainable. In any event, if this contention is accepted, then it begs the question why there is no correlation between the invoices rendered by the applicant and the amounts paid by the respondent.

[13]. For all of these reasons, I am of the view that by the time the applicant commenced the liquidation proceedings, an amount of R814,970.00 was owing, due and payable by the respondent to the applicant. Despite notice on or about the 15th July 2015 to the respondent in terms of section 69 of the Act, the respondent has to date not paid to the applicant the amount demanded. The deeming provisions to the effect that the respondent is unable to pay its debts come into effect.

[14]. I am therefore satisfied that the applicant has made a case for the final liquidation of the respondent.

ORDER

In the circumstances I make the following order:

1. The respondent be and is hereby placed under final winding up.

2. The cost of this application shall be costs in the winding up of the respondent.

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L ADAMS
Acting Judge of the High Court
Gauteng Local Division, Johannesburg

HEARD ON:	26th April 2016
JUDGMENT DATE:	29th April 2016
FOR THE APPLICANT:	Adv N Lombard
INSTRUCTED BY:	Eugene Marais Attorneys
FOR THE DEFENDANT:	Adv L Keijser
INSTRUCTED BY:	Seanego Attorneys