

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2021/43101

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED: NO

DATE: 25 November 2021

In the matter between:

HOGO MALUNGA INVESTMENTS (PTY) LTD

Applicant

and

KRYSTAL KLEAR VISION (PTY) LTD

Respondent

JUDGMENT ON COSTS

Weiner J

Introduction

[1] The applicant sought an order to the effect of an anti-dissipation order against the respondent, pertaining to funds held in account 'Krystal Klear Vision', pending the finalisation of an audit into the business of the joint venture between the applicant and the respondent (the 'JV').

[2] In the alternative, the applicant sought relief to the effect that the respondent may continue to operate the above account for any nature of its business, but guaranteeing that, pending the audit, it would hold the funds in contention in the trust

banking account of SM Patrick Attorneys Inc. (the respondent's attorneys). The applicant also sought proof that such funds would be/were transferred to the trust account of the respondent's attorneys.

[3] The Court, after hearing arguments by both parties, suggested that certain relief was warranted. On 17 September 2021, I granted the relief set out in annexure 'A' hereto (the 'order'), which was, in effect, agreed to by the parties.

[4] As appears from the order, the funds held by the respondent were to be transferred into the trust account of SM Patrick Attorneys Inc. Further, the respondent was to notify the applicant of every transaction, and report monthly to the applicant.

Costs

[5] As appears from the order, the issue of costs was held over and each party has submitted heads of argument on this issue. The applicant that it had sought to resolve the matter amicably with the respondent and had requested a roundtable meeting which canvassed two main issues i.e. firstly, the transfer of funds from the respondent's account to the respondent's attorney's trust account; secondly, the applicant requested several documents relating to the project from the respondent.

[6] The roundtable meeting was conducted on 23 August 2021. After failing to agree on a settlement, the applicant stated that the respondent had agreed that all the funds belonging to the JV would be transferred to the trust account of the respondent's attorneys, and that the requested documents would be provided to the applicant.

[7] Despite the respondent's undertaking, the applicant submitted that no such documents were provided and an unexplained amount of R125 000 was transferred by the respondent to its attorney's trust account and earmarked for settlement, which settlement negotiations, the applicant contended, had collapsed. This left the applicant with no alternative but to approach the Court on an urgent basis seeking the preservation of the funds.

[8] The applicant submitted that the order granted amounted to substantial relief for the applicant and it was therefore entitled to costs, which it prayed for on a punitive scale.

[9] The respondent, on the other hand, contended that it should be awarded costs on a punitive scale as:

(a) the applicant had abused the Court process by introducing new evidence in a replying affidavit that then had to be dealt with by the respondent in a supplementary affidavit;

(b) the applicant had been absent for the majority of the implementation of the JV project and only surfaced to make unreasonable and unrealistic demands that the respondent could not reasonably be expected to meet;

(c) the respondent has been substantially successful in opposing the relief sought by the applicant in that the interdict, the anti-dissipation order, as well as the rule *nisi*, were not granted.

[10] The respondent contended that it was not in dispute that the applicant failed to perform their obligations in terms of the JV agreement. Despite this, the respondent submitted that it has not stated that the applicant will be denied its share of the profits. Thus, the application was not only unnecessary, but an abuse.

[11] This Court found that, not only was the matter urgent, but that the respondent had acted contrary to the JV agreement in failing to place funds it received into a JV account, and failing to account to the respondent as required. Thus the application was not an abuse. The respondent had promised to furnish documentation relating to the finances of the JV, but failed to do so – thus the applicant feared the funds would be dissipated. The alternate relief sought was therefore competent and was granted in terms of the order.

[12] In my view, the applicant has been substantially successful and is entitled to costs. Attorney and client costs are, however, not warranted.

Accordingly, the following order is granted:

1. The respondent is to pay the applicant's costs of the application.

S E WEINER

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

This judgment was handed down electronically by circulation to the parties' and/or parties' representatives by email and by being uploaded to CaseLines. The date and time for hand-down is deemed to be 10h00 on 25 November 2021.

Date of hearing: 14, 15 & 17 September 2021

Date of judgment: 25 November 2021

Appearances:

Counsel for the applicant: L Dube

Attorney for the applicant: Dube Lesley Attorneys

Counsel for the respondent: I Mwanawina

Attorney for the respondent: SM Patrick Attorneys Inc.

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)**

Heard on 14, 15 and 17 September 2021

Before her Ladyship Weiner J

CASE NO: 2021/43101

In the matter between:

HOGO MALUNGA INVESTMENTS (Pty) Ltd
[REG NO. 2015/143057/07]

APPLICANT

and

KRYSTAL KLEAR VISION (PTY) LTD
[REG NO. 2013/172420/07]

RESPONDENT

COURT ORDER

HAVING read the documents filed of record, heard Counsel and having considered the matter, it is ordered that: -

(1) The matter is heard on an urgent basis and the forms and services provided for in the Rules of this Honourable Court, are dispensed with in terms of Rule 6 (12) of the Uniform Rules.

(2) The Respondent shall before the end business on 21 September 2021 transfer the remainder of the funds received from the Eastern Cape Department of Social Development pertaining to the projects of the joint venture to the Trust Banking Account of SM PATRICK ATTORNEYS INC, with details:

Ace holder:	SM Patrick Attorneys Inc.
Bank:	Standard Bank
Acc no:	[...]
Branch code:	051001
(the trust account)	

(3) The Respondent shall furnish the Applicant or its attorneys with proof of such transfer of funds in prayer 2 above.

(4) The respondent is to immediately inform the Eastern Cape Department of Social Development that all funds owed in respect of the project should, from the date of this order be paid into the trust account.

(5) A copy of this court order should be served on the relevant accounts

department of the Eastern Cape Department of Social Development.

(6) The Respondent, pending the completion of the projects, shall operate all further receipts and payments pertaining to the projects through the trust account of SM PATRICK ATTORNEYS INC.

(7) The Respondent shall copy the applicant via email, with instructions it provides to its attorneys (SM Patrick Attorneys Inc) for them to make payments. Such instructions shall be accompanied by all invoices and relevant statements and/or certificates relevant to such payments.

(8) The Respondent shall at the end of each month in accordance with the provisions of section 12.6 of the Joint Venture Agreement concluded between the parties give a detailed report, commencing at the end of September 2021.

(9) Costs are reserved for decision by this court in due course.

BY ORDER OF COURT

REGISTRAR