

**IN DIE HOOGGEREGSHOF VAN SUID-AFRIKA
(BOPHUTHATSWANA PROVINSIALE AFDELING)**

SAAKNOMMER 75/04

In die saak tussen:

**P J & ILM BOERDERY
APPLIKANT**

en

**LICHTENBURG GRAAN TRUSTEES
RESPONDENT**

UITSPRAAK OP VERLOF OM TE APPELLEER

LANDMAN R:

[1] PJ & ILM Boerdery (Edms) Bpk (“die Maatskappy”) die respondent in die hoofaansoek doen aansoek om te appelleer teen my uitspraak in die hoofaansoek

gedateer 15 Januarie 2007.

- [2] Die gronde waarop die Maatskappy hom beroep word in sy kennisgewing gedateer 5 Februarie 2007 uiteengesit. Ter ondersteuning hiervan het Mnr Van der Merwe hoofde van betoog ingedien. Die hoofde handel met enkele aspekte van die gronde. Mnr Pistor SC, wat namens Lichtenburg Graan Trustees (Edms) Bpk optree het, het ook hoofde van betoog ingedien.
- [3] Die submissies wat Mnr Van der Merwe gemaak het is meestal 'n herhaling van sy submissies in die hoofaansoek. Hulle is volledig in die uitspraak behandel. Mnr Van der Merwe het tydens sy betoog 'n kennisgewing van mosie en 'n gefunderende beëdigde verklaring in die aansoek van Lichtenburg Graan Trustees (Edms) Bpk en A C G Lemmer NO en M W S Faul NO ingedien. Mnr Van der Merwe het my aandag op paragrawe 26.4 tot 26.6 en 26.14 daarvan gevestig. Die beweringe lees:

“26.4 the Applicant issued summons for provisional sentence against the two Respondents on the dishonoured cheque, applied for provisional sentence against the TRUST who raised various defences by mouth of G P Els. Inter alia G P Els alleged that instead of receiving plus minus 4 000 tons of maize, the TRUST has only received 300 tons of maize from the COMPANY;

26.5 whilst this matter against the TRUST represented by the two Respondents were pending during 2004 and under case no 75/2004, the Applicant applied for the liquidation of the COMPANY which COMPANY raised the defence that the COMPANY has a dispute with the Applicant and that the COMPANY has delivered not more than 300 tons of maize to the TRUST. G P Els supported this defence of the COMPANY in the application for liquidation;

26.6 the Applicant then by doing its own investigation established that at least 1 000 tons of maize were delivered by the COMPANY to the TRUST. To this allegation, G P Els representing the TRUST replied that the 1 000 tons was not received from the COMPANY but from other clients of the TRUST.

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26.14 It is the case of the Applicant that the TRUST during September 2003 received maize valued at at least R5 million, the TRUST has not paid for the maize but the TRUST has most probably sold the maize. The TRUST has not accounted in financial statements or to the Receiver of Revenue for the proceeds and it is highly likely that G P Els has utilized this money unauthorized for his own financial gain and a trustee appointed for the TRUST in sequestration shall be in a position to investigate what has happened to the maize and the proceeds thereof and recover it for the benefit of the creditors and the beneficiaries."

[4] Mnr Van der Merwe het aan die hand gedoen dat die bewerings strydig is met die getuienis in die hoofaansoek en steun die aansoek om verlof om te appelleer.

[5] Die beweringe klop met die getuienis wat in die loop

van die hoofaanzoek aangebied is en doen nie afbreuk van my bevinding dat die Maatskappy nie 'n redelike en *bona fide* verweer het nie en dat LGT 'n skuldeiser van die Maatskappy is.

[6] Ek is van mening dat 'n ander hof nie redelikswys tot 'n ander slotsom sal raak nie.

[7] Derhalwe word die aanzoek met koste van die hand gewys.

A A LANDMAN
REGTER VAN DIE HOOGGEREGSHOF

VERSKYNNINGS:

VIR DIE APPLIKANT	:	MNR VAN DER MERWE
VIR DIE RESPONDENT	:	MNR J H F PISTOR SC

PROKUREURS:

VIR DIE APPLIKANT : SMIT & STANTON
VIR DIE RESPONDENT : VAN ROOYEN TLHAPI &
WESSELS

DATUM VAN VERHOOR : 31 AUGUSTUS 2007
DATUM VAN UITSpraak : 19 SEPTEMBER 2007