

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NUMBER: 2022/1321

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

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S. MSIBI

26 October 2023

In the matter between:

MSG MARKETING (PTY)LTD

First Applicant

PROFESSIONAL WORLDWIDE SERVICES (PTY) LTD
Applicant

Second

and

FIRSTRAND BANK LTD

Respondent

**WRITTEN REASONS
(LEAVE TO APPEAL)**

MSIBI AJ

Background

- [1] The applicants seek leave to appeal against the judgment and the orders dated 30 January 2023 in the opposed main application in terms of which I dismissed the applicant's application with costs. In the main application the applicants sought a declaratory relief against the respondent as well as orders directing the respondent to make payment of monies due to the applicants. The respondent opposes the application for leave to appeal.

[2] The applicants have raised several grounds of appeal, as indicated in the application for leave to appeal. Of note is the consideration that one of the issues the applicants seek clarity on is the construction and interpretation of the relevant clauses applicable after termination of the merchant service agreements concluded between respondent and the applicants. Counsel argued that the merchant agreements are standardised agreements with the bank, affecting the public at large, therefore the guidance of the Court of Appeal will have an effect on future disputes. Counsel for respondent submitted that the relevant merchant clauses are plain worded and have been properly interpreted by this court.

[3] In determining whether leave to appeal is granted, section 17(1) (a) (i) and (ii) of the Superior Courts Act 10 of 2013 provides as follows:

“Leave to appeal may be given where the judge or judges concerned are of the opinion that –

- (i) The appeal would have a reasonable prospects of success; or
- (ii) There are some other compelling reasons why the appeal should be heard, including conflicting judgments on the matter under consideration.”

[4] A key factor to be considered is the bank’s contractual entitlement to withhold the client’s funds after termination of the banking relationship. This issue is essential to the parties and it might bring legal certainty with regard to the interpretation of merchant agreements in this regard. It therefore highlights the need for leave to be granted where there is some other compelling reason, on the basis of section 17(1) (b) of the Act.

[5] Having considered the grounds of appeal against legislative framework, I am of the view that there is a reasonable prospect that another court would come to a different conclusion on the issues raised by the applicant.

[6] Due to the importance of the issue to the banking industry and its clients alike, the applicant argued that leave to appeal be granted to the Supreme Court of Appeal in accordance with section 17(6) (a) of the Act. Counsel for the respondent argued that if leave is granted by this court the, application can be heard in by a full bench of this Division.

[7] Having considered the papers filed on record in this matter and having heard counsel, it is ordered that:

1. The applicant is granted leave to appeal against the judgment and orders of this court dated 30 January 2023.

2. Leave to appeal is granted to the full bench of this Division.

S. MSIBI
Acting Judge of the High Court
Gauteng Division, Johannesburg

Heard: 18 October 2023
***Ex Tempore* Judgment:** 18 October 2023
Written Reasons: 26 October 2023

Appearances:

For Applicants: SP Pincus SC
Instructed by: Howard S Woolf

For Respondent: A Cockrell SC
Instructed by: Glover Kannieppan Inc.