

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 96949/2015

And

CASE NO: 96948/2015

DELETE WHICHEVER IS NOT APPLICABLE

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

Signature: 

Date: 18 May 2021

In the matter between:

SAFETY GRIP CC

Applicant

and

ADVENT OIL (PTY) LTD

First Respondent

THULANI JOSIAH HADEBE

Second Respondent

And

In the matter between:

SAFETY GRIP CC

Applicant

and

ARVOPROX (PTY) LTD T/A

First Respondent

PAKAMOLE TRANSPORT

Second Respondent

THULANI JOSIAH HADEBE

J U D G M E N T

GWALA, AJ:

1. This is an application for leave to appeal an order I had made in terms of which I had dismissed both applications.

The applicant seeks leave to appeal in respect of both matters. In the judgment I had reasoned that the credit agreement entered into between the applicant and Advent Oil was invalid.

2. At the time of the conclusion of the credit agreement between applicant and Advent Oil, Mr Nkosi was the sole director of Advent Oil. He was also a director and a shareholder in Arvoprox.
3. Arvoprox required to enter into a credit agreement. It was unable to secure credit it needed from the applicant. Mr Nkosi was advised to use Advent Oil as a conduit to boost the credit worthy of Arvoprox. He did this by purporting to approve a conclusion of the credit agreement between Advent Oil and the applicant. This credit agreement was for the benefit of Arvoprox of which Mr Nkosi was a sole director and a sole shareholder.
4. The conclusion of the credit agreement between Advent Oil and the applicant was not approved nor authorised by the shareholder.
5. Mr Nkosi did not disclose this credit agreement to Ms Mbethe, the shareholder in Advent Oil. No approval of the

credit agreement was granted by the shareholder. Therefore, Mr Nkosi was not permitted to conclude the credit agreement on behalf of the Advent Oil. Thus, the credit agreement did not have any binding effect, due to the invalidity, so I concluded as informed by the provisions of section 75(3) of the Companies Act 71 of 2008.

6. The crux of the argument by the applicant in the application for leave to appeal is that section 75(3) of the Companies Act does not apply in the circumstances of this matter. I am unable to agree.

7. Section 75(3) provides that:-

“(3) If a person is the only director of a company, but does not hold all of the beneficial interests of all of the issued securities of the company, that person may not-

(a) approve or enter into any agreement in which the person or a related person has a personal financial interest; or

(b) as a director, determine any other matter in which the person or a related person has a personal financial interest,

unless the agreement or determination is approved by an ordinary resolution of the shareholders after the

director has disclosed the nature and extent of that interest to the shareholders."

8. In my view the position of Mr Nkosi fits the definition of the person referred to in section 75(3). As a director Advent Oil he concluded an agreement for the benefit of another company of which he is a sole director and shareholder. This benefits him financially.
9. Section 75(1)(b) defines related person as follows: - **'related person'**, *when used in reference to a director, has the meaning set out in section 1, but also includes a second company of which the director or a related person is also a director, or a close corporation of which the director or a related person is a member.*
10. Once more, Mr Nkosi fits this definition of related person and Avroprox too.
11. As it is, the credit agreement was not approved by the shareholder. In fact, it was not even disclosed to the shareholder. For these reasons I say it is invalid. It is unauthorised in law.
12. There is another aspect which concerns Mr Hadebe. He

states that the portion of the credit agreement that relates to him agreeing to stand as surety was signed in error for the reasons set out in the judgment.

13. I concluded that Mr Hadebe was misled into believing that he was signing a credit agreement unbeknown to him that he was signing a suretyship agreement. The credit agreements signed on behalf of Advent Oil and Arvoprox were not signed by him in his personal capacity. This justifies a conclusion that Mr Hadebe should not be held personally liable as a surety.

14. For these reasons, I am unable to form an opinion that the appeal would have a reasonable prospect of success or that there is some other compelling reason why the appeal should be heard. There are no conflicting judgments on the matter under consideration;

15. In the result I make the following order:

15.1 Both applications for leave to appeal are dismissed with costs.



GWALA, AJ
JUDGE OF THE HIGH COURT (ACTING)