



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

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

SIGNATURE

DATE: 9 October 2023

Case No. 2021/55809

In the matter between:

DISCHEM SUNWARD PARK (PTY) LTD

First Applicant

DISCHEM PHARMACIES LIMITED

Second Applicant

and

**HG MANOLAS CC trading as
SUNWARD PARK PHARMACY**

Respondent

JUDGMENT

WILSON J:

- 1 The respondent is a close corporation, whose sole member is Mr. Manolas. The close corporation sued the applicants, Dischem, for breach of contract. The close corporation sold a pharmacy to Dischem, but alleges that Dischem has breached the sale agreement in a number of respects. It claims specific

performance of the obligations it says Dischem failed to fulfil. It also brings an alternative claim for just under R12 million in damages.

- 2 On receipt of the claim, Dischem demanded security for costs under Rule 47. Security was tendered, and the Registrar set the value of security in the amount of R225 226, to be provided by way of a bank-guaranteed cheque. Although he accepts that he originally instructed his erstwhile attorneys to tender security, Mr. Manolas now disputes the close corporation's obligation to provide it.
- 3 Dischem seeks an order compelling the close corporation to provide security in the manner and in the amount set by the registrar, failing which Dischem asks that the main action be stayed until security is provided.
- 4 In opposing Dischem's application, the close corporation sought to introduce a supplementary answering affidavit, to which Mr. Manolas deposed. Dischem opposes that application. Mr. Manolas has also sought my leave to permit him to represent the close corporation in the main action, as he has dismissed the close corporation's attorneys and he does not wish to instruct another firm.
- 5 There are, accordingly, three interlocutory applications before me: Dischem's application to compel the provision of security, the close corporation's application for leave to file a supplementary affidavit and Mr. Manolas' application for leave to act for his close corporation in the main action. I address each in turn.

The application to compel the provision of security

6 There is no real dispute that, with the benefit of its attorney's advice, the close corporation, acting through Mr. Manolas, tendered security for costs. Nor is the registrar's decision as to manner and amount of security to be provided seriously assailed. What Mr. Manolas seeks in defending the application to compel, is the re-opening of the issue of whether the close corporation should have had to provide security for costs in the first place. I am not at liberty to re-open that issue, and, even if I were, I can find no good reason to do so in this case. Mr. Manolas' case appears to be that (a) the close corporation only tendered security to speed the litigation up; that (b) this did not have the desired effect and (c) that, because the tendering of security did not have the desired effect, the close corporation should no longer be required to provide it.

7 As sympathetic as I am to what appears to be a layperson's obvious frustration with the delays inherent in litigation, Mr. Manolas has laid no basis on which the close corporation can avoid the obligation to provide the security he instructed his attorney to tender on the close corporation's behalf. The application to compel security must succeed.

The application for leave to file a supplementary answering affidavit

8 The application for leave to file a supplementary answering affidavit must be refused, because the affidavit sought to be filed is devoid of any material relevant to the issues in the main application. What Mr. Manolas does in the

affidavit, for the most part, is complain about the delays that have dogged the main action, and seek to litigate the issues in that action. The affidavit does not canvas any material that could conceivably be relevant to the question of whether the close corporation should provide the security the close corporation's attorney tendered on Mr. Manolas' instructions.

The application for leave to represent the close corporation

9 The common law rule is that a company or close corporation may not be represented in legal proceedings by a layperson, even if that layperson is a director or shareholder of the company, or a member of the close corporation. A court, however, has a residual discretion to permit a layperson to appear before it and make submissions on the company or close corporation's behalf if the administration of justice requires it (see *Manong and Associates v Minister of Public Works* 2010 (2) SA 167 (SCA), paragraphs 10 and 13). I permitted Mr. Manolas to do so in these applications, because he is the sole member of the close corporation he wishes to represent and because the alternative would have been to have Mr. Manolas sit in the public gallery while I heard only from counsel for Dischem. That seemed undesirable for all sorts of reasons, not the least of which is that it would have been demeaning of Mr. Manolas.

10 However, the question now is whether I should make a general order permitting Mr. Manolas to appear in the main action on behalf of the close corporation. Laypeople look with sometimes understandable suspicion and incredulity at the way lawyers behave and at the way legal processes work. Mr. Manolas has, for reasons that are not clear but with which it is hard not

to have sympathy at a very general level, decided to do away with his lawyers and run his case himself. However, as with most decisions born purely of frustration, Mr. Manolas' choice was unwise. By dismissing his attorneys and counsel, Mr. Manolas has multiplied the delays of which he complains, and has argued himself into a corner. The main action will now be stayed until he provides the security he tendered.

11 During the course of argument, I emphasised to Mr. Manolas that he ought to obtain legal representation for his close corporation. There is no suggestion that the close corporation cannot afford to obtain representation or to provide the security tendered. Mr. Manolas' decision to go it alone seems to be little more than hubris.

12 In these circumstances, I can see no good reason to issue a general order permitting Mr. Manolas to represent the close corporation in the main action. Such an order would bind the Judges before whom the main action or any future interlocutory applications are heard. There is nothing in this case that would justify that outcome. The application will be dismissed, but I emphasise that my order is not an absolute bar to Mr. Manolas being able to represent the close corporation in future. I will leave the decision of whether to hear from Mr. Manolas again to the Judges who are in future seized with the action or applications interlocutory to it. That decision will obviously have to be made taking into account the particular circumstances with which future courts are then presented.

Costs

13 Dischem seeks costs on a punitive scale, on the basis that Mr. Manolas' approach to these applications has been wholly misconceived. It is true that Mr. Manolas' approach is misconceived, but that is no reason to punish the respondent with a punitive costs order. As a layperson, Mr. Manolas is not to be held to the same standards as a legal professional, and I do not wish to open the door to punitive costs orders against mistakes made without malice by lay litigants.

Order

14 For all these reasons –

14.1 The respondent is ordered to furnish security in the form of an irrevocable banker's guarantee in the amount of R225 226.

14.2 The action instituted by the respondent under case number 55809 / 2021 is stayed until the required security is provided.

14.3 The respondent is directed to pay the costs of the application to compel security.

14.4 The application for leave to file a supplementary answering affidavit is dismissed with costs.

14.5 The application to permit Mr. HG Manolas to appear for the respondent in the main action is dismissed with costs.

S D J WILSON

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading to Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 9 October 2023.

HEARD ON: 7 September 2023

DECIDED ON: 9 October 2023

For the Applicants: HC van Zyl
Instructed by Saltzman Attorneys

For the Respondent: HG Manolas
Instructed by the Respondent