

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 2580/06

In the matter between:

MALAGEORGIA ENTERPRISES (PTY) LTD

APPLICANT

And

THABA HOUSING SUPPORT ORGANISATION 1st RESPONDENT

FLORA DUBE

2nd RESPONDENT

In re:

THABA HOUSING SUPPORT ORGANISATION PLAINTIFF

AND

MALAGEORGIA ENTERPRISES (PTY) LTD

DEFENDANT

CORAM: Q.M. MABUZA-AJ

FOR THE APPLICANT: MR. MAGAGULA (R. BERTRAM)

FOR THE RESPONDENT: MR. DLAMINI (OF MAGAGULA, HLOPHE)

RULING 7/12/06

[1] In this matter the Respondents had instituted action proceedings against the Applicant wherein they claimed payment of the sum of E7,500-00. The Respondents obtained default judgment and issued a writ of execution.

[2] It was at this stage that the Applicant successfully moved an application for an interim order which it obtained on the 17/8/06 interdicting the second Respondent from executing and or attaching any of the Applicant's movable property pending the final determination of this matter.

[3] The pleadings are now closed. The Respondents have now filed their answering affidavit and the Applicant its replying affidavit.

[4] The applicant did not apply for rescission of judgment and alleges in its papers that it was seeking an interdict because it had given the Respondents postdated cheques which had not been presented and the Respondents could not execute until these had been presented and had not been paid.

[5] The Applicant also indicated that it had made the cheques payable to the 1st Respondent a company registered and carrying on business in South Africa. It had done this because it feared that if it made payment to the 2nd Respondent the other director of the company would not receive payment or could easily deny payment.

[6] When the court enquired as to why the cheques were not made payable to the Respondents attorneys the response from counsel for the Applicant was that the writ had indicated that payment be made to either the Respondents attorneys or to the Plaintiff. The Respondents counsel did not dispute this submission. The High Court Act was promulgated in 1950. Some of the forms at the end of the rules are outdated. As a result in some instances conventional practice has grown up in their place. It is now accepted conventional practice that payment is normally made to the attorneys of record and paid into their trust account.

In my view this advice given by its attorney to the Applicant was also meant to frustrate the Respondents and to delay payment further.

[7] The court also enquired as to why Emalangen currency was used on the cheques to pay a South African company based in Pretoria instead of Rand

currency. Counsel for the Applicant seems to have failed to notice this perhaps because the cheques were drawn by his client on his clients account. They were not drawn upon counsels trust account. This indicated to me that the Applicant was applying delaying tactics with the connivance of its attorney.

[8] The above issues were apparent at the time the interdict was sought and obtained. The interdict in my view was further meant to delay payment to the Respondents.

[9] It is clear from the papers that this is an old debt and yet the Applicant still sought to pay it in installments further frustrating quick payment thereof.

[10] Had the Respondents deposited the cheques in Pretoria they would have been rejected because of the currency. This would have meant posting them back to Swaziland and a further delay would have been occasioned. On the other hand had the cheques been accepted it would have meant a long delay before they arrived in Swaziland for clearance - causing further delay and inconvenience to the Respondents.

[11] I do not wish to get into the ethics of how the matter was presented before me save that I have been at sixes and sevens as to whether or not to order counsel for the Applicant to pay costs **de bonis propriis** as a mark of the court's disapproval. After pondering the matter further I have decided against such punitive action.

[12] For the above reasons I hereby order as follows:

(a)The application is dismissed and the interim interdict discharged.

(b)Costs to be paid by the Applicant on the attorney and client scale.

Q.M. MABUZA-AJ