

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES: **NO**
- (3) REVISED:

Date: **15th SEPTEMBER 2016** Signature: _____

15/9/16

CASE NO: 2016/70433

In the matter between:

PIZA VINO LYNRIDGE (PTY) LTD t/a PIZA E VINO

Applicant

and

**THE CHAIRPERSON OF GAUTENG
PROVINCIAL LIQUOR BOARD**

First Respondent

THE GAUTENG PROVINCIAL LIQUOR BOARD

Second Respondent

JUDGMENT

ADAMS AJ:

[1]. The applicant launched an urgent application for an order in the following terms:-

1.1 Pending determination of Part B, the applicant be permitted and authorised to trade liquor at its business premises as if a permanent liquor licence has been issued and authorising the applicant to trade in liquor as if the restaurant liquor licence applied for, for the business known as *Piza E Vino*, situated at Shop 38, Lynn Ridge Mall, Lynwood Ridge, Pretoria, Gauteng, was granted, until such time as the first and second respondents have considered and decided the said application.

1.2 That the cost of this application be paid by the second respondent on an attorney and client scale,

[2]. The urgent relief prayed for by the applicant is in the form of an interim order and is incorporated in a Part 'A' of the Notice of Motion, which is divided into parts 'A' and 'B', with a prayer that part 'B' be *postponed sine die*.

THE FACTS

[3]. On the 6th of May 2016 the applicant filed with the respondents an application for a Liquor Licence as contemplated in terms of the provisions of section 23 of the Gauteng Liquor Act, no 2 of 2003. It is alleged by the applicant that it complied with all of the procedural as well as the substantive requirements as prescribed by the provisions of the said section. In particular, the applicant lodged with the respondents all of the prescribed forms, duly completed and signed as required, together with all the necessary supporting documentation.

- [4]. All of the formalities as prescribed by the section were complied with, and there exist at present no lawful and / or valid reason for the respondents not to issue the applicant with the Liquor Licence applied for.
- [5]. Since lodging the application with the respondents, the applicant has on a regular basis been communicating with the respondents with a view to ensuring that its application is processed timeously and expeditiously. An electronic communication was addressed on behalf of the applicant to the respondents on the 26th July 2016, which is some two and a half months after the lodgement of the application, enquiring about the '*status of the application*'. Up to that point, the silence on the part of the respondents in response to the application for a Liquor Licence was deafening, hence the enquiry for an update on the progress from the applicant.
- [6]. Finally, on the 18th August 2016, some three and a half months after the application had been delivered to them, the respondents awoke to the fact that, in terms of their statutory obligations, they are obliged to deal with and process the application of the applicant. What respondents then did at that late stage was to require additional documents before any consideration would be given to the applicant's application.
- [7]. Needless to say, this came as somewhat of a surprise to the applicant as, in their view, the request for the additional documentation was *ultra vires*, and the respondents were advised accordingly in writing by the applicant on the 25th August 2016. The respondents were placed on terms to issue the Liquor Licence, failing which, so they were advised, an application would be filed.

APPLICANT'S CAUSE OF ACTION

- [8]. The second respondent, the Gauteng Liquor Board, is constituted as a legal *persona* by the provisions of the Gauteng Provincial Liquor Act 2 of 2000 (*the Liquor Act*), in particular section 2 thereof.
- [9]. The applicant's claim is founded upon and based in terms of the provisions of the Liquor Act. Section 23 of the Liquor Act deals with applications for new liquor licences. It prescribes all the documentation that must accompany such an application, which itself must be submitted on a prescribed form.
- [10]. It is contended by the applicant that the relevant application complied, in all material respects, with the requirements of the said s 23.
- [11]. The respondents oppose the application on the basis of a number of legal points in limine, all of which in my view are without merit, in addition to raising a defence on the merits of the application.

LIS PENDENS

- [12]. The respondents contend that the applicant's present application should be stayed because there is another application '*pending*' between the same parties, based on the same cause of action with the same subject matter. The other application, so it is contended by the applicant, is dormant in that after it was removed from the urgent court roll by another Judge, there has been no further developments in that application.

[13]. The court is vested with a discretion as to whether to stay the proceedings or to hear the matter despite earlier pending proceedings. In *Loader v Dursot Bros (Pty) Ltd*, 1948(3) SA 136 (T), Roper J dealt with the defence of *lis pendens* as follows:

'It is clear on the authorities that a plea of lis alibi pendens does not have the effect of an absolute bar to the proceedings in which the defence is raised. The Court intervenes to stay one or other of the proceedings, because it is prima facie vexatious to bring two actions in respect of the same subject-matter. The Court has a discretion which it will exercise in a proper case, but it is not bound to exercise it in every case in which a lis alibi pendens is proved to exist - Wolff, N.O v Solomon (15 S.C. 307); Michaelson v. Lowenstein (1905, T.S. 324); Osman v Hector (1933 CPD 503).'

[14]. In the exercise of my discretion, and in the circumstances of this matter and having regard to the balance of convenience, I am of the view that it would be just and equitable that I should hear this matter and not stay proceedings on the basis of the other pending application. In that regard, an aspect which weighs fairly heavily on my mind is the fact that the respondents always have open to them the option to force the prior application to finality.

[15]. Accordingly, the first point *in limine* of the respondents stands to be rejected.

NON – COMPLIANCE WITH THE PRACTICE DIRECTIVES & URGENCY

[16]. The respondents also contend that the application should be dismissed due to non – compliance with practice directives applicable in this division.

Closely linked to this contention is the respondents' submission that the application should fail for lack of urgency.

[17]. As I indicated above, the applicant lodged the application for a Liquor Licence on the 8th of May 2016 and at the same time paid the '*lodgement fees*'. Thereafter, for a period of two and half months the respondents failed to respond to and / or deal with the application. I am of the view that the second respondent failed in its statutory duty to deal with and process Liquor Licence Applications.

[18]. When the respondents finally responded on the 18th August 2016, they requested additional information and documentation, which, according to the applicant, the respondents are not entitled to ask for.

[19]. By then, the matter had become urgent in the sense that the restaurant business of the applicant ought to have been up and running and would have been fully operational but for the fact that the Liquor Licence had not been issued. This in turn resulted in irreparable damage to the applicant in that it is suffering great financial loss due to the severe damage to the reputation of the restaurant. This, in my view, had resulted from the tardy conduct on the part of the second respondent.

[20]. I find this conduct by the respondents to be unreasonable. I am at a loss to understand why there is such a delay in finalising the application for a Liquor Licence. In their answering affidavit the respondents make the following statement: '*only a period of four (4) months has elapsed since such liquor licence application was lodged and no decision has been taken by the Second Respondent*'. What astounds me about this averment is the fact that the respondents, despite their statutory duty to process

applications for Liquor Licences, consider it acceptable to drag their heels whilst businesses are being prejudiced. It would have been understandable if an explanation was given for the delay in attending to the application for a Liquor Licence after it was received.

[21]. I find in the circumstances that the application is urgent. It is quite clear that should the applicant not be placed in a position where he can trade in liquor, his business will be seriously prejudiced and he will suffer irreparable harm, which will not be recoverable from anyone.

MERITS

[22]. The applicant is of the view that the respondent should take a decision and decide on its application for a liquor licence without the need for further documentation. The respondents insist on this additional documentation. This is an issue to be dealt with as part of Part "B" of the Notice of Motion.

[23]. The point is that, but for the undue delay caused by the tardiness of the respondents in dealing effectively and efficiently with the applicant's application, they would have been far advanced in processing the application.

CONCLUSION

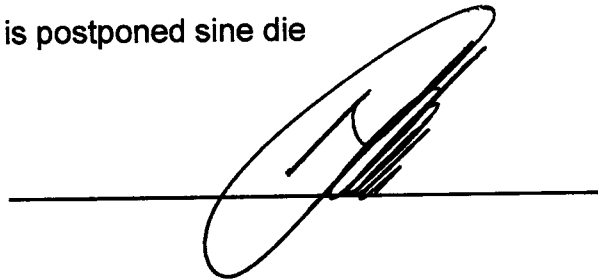
[24]. I am therefore of the view that the applicant is entitled to the interim relief prayed for in its Notice of Motion.

[25]. In the premises, the applicant's application must succeed.

ORDER

In the result, I make the following order:-

1. The application is urgent.
2. Pending determination of Part 'B' of the Notice of Motion, the applicant be permitted and authorised to trade liquor at its business premises as if a permanent liquor licence has been issued and authorising the applicant to trade in liquor as if the restaurant liquor licence applied for, for the business known as *Piza E Vino*, situated at Shop 38, Lynn Ridge Mall, Lynwood Ridge, Pretoria, Gauteng, was granted, until such time as the first and second respondents have considered and decided the said application.
3. The costs of this part of the application shall be in the course of the main application.
4. Part 'B' of the Notice of Motion is postponed sine die

A handwritten signature in black ink, consisting of a large, stylized 'L' and 'A' intertwined, written over a horizontal line.

L ADAMS

*Acting Judge of the High Court
Gauteng Division, Pretoria*

HEARD ON: 13th September 2016
JUDGMENT DATE: 15th September 2016
FOR THE APPLICANT: Adv C J Marneweck
INSTRUCTED BY: Emma Nel Attorneys
FOR THE RESPONDENT: Adv Modisa
INSTRUCTED BY: The State Attorney