

REPUBLIC OF SOUTH AFRICA



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

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

Case No: 2022/034570

In the matter between:

KELLER GEOTECHNICS SA (PTY) LTD

APPLICANT

AND

FRANKS CONSTRUCTIONS (PTY) LTD

(Formerly known as ZERO AZANIA (PTY) LIMITED)

RESPONDENT

JUDGMENT

KAPLAN AJ:

1. In this matter the Applicant seeks an order placing Respondent under a final winding up order on the basis that Respondent is unable to pay its debts in terms of Sections 345(1)(c) of the Companies Act 61 of 1973 read with Item 9 of Schedule 5 of the Companies Act 61 of 2008.
2. Applicant contends that Respondent is indebted to it in the following amounts:
 - 2.1 The sum of R4 649 131.23 being the balance due and owing pursuant to an agreement concluded between the parties on 27 April 2020 (“the 27 April 2020 agreement”).
 - 2.2 R907 727.55 being the amount short paid to the Applicant in respect of “the SARB project”.
 - 2.3 R12 797 254.22 being the outstanding amount due and owing to the Applicant in respect of “the PIC project”.
3. Respondent has raised disputes in regard to Applicant’s claims set out in subparagraphs 2.2 and 2.3 supra on the basis that the said claims are not due and owing in the absence of payment certificates which are not before the Court and which cannot be added in the Replying Affidavit, because the Applicant must make out its case in its Founding Affidavit.

4. I am of the view that it is not necessary for me to become embroiled in the disputes in regard to the Applicant's claims set out in subparagraphs 2.2 and 2.3 supra. This is because I am satisfied that Applicant has established its claim set out in subparagraph 2.1 supra. In this regard:

4.1 The said claim arises out of the 27 April 2020 agreement between the parties.

4.2 The 27 April 2020 agreement:

4.2.1 is common cause on the papers;

4.2.2 records on page 1 in paragraph A that "Zero owes Frankie (Respondent)" an amount of R5 649 131,23;

5. Whilst Respondent admits the conclusion of the 27 April 2020 agreement and its terms, it baldly denies the recordal in paragraph A thereof that "Zero owes Frankie (Respondent)" an amount of R5 649 131.23". This bald denial is untenable and falls to be rejected. (See *FAKIE NO V CCII SYSTEMS (PTY) LIMITED* 2006 (4) SA 326 (SCA) and *WIGHTMAN T/A JW CONSTRUCTION V HEADFOUR (PTY) LIMITED AND ANOTHER* 2008(3) SA 371 (SCA).

6. Applicant avers in its Founding Affidavit that:

6.1 its attorney by way of a letter dated 13 January 2022 demanded payment of the outstanding balance of the admitted indebtedness (in the sum of R4 649 131.23) in the 27 April 2020 agreement;

6.2 a meeting was held on 10 March 2022 to discuss the Respondent's outstanding indebtedness to Applicant;

- 6.3 on 10 March 2022 Applicant's attorney addressed a letter to Respondent confirming the discussions between the parties at the meeting of 10 March 2022.
7. In its Answering Affidavit Respondent admits receipt of the letters in subparagraphs 6.1 and 6.3 supra from Applicant's attorneys and that the meeting on 10 March 2022 was held. It baldly denies the contents of the said letters.
8. I am of the view by virtue of the foregoing and in particular paragraphs 6 and 7 supra, that Applicant has proven Respondent's inability to pay its debts.
9. In conclusion I find that Applicant has made out a case for the winding up of Respondent in accordance with Section 345(1)(c) of the Companies Act 1973 and accordingly an order is granted in the following terms:
- 9.1 Respondent is placed in final liquidation in the hands of the Master of the above Honourable Court.
- 9.2 That the costs of this application be costs in the administration of Respondent's estate.

JL KAPLAN
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

Appearances:

Appearance for Applicant:

Adv L Acker

Instructed by:

KWA Attorneys

Appearance for Respondents:

Adv J H Lerm

Instructed by:

Crawford Attorneys

Date of hearing:

7 November 2023

Date of judgment:

10 November 2023