

IN THE HIGH COURT OF SWAZILAND  
SWAZILAND ROYAL INSURANCE CORPORATION

Applicant

V

NYLACAST SOUTHERN AFRICA (PTY) LTD

Respondent

Civ. Trial No. 1619/99

Coram

S. W. SAPIRE, CJ

For Plaintiff

Mr. Currie

For Defendant

Mr. Henwood

JUDGMENT

(14/07/99)

The Swaziland Royal Insurance Corporation seeks orders against the respondent, Nylacast Southern Africa (Pty) Ltd., prior to the institution of a proposed action in which it intends to claim an amount exceeding some seven million Emalangeneni. The types of order sought are known by the names of parties in proceedings in the United Kingdom where this form of relief was first granted.

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The first order is recognised as a Mareva interdict. The object and purpose of such an order is to conserve assets of a prospective defendant pending the outcome of an action, which the applicant intends bringing. It involves the attachment and interdiction of property, in which the Respondent not the Applicant has the proprietary right. The remedy is available where the Applicant fears on reasonable grounds that the assets in question will be dissipated or removed beyond the jurisdiction, in order to defeat the applicant's claim before execution on a judgment can be effected.

C B Prest, in a text on interdicts<sup>1</sup> points out that in South Africa (and the same is true for Swaziland) unlike in the United Kingdom, there is no statutory basis for the granting of relief of this type. On the other hand orders having the same or similar effect have over a considerable period long been made. See *Stern and Ruskin v Appleson*<sup>2</sup>, *Nikro Investments (Pty)Ltd v Jacobs*<sup>3</sup>

The second type of relief is the Anton Piller order. The object and purpose of such an order is to procure and preserve evidence to enable the applicant to pursue its claim against the respondent. The terms of the order as framed in the prayer to the notice of motion, are much wider than the courts will grant.

Before relief of this nature is given, the applicant has to establish a prima facie case and in this respect the applicant has fallen short of the requirement. It is the applicant's case that a fraud was perpetrated against it by the respondent in the making of a claim arising out of the destruction of machinery in the respondent's factory. There was a conflagration or explosion in the factory and certain of the machinery was rendered unfit for use. The applicant has however, apart from alleging facts which may have given rise to some suspicion on its part that the salvage to which it was entitled has not been properly dealt with, has not stated the terms or effect of any representation which were made by the respondent which are alleged to be false. These misrepresentations have not

1. 1 The Law and Practice of Interdicts 1st ed. p. 164
2. 2 1951(3) SA 800

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been identified in the papers. That being so and that the applicant is relying on an alleged fraud as the cause of action for the relief it says it will be seeking in the proposed action it would be improper at this stage to accede to this application for the type of relief sought by the applicant.

Accordingly the application is dismissed with costs

S W Sapire CJ

3 1966(1) SA 182