IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NUMBER: 50088/2017

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHERS JUDGES: ~~YES~~/NO
(3) REVISED

10/9/2020

In the matter between:

NOBRE, RUI MIGUEL RODRIGUES	First Applicant
R N GRIFFIN INVESTMENTS (PTY) LIMITED	Second Applicant
and	
SNEECH, BARRY HYLTON	First Respondent
THE COMPANIES AND INTELLECTURAL PROPERTY COMMISSION	Second Respondent
BLUE DOT PROPERTIES 56 (PTY) LTD	Third Respondent

IN RE:

SNEECH, BARRY HYLTON	Applicant
and	
THE COMMISSIONER OF THE COMPANIES	

AND INTELLECTURAL PROPERTY COMMISSION Respondent

JUDGMENT

LE GRANGE AJ: The Court proceeds with a short judgement.

[1] In this matter the applicants seek leave to appeal against the whole of my judgement and order handed down on 23 August 2019 to the Full Court of the Gauteng Division of the High Court.

[2] Subsequent to my judgement it came to my attention that my judgement contains a typographical error. The second portion of the words of Corbett J in United Watch & Diamond CO (Pty) Ltd and Others v Disa Hotels LTD and Another 1972(4) SA 409 (C) as quoted in paragraph 10 should read:

> *"In my opinion, an applicant for an order setting aside or varying a judgment or order of Court must show, in order to establish locus standi, that he has an interest in the subject-matter of the judgment or order sufficiently direct and substantial to have entitled him to intervene in the original application upon which the judgment was given or order granted."*

and the judgement should then have referred to De Villiers and Others v GJN Trust and Others 2019 (1) SA 120 (SCA) at [22]:

> *"In United Watch & Diamond Co (Pty) Ltd and Others v Disa Hotels Ltd and Another 1972 (4) SA 409 (C) Corbett J held that, in order to establish locus standi under rule 42(1) (a), an applicant must show a direct and substantial interest in the judgment or order that the applicant wishes to have varied or rescinded. This means a legal interest in the subject-matter of the action or application which could be prejudicially affected by the order in that action or application. This judgment has been cited with approval on numerous occasions, including by this court in, inter alia, Aquatur (Pty) Ltd v Sacks and Others 1989 (1) SA 56 (A) at 62."*

[3] The error is hereby corrected in order for the quotations, from the two matters referred to above, to be cited correctly in the main judgement.

[4] The following are the major grounds of appeal:

First ground

4.1. The learned Judge erred in finding that he was *functus officio*.

4.2. The learned Judge erred in relying on Naidoo and Another v Matlala N.O. and Others 2012 (1) SA 143 (GNP) at 153, paragraph [6] in finding himself to be *functus officio*.

4.3. The learned Judge erred in finding that the court a quo considered the applicants' potential prejudice upon the restoration of Blue Dot. Even if the court a quo had considered the applicants' prejudice upon the restoration of Blue Dot that, this did not render the learned judge *functus officio*.

4.4. The learned Judge erred in finding that the court a quo was of the view that the applicants did not have the necessary interest to be joined at the time of the order, particularly in as much as:

4.4.1. the applicants were never given notice of the application let alone heard;

4.4.2. the court a quo gave no reasons for the judgement and was not asked for reasons; and

4.4.3. factual averments by the first respondent made in his practice note, alternatively heads of argument, further alternatively during the hearing, did not constitute evidence or information on which the court could rely.

Second ground

4.5. The learner Judge erred in not finding that the applicants had proven the existence of at least one jurisdictional fact, namely that the order or judgement had been erroneously sought in the absence of the applicants.

4.6. The learned Judge erred in not construing the rule 42 to mean that once one of the grounds was established, rescission of the judgement should be granted.

4.7. The learned Judge ought to have found that inasmuch as the applicants were director and sole shareholder respectively, they were entitled to notice of the application and at the very least an opportunity to make out a case for joinder alternatively leave to intervene pursuant to rule 12 of the Uniform Rules of Court. This is particularly so given that the learned Judge expressed the view that *"... there can be no doubt that the applicants (as director and shareholder of the Company) have and had an interest in the affairs of the Company"*.

4.8. In the premises the learned Judge ought to have found that the applicants' *locus standi* was established.

Third ground

4.9. The learned Judge misdirected himself in the application of De Villiers and Others v DJN Trust and Others 2019 (1) SA 120 (SCA) at 128, paragraph [25]. The relevant part of this authority is at [14] and that the effect of an order under section 420 of the Companies Act, 61 of 1973 i.e. to revive the company and to restore the position that existed immediately prior to its dissolution (and does not validate any corporate activity of the company which may have taken place during the period of its dissolution), is to be contrasted with the effect of an order in terms of section 82 (4) of the Companies Act, 71 of 2008.

4.10. In so finding the learned Judge erred in finding *"... that, the mere fact that a party is a director and/or shareholder of a company (albeit having a substantial interest in the company through office or shareholding) does not provide a party with the necessary legal interest or locus standi for the purposes of a rescission application, either in terms of rule 42 or the common law"*.

Fourth ground

4.11. The learned Judge erred in respect of the applicable test for *locus standi* for an application in terms of R 42 alternatively the common law, and finding that *"... 'prejudice' is necessary to unlock an application for rescission"*.

[5] Pursuant to Section 17 (1) of the Superior Courts Act 10 of 2013, leave to appeal may only be given when the judge or judges concerned are of the opinion that the appeal would have had a reasonable prospect of success.

[6] What the test of reasonable prospects of success postulate is a dispassionate decision based on facts and the law that a Court of Appeal could reasonably arrive at a conclusion different to that of the trial court.

[7] In order to succeed therefore, the applicants must convince this court on proper grounds that they have prospects of success on appeal and that those prospects are not remote, but they have a realistic chance of succeeding. More is required to establish than that there is a mere possibility for success and that the case is arguable on appeal, or that the case cannot be categorised as hopeless. There must be a sound, rational basis for conclusion that there are prospects of success on appeal.

[8] In respect of all the grounds of appeal raised, my judgement deals extensively with the facts and law as presented by the parties and how the court arrived at its

conclusion on the contentions raised by the applicants in the application for leave to appeal.

[9] In the present matter when the facts were examined, there were a number of considerations, which militated against another court finding in favour of the applicants.

[10] On all these issues there are, in my view, no prospect of another court arriving at a different conclusion. The matter has no prospect of success deserving neither the decision of the full court of this division or the Supreme Court of appeal. The issues have been irrefutably and substantially dealt with in the judgement.

[11] In the result, the following order is made:

11.1. The application for leave to appeal is dismissed with costs.

AJ LE GRANGE

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DATE OF HEARING: 12 November 2019

DATE OF JUDGMENT: 10 September 2020 (delivered electronically)

APPEARANCES

For the Applicants:	Adv. R. Willis
For the Respondent:	B. Hilton Sneech in person.