THE HIGH COURT OF SWAZILAND

CIVIL CASE NO.414/03

In the matter between:

ETSALA NATIONAL SEED CO. LTD	PETITIONER
AND	
SKONKWANE FRANCHISE LTD	
(REGISTRATION NO.916/2000)	
RESPONDENT	
CORAM	ANNANDALE J
FOR PETITIONER ADV.	P. FLYNN
	(instructed by Robinson Bertram)
FOR RESPONDENT ADV.	M. van der WALT
	(instructed by Millin & Currie)

JUDGMENT

28th MARCH 2003

As a matter of urgency, the petitioner approached Court and obtained interim relief which entails an Order for the provisional winding up of the respondent, "under the hands" of the Master of the High Court of Swaziland. The rule nisi, issued by the learned Chief Justice, called upon all interested parties to show cause why the provisional winding

up should not be made final; it also provided for the mode of service, inter alia by publication in the press and the Gazette; and the appointment of Peter Ronald Cooper as Provisional Liquidator of the respondent, with all powers set out in Section 127 of the Companies Act of 1912 (Act 7 of 1912); and costs.

The full sequence of events was not noted on the file available to me. I do however take it for granted that initially the petition was heard on the 28th February 2003, with a rule nisi issued. From a Notice of Anticipation of the return date to the 7th March, I gather the initial return date to have been some date after that, but on the latter date, leave was granted for the Petitioner to file (probably a replying) affidavit by Wednesday (12th March). I accept that the return date was then extended until the 14th March. On the return date the matter was fully argued by counsel for both the petitioner and respondent and thereafter the return date was again extended pending judgment, which had to be held over for two weeks due to the unavailability of this court to deal with the matter sooner.

It is common cause that the High Court of Swaziland has jurisdiction over the mater and that urgency is justified. Respondent is described by the name in the citation hereof, with a company Registration number of 916/2000. This is admitted. It is denied that the company carries on business anywhere else than at Nhlangano town, while the petitioner avers business to be carried on at a further eight named towns and cities throughout Swaziland. It is also denied that there are two different companies, as alleged by the

petitioner (paragraph 5.12 of its founding affidavit) both being styled as "Skonkwane Franchise Limited", one with registration number 403/2000, the other 916/2000. This is borne out by Mrs. Magagula of the Registrar of Companies, who

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confirms that there is only one company by that name, with the latter registration number.

The petitioner seeks to have "Skonkwane Franchisee Limited" liquidated because it essentially says that it cannot be paid its outstanding debts. For this to be done, the petitioner relies on eleven cheques which were issued to it, plus a further amount of E120 745.10, totalling E734 163.42. All the cheques were presented for payment to First National Bank and returned with endorsements of mostly "Unpaid - Payment Stopped, other arrangements made". These unpaid due and outstanding amounts are said to be only a part of outstanding commitments, which are mentioned in two letters sent out by the holding company, Skonkwane Holdings (Pty) Ltd, registered in South Africa. Therein, financial difficulties and cash flow problems are mentioned and admitted, moreover, rescheduling of debts is proposed and creditors are advised that the view held by the board of the holding company and some of the "key suppliers" is that "... liquidation in any form or manner will not benefit any stakeholder".

Copies of the returned cheques were attached to the application. All are drawn in favour of the applicant. Each cheque is to the amount as listed by applicant, with a bank teller's date stamp on its face and endorsed as stated above. All these cheques are drawn on Nhlangano branch of First National Bank, with several different account numbers, drawn by "Skonkwane Franchisee Ltd xyz Co. Reg. 916/2000", which is printed on each different cheque above the signature. The xyz alternates between Pigg's Peak, Malkerns, Manzini, Siphofaneni, Mbabane, Nhlangano, (x3) Siteki, Lomahasha and Ebuhleni. A table of the eleven different cheques, in date sequence between the 4th December 2002 and the 12th January 2003, with the different amounts of those cheques, is listed in paragraph 5.3 of the founding affidavit.

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Applicant states that in each of the diverse instances, it sold and delivered seed and seed products to the "the respondent", following placement of an order, and that a delivery note signed by respondent's representative was followed by a specific invoice, later to be accompanied by a cheque post-dated for thirty days, issued by "the respondent". It is these cheques, held for value by the petitioner and returned as unpaid by the Bank, which form the basis of the petition for liquidation, together with a further invoiced amount of E120 745.10, for which no cheque is held.

It is not an issue to be decided as to whether the amounts of the cheques and the further invoiced amount is due and payable or not. Nor whether the unpaid cheques were properly presented for payment, which was duly refused. What ultimately does require a decision is whether the rule nisi issued in respect of the respondent is to be confirmed or not, essentially on the basis of the unpaid cheques, to have the respondent company wound up.

For this to be determined it is necessary to establish if it indeed is the respondent which is to be held accountable, or some other entity or entities, as respondent contends. It states that it is its different franchisees which must be looked at, not the respondent company itself, relying on a number of different aspects. Especially and foremost, the respondent company relies on the absence of a iusta causa debendi or reasonable cause for its own liability, or that it did not receive a quid pro quo or consideration from the petitioner.

On the first these two aspects, the identity, respondent's case is that its sole business is the sale and administration of its franchisees, individual companies trading under the "Skonkwane" brand in return

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for royalties. It denies ever having traded with the petitioner. It says it does not even hold any shares in

the different franchisees scattered over Swaziland and styled as "Asibemunye Building Supplies (xyz) Ltd trading as Skonkwane (xyz)", xyz being the name of the town where it operates from.

Both the respondent company and Skonkwane Holdings (Pty) Ltd are said to fulfil an administrative and overseeing role, the administration to include a very tight and unusual role for franchising parent companies. Apparently, the current accounts of the individual franchisees held in their own names with First National Bank were closed, to have new accounts opened at the same bank but of which the cheques had to be signed by both the franchisor and franchisee. It is stated by the director that the individual accounts were named as "Skonkwane Franchise Ltd trading as Skonkwane Franchise Ltd "xyz" ("xyz" again being a place name, e.g. Mbabane, Nhlangano, Pigg's Peak etc, where the franchise is situate).

This is at variance with the printed identification of the account holders, embossed on the returned cheques. There, it reads:- "Skonkwane Franchise Ltd ("xyz" as above) CO. Reg. 916/2000".

From the filed cheque copies it becomes clear, on a comparison of the details of the cheques, that in respect of each different town's name used in the printed name of the drawer ("xyz", for example "Lomahasha") the account number also differs. Thus, the account number of the Lomahasha franchisee differs from that of the other franchisees. Although this ties in with the respondent's explanation of itself overseeing and assisting the franchisees, it begs an answer as to why an independent and autonomous franchisee would require a joint signature of its franchisor on each cheque it uses to pay a creditor like the

applicant. This moreso as each cheque of the differently numbered accounts of each different franchisee still uses the same identifying company registration number, 916/2000 the registration number of the respondent.

Respondent says that this cumbersome and unusual procedure was agreed to by itself "for administration purposes, but on the strict understanding that it would not incur any liability in respect thereof, and that the relevant franchisees shall be personally liable" (answering affidavit paragraph 7.2.8).

In support hereof, the respondent filed the first page of its standard agreement with each franchisee. It contains references to the contracting parties and some interpretation clauses, but no mention of the aforesaid limitation of liability. It also annexed a number of confirmatory affidavits to its papers. The deponents are all said to be the sole shareholders and directors of various branches of "Asibemunye Building Supplies xyz (the town or city) (Pty) Ltd trading as Skonkwane xyz". Each of these franchisees tried to confirm the exposition of the respondent's liability, saying they themselves are liable to effect payment to the petitioner, not the respondent, and confirming the bank account arrangements mentioned above.

However, each and every of these confirmatory affidavits were struck out during the course of the hearing, on the basis that it was improperly attested to. The Commissioner of Oaths in each case was the Corporate Liaison Officer of Skonkwane at Nhlangano, a man very much connected to a party in the proceedings. Without going into the motivation for the ruling which was made virtually unopposed, it is trite that the affidavit of a deponent who is involved in judicial proceedings may not be commissioned by anyone who may, might or has an interest in the

outcome of the proceedings. This is not a novel idea and one would have thought that any practising attorney would be well aware of this very basic legal principle.

The striking out of the eight confirmatory affidavits made by eight "sole shareholder and directors" of the franchisees, admitting that in respect of all transactions with the petitioner, Skonkwane xyz (town/city) is the debtor and as such is liable to effect payment to the Petitioner for the goods sold and delivered",

waters down the case of the respondent to quite some extent. Clearly it is the respondent who wants to avoid liability and of being wound up, which relies on the franchisees to take the blame. Equally, if the applicant wanted to do so, it could have abandoned the original application and have proceeded against the individual franchisees if it chose to do so, at minimum on strength of the formal admissions of liability.

The other leg that the respondent has remaining to support its denial of liability and setting out of the situation, is the confirmatory affidavit of Mr. John McSeveney, a further director and major shareholder of the respondent company. He says that in order to overcome certain accounting problems (without him elaborating on it), the franchisees had closed their individual bank accounts and opened new accounts. Respondent's role, he says, was an agreement "to act as an umbrella for the franchisees by opening and administrating the particular bank accounts, on the strict understanding that the franchisees would service the accounts and that the respondent would not incur any personal liability to payees of cheques, but that liability for same would remain with the franchisees", (para 5)

Most importantly however is the removal of any factual dispute. He admits the main contention of the petitioner to be correct, namely that

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respondent countermanded the cheques in issue "in its capacity as administrator of the account, because there were insufficient funds in the accounts to meet payment of the cheques" (para 8). Respondent's counsel's main argument finds roots in his contention that respondent is said to be merely a franchisor which did not purchase or receive any goods from the petitioner. As indicated further down, Ms. van der Walt argues that absence of a iusta causa in respect of the cheques is fatal to the petition.

A further aspect requires mention. The respondent's case is that not only did it not incur any liability at any stage before or after countermanding of the cheques, but also that the petitioner was well aware of its position almost "untouchable". It says that the petitioner cannot be heard to say it was not aware that each of the different Skonkwane outlets is a separate entity, an independent franchisee.

For this attitude it inter alia relies on a letter by petitioner's financial manager, to the Holding Company (Skonkwane Holdings (Pty) Ltd), relating to the unpaid amounts. Therein, to settle the matter, the following specific terms and conditions are proposed:- (quoted selectively)

"2.1. That Skonkwane Holdings (Pty) Ltd bind (sic) itself as surety and co-principal debtor with all the franchisees who are indebted to us...

2.4 That Skonkwane Holdings (Pty) Ltd accepts liability for all costs...

2.5. Each franchisee shall give their personal suretyship to us in respect of the debt owing by each individually;

2.7. Each of the franchisees shall grant us an unrestricted lien over identifiable stock that vests in the franchisee branches...

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3. In the event of the above conditions not being met within the time limits stipulated we reserve our right to forthwith proceed against the franchisees and other relevant parties for the sums owing to us".

(Annexure SFL 2, dated 19th February 2003, filed with the
answering affidavit).

It is because of information like this, especially terminology like "each franchisee" that respondent's director states in her answering affidavit (at paragraph 7.3.1) that:-

"It is important to point out that the petitioner has deliberately refrained to disclose to the above Honourable Court that it full well knew the debts were incurred by the franchisees, and not the respondent, and that the question of insolvency pertains to the relevant franchisees, and not the Respondent".

Her following paragraph makes mention of the fact that in the above letter, the petitioner referred to the indebtedness of the franchisees and possible recourse against the franchisees of the Skonkwane Holding company. Nowhere in the letter is there any mention of any indebtedness by the respondent company.

The petitioner admits the letter it wrote to the holding company but retains its stance that it is neither aware of nor bound by internal arrangements between the respondent and the individual franchisees. Over the period of time that their business relationship had been established, all payments of goods supplied to the outlets or branches or franchisees were made by the respondent to the petitioner, not by the individual entities. Thus, if it was an internal requirement that a particular franchisee had to see to it that the franchisor has to be put in funds to cover payments made on its behalf (by the respondent) it was

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not the business of the applicant or petitioner to be aware of such arrangement, nor to be bound by it.

In fact, the petitioner chose to direct its attack against Skonkwane Franchise Limited, registration No.916/2000 on the basis that it received the unpaid countermanded cheques from it and not from the individual outlets or franchisees. The whole basis of the petition to have the respondent company liquidated is unpaid countermanded cheques which were issued by respondent to the petitioner, who received it against value supplied. It may well be so that the unpaid supplier is aware that there are individual franchisees but it is the respondent who stopped payment, which payments respondent admits to have made on their behalf, which forms the rationale of this matter. It is the respondent company who says it is not liable as it never entered into any commercial transactions with the petitioner and that it is not indebted to it.

The petitioner's argument on liability is condensed in paragraph 14.2 of its replying affidavit.

"a. The individual outlets and/or franchisees order seed and seed products from your petitioner.

b. Thereafter, the petitioner issues an invoice.

c. Upon receipt (of) the invoice the Respondent issues a cheque unto and in favour of the petitioner.

d. Whereafter the outlets or franchisees signs for and takes delivery of the product".

It is thus as a result of such cheques which the respondent issued but thereafter countermanded, that the petitioner now holds eleven valueless cheques totalling some E734 163.42. A further unpaid amount of E120 745.10 is said to be outstanding after invoicing, but for

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which no cheque was received. In all, the petitioner has a prima facie claim of close to three quarter million Emalangeni, mainly based on unpaid countermanded cheques drawn in its favour by the respondent.

That the various "franchisees" or former branches of Skonkwane received value for the various amounts making up the total amount is not in issue. Nor that they were invoiced for it and had payments effected by the respondent. It is the respondent who says that the individual Skonkwane franchisees are liable, which they did infact admit in their struck out affidavits.

The respondent company says, though its director's answering affidavit, that cheques are issued on

behalf of its franchisees, who are in turn to ensure that funds are available to cover same. This is held out to be some form of administrative assistance, a service provided to the franchisees by the respondent company. Also, each of the individual franchisees has its own unique cheque account number with First National Bank at Nhlangano. It appears to be the case that each of the franchisees is a co-signatory of the cheques issued "on its behalf" by the respondent company.

As its sole business, relying inter alia on company financial reports of "Skonkwane Franchise Limited, Registered Number 915/2000" (Not number 916/2000 as elsewhere in the application), respondent says it is the sale and administration of franchises, empowering the former branches, now individual franchises, to trade. This is against the receipt of royalties. It also equally says that the nature of its business is that it comprises a group of retail outlets in Swaziland selling inter alia agricultural supplies, according to the financial report of a similarly named company.

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In doing so, the individual trading franchisees act independently, yet have their payments made by the respondent company, on their behalf. The problem arose when the respondent company countermanded cheques which it had already issued to the petitioner. It now wants to have it found that it is not to be held liable, at all, on the basis that the individuals had to be cited in the application, distancing itself from the different franchisees.

It is thus the whole foundation of the application to have the respondent company held liable on account of the cheques it issued, irrespective of whatever internal arrangements it may have had with its franchisees or outlets, payment of which cheques were stopped by the respondent. The application, or petition, is to have the respondent company liquidated because it cannot pay its debts.

It is also this aspect that counsel for the respondent company argues to be the downfall of the matter, to the greatest extent because of the absence of a quid pro quo, or no iusta causa debendi.

Counsel for the respondent clearly prepared in depth for this matter and argued most eloquently to have the rule nisi not only discharged but to punitive costs awarded as the petitioner is said to have abused the process of Court. The latter contention is based on remarks made by the former Judge President of the Transvaal Provincial Division, Eloff, J (at the time) in WALTER McNAUGHTAN (PTY) LTD v IMPALA CARAVANS (PTY) LTD 1976(1) SA 189 (W) at 191 & 192 held that the company had been "put to needless expense in resisting this application although it had expressly warned applicant of the basis on which the application would be opposed", and that the "conduct of the applicant in nevertheless persisting in a futile application which was doomed to failure from the beginning justifies a special order for costs".

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With reliance on HENOCHSBERG ON THE COMPANIES ACT (Miskin) VOL.1 page 693-5, Ms. van der Walt argues the present application to be an abuse of the process of Court, inter alia that the application is not sought for the bona fide bringing about of the company's liquidation, but to enforce payment of a debt bona fide disputed by the company on reasonable grounds. Also, that the procedure for winding up is not designed for the resolution of disputes as to the existence or non-existence of a debt, or an obligation to pay debts of the respondent's franchisees. The gist hereof is that with regard to Section 344(F) of the South African Companies Act, where a company has not paid or secured a creditor on demand to pay, which failure is used to have it wound up, such an application is to be refused if the company in good faith disputes the debt (BADENHORST v NORTHERN CONSTRUCTION ENTERPRISES (PTY) LTD 1956(2) SA 346 (T)).

The respondent in this matter disputes that it is indebted to the applicant at all, holding its franchisees to be the liable parties, with reliance on its agreements with the franchisees wherein liability for debts of the individual businesses are excluded. Neither estoppel nor applicability of the Turquand rule has been argued. What applicant does contend is "yes, that might be the internal arrangement, but I received the countermanded cheques from the respondent, not the individual franchisees".

It is therefore that respondent's counsel argues that it may well be the position as set out above but that the respondent cannot be held liable on strength of the cheques alone as there is no underlying causa between the parties, apart from the issued cheques. For this contention its counsel heavily relies on FROMAN v ROBERTSON 1971(1) SA 115 (A), a unanimous decision by most eminent jurists of the Appellate

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Division. Although some forty years old by now, it remains the leading authority on the aspect which counsel for the respondent relies to have the rule nisi set aside and it justifies quoting extensively from it.

On page 120-F, Corbett, A J A (as he then was), with reference to various authorities stated that "...a cheque, which has been properly drawn and issued, constitutes a contract in writing. Being a contract, a cheque so drawn and issued must be founded upon justa causa debendi or reasonable cause, in order to be valid and enforceable. ...In the well-known case of ROOD v WALLACH, 1904 TS 187 Solomon J (as he then was), discussed the meaning of these concepts and then stated (at page 211-12):-

"The conclusion, however, to which I have come on a review of the chief authorities is that by causa in this connection the jurists simply meant the reason for a promise; and that the meaning of the doctrine that the promise to be binding must be based upon a reasonable cause or justa causa is that the reason for the promise must be a good and legitimate one, and not one contrary to law or morality or public policy".

In the same case Innes CJ, concluded that causa meant "the reason or ground for a contract" (at page 201). In CONRADIE V ROSSOUW 1919 A.D. 279, which finally settled the judicial controversy as to whether or not justa causa was equivalent to the English concept of valuable consideration, de Villiers A J A (as he then was), expressed the view (at page 314) that causa (or oorsaak) [= the reason or causa in Afrikaans -my translation] in this context referred to - "the particular transaction out of which the obligation is said to arise, be it sale, hire, donation or any other contract or handeling [= act, my translation]".

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Generally speaking the courts have tended to adopt the above-quoted definitions given by Solomon J and Innes J. Thus in KENNEDY V STEENKAMP, supra, Watermeyer, A J P (as he then was), having referred to Rood's case, supra, and Conradie's case, supra, and to certain other authorities stated (at page 117) -

"The conclusion to be drawn from all these discussions is that the causa of an obligation means the ground or reason for entering into it. In most cases it corresponds to consideration in the sense of a quid pro quo but it may be mere generosity or desire to do a favour. It is not the same thing as valuable consideration in English law..."

It is not necessary to express any preference in regard to these different meanings because at all events these authorities clearly establish (i) that the requirement of justa causa or reasonable cause is sufficiently satisfied if the promise is made seriously and deliberately and with the intention that a lawful obligation should be established... and (ii) that in determining whether a promise is founded upon justa causa or reasonable cause the ground or reason for the promise should be examined.

Reverting, more specifically, to the position of the drawer of a cheque, it is clear that by issuing a cheque in due form he engages, or promises, that on due presentment, it will be honoured by the bank according to its tenor and that if it is dishonoured he, the drawer, will compensate the holder.... As between the payee and the drawer these promises are enforceable only if supported by justa causa in the above described sense; or, to put it another way, as between himself and the payee, the drawer, when sued on the cheque, is always entitled to raise the defence

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that he drew and issued the same without there having been necessary justa causa....
In applying the requirements of justa causa to the engagements of the drawer, regard must always be had to the special characteristics of a cheque.

In modern usage a valid cheque represents money and is a generally accepted medium for the payment of a monetary obligation.... Such an obligation generally arises from some transaction, contractual or otherwise, extraneous to the drawing and issue of the cheque itself but nevertheless constituting the ground or reason therefor. Accordingly, any investigation as to the existence or validity of the causa for the engagements of the drawer must necessarily embrace this underlying transaction. It is for this reason that our courts have held that an immediate party sued upon a cheque or other negotiable instrument is entitled to raise the defence that, having regard to the underlying transactions constituting the ground for the issue of the cheque, there is an absence or failure of justa causa, or "consideration" as it is sometimes termed.... In such a case it is no answer for the party suing to contend that the cheque, viewed in isolation, i.e. without reference to the underlying transaction, is supported by justa causa in that it was drawn and issued seriously and deliberately and with a view to establishing a lawful obligation thereon. In the circumstances such as these the cheque cannot be viewed in isolation".

In casu, it is specifically the respondent's case that there is no iusta causa underlying the cheques it issued to the applicant and that the rule nisi should thus not have been issued in the first place, let alone confirming it. This is also the basis on which its counsel argued.

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I have no doubt that the Froman case so extensively quoted has been not only correctly decided but also that it very clearly sets out the underlying legal principles. Thus, indeed iusta causa is required to have the drawer accountable to the drawee. What is required to properly decide this matter is to apply the legal principles to the facts established in the papers.

This begs a question as to exactly why Skonkwane Franchisee (Pty) Ltd, company 216/2000, issued the cheques to the applicant. Certainly, it was not spuriously done, or in jest, or in an attempt to frustrate the supplier of seeds and related materials to its various branches or franchisees as it lately may have become. There is no room for any other conclusion that it did so seriously and deliberately. Respondent now chooses that it be found that it had no intention of incurring any liability thereon. Can it be so?

To assess this question it is helpful to also look at the past conduct and transactions of the parties. It is common cause that these were not the first time business transactions. Over time, applicant has received orders for its products from the various retail outlets under the Skonkwane banner. Invoices were issued after delivery, which were thereafter paid in exactly the same manner as the present, namely cheques drawn by the Franchise company, on the individual account numbers which relate to each of the different stores, e.g. at Nhlangano or Pigg's Peak, Mbabane, etcetera. The only difference from the present situation is that in the past, the cheques were honoured. On presentation to the bank, payment was effected. This arrangement continued until the present batch of cheques were returned as unpaid, countermanded.

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A very good analogy may be drawn on this situation, again from FROMAN V ROBERTSON (supra), at page 127A-B where the learned Corbett A J A at the time, later Chief Justice, said:-

"In view of the modern acceptance of a valid cheque as representing money... the submission that because appellant in fact paid van Rooyen's debt by cheque - and not in cash - he incurred no liability on the cheque to respondent is a somewhat startling one, to say the least. But I do not think the court is obliged to arrive at so anomalous a conclusion".

All along, the cheque payments to the applicant were made to discharge lawful obligations to it. It did not

matter whether the payments were made by individual franchisees or on their behalf by the parent company insofar as the discharge of obligations were concerned. Nor would it have mattered if payments were made in cash or by cheque, or indeed any other form of accepted payment. All payments made to the applicant by respondent were, as found above, made seriously and deliberately. They were also made with the intention that a lawful obligation be established. Were it not so, applicant would most certainly not have continued to supply Skonkwane shops with seeds of great value unless some other form or method of payment was arranged, which is not the case.

The only thing that upset the apple cart, so to speak, was that around the turn of the year, the individual franchisees in unison were suddenly all affected by the same malady - a failure to ensure that the bank had money or facilities to cover payment of cheques presented by applicant. These cheques were drawn by the respondent company, whose details are printed on each of the unpaid cheques that it later countermanded. The reason to countermand may well be as just mentioned but it does

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not have the consequence that all of a sudden the respondent can now hide behind an internal arrangement it had with its franchisees.

Accordingly, it cannot be found that there is no iusta causa indebiti. The cheques in issue were drawn by respondent company, and issued to the applicant to discharge pre-existing contractual obligations. It is not a good defence for it to now come and say that the different obligations were not its own but that of its franchisees.

In any event, a pre-existing obligation is not an essential requirement when determining whether there is iusta causa.

This finding, that the respondent cannot rely on an absence of iusta causa to establish a defence against the petitioner's case is to be viewed as a part of the whole. Although the financial statements filed by the respondent company refers to a different company registration number (915/2000 instead of 916/2000) as is imputed to the respondent, but with exactly the same name, those statements do not reflect an ability to be able to pay a debt of about three quarters of a million Emalangeni from cash at bank and in hand (41 634.14) at the end of December 2001. It is not however decisive to have too much regard to the financial statement, without proper evidence and interpretation. The situation may very well have changed over the intervening period of more than a year. Also, it is most confusing to try and decipher annexure "SFL 4" which respondent filed. I have already mentioned the aspect of different company registration numbers. In addition, the first nine pages pertain to the period ending 31st December 2002, whereas the last two pages refer to the period ending 31st December 2001, a year earlier. Thirdly, the first nine pages use Emalangeni as currency unit, to be displaced by Rand in the last two pages! I have a difficulty to evaluate the correctness of Skonkwane's director's evidence on exactly

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who does what and who owes who when already the supporting affidavits have been struck out, to also have the respondent's case further eroded by filing mismatched financial reports.

For the above reasons I can come to no other finding than to order the rule nisi herein to be confirmed, with costs, such costs certified under the provisions of Rule 68(2) insofar as counsel's remuneration goes.

JACOBUS P. ANNANDALE

Judge