IN THE HIGH COURT OF SOUTH AFRICA,

FREE STATE DIVISION, BLOEMFONTEIN

Case number: 922/2023

In the matter between:

R700 TRUCK STOP (PTY) LTD   Applicant

and

PIETER IGNATIUS SMIT   First Respondent

MARNU SMIT   Second Respondent

MELINDA SMIT   Third Respondent

ESTEAN SMIT   Fourth Respondent

HOOPSTAD LANDBOUDIENSTE (PTY) LTD   Fifth Respondent

CORAM: LOUBSER, J

HEARD ON: 11 AUGUST 2023

JUDGEMENT BY: LOUBSER, J

DELIVERED ON: 18 AUGUST 2023

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[1]   This is an application by the respondents for leave to appeal against the judgement of this court confirming the *rule nisi* issued by Bomela, AJ with costs on an attorney and client scale. The facts and circumstances of the matter appear from the judgement, and will not be repeated herein.

[2]   The application for leave is based on the usual test, namely that there is a reasonable prospect that another court would come to a different conclusion. This means that leave to appeal must not be granted unless there truly is a reasonable prospect of success.[1]

[3]   On behalf of the respondents it was contended that the court has erred in several respects in coming to its conclusion. Even if it could be assumed, for the moment, that there is merit in some of these contentions, then I am not persuaded that there is truly a reasonable prospect that another court would come to a different conclusion based on those contentions. In my view, a court of appeal would rather agree with the main findings made by this court in its judgement as far as material issues are concerned.

[4]   For instance, this court found that there was a multiplicity of factual disputes between the parties on the papers before the court, and that it would therefore follow the guidelines laid down in Plascon-Evans to determine whether it could find in favour of the applicant. I do not think that this approach can be faulted.

[5]   Further, this court found that it was not in dispute that Pienaar in fact paid an amount of money for the clientele when he purchased the applicant company. It was therefore found that it would serve no purpose to refer for oral evidence the question whether the R500 000.00 paid by Pienaar was for the clientele list or not. The court also found that the information sought by Pienaar, is still in possession of the first respondent because he conceded that he had taken the external device with that information with him when he left the applicant, and because it cannot be accepted that the information on the device were transferred to the applicant thereafter on 7 February 2023.

[6]   This court further found that the first respondent was not a *de facto* director nor a shareholder of the applicant. Pienaar therefore had the necessary *locus standi* to bring the application on behalf of the applicant. The court concluded by finding that the applicant is the owner of the clientele list and the information relating to
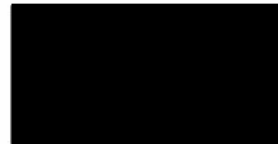
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[1] MEC for Health, Eastern Cape v Mkhitha and another [2016] ZASCA 176 par. 16

each client, while a final order will not prevent the respondents from trading freely. It will only prevent them from using the information on the clientele list in doing so. I do not think that another court will conclude differently on all these findings.

[7] It was strongly argued on behalf of the respondents that another court will not condone the final nature of the order made by Bomela, AJ in the sense that it will find application *ad infinitum*. Due to the fact that the order only has reference to a limited number of clients and their information, I am not persuaded that another court would come to a different conclusion, having regard to all the circumstances of the matter.

[8] I therefore make the following order:

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

P. J. LOUBSER, J

For the applicants for leave:	Adv. S. Grobler SC
Instructed by:	Kruger Venter Attorneys
	Bloemfontein

For the applicant:	Adv. M. C. M. Pieterse
Instructed by:	Pieter Skein Attorneys
	Bloemfontein

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