REPUBLIC OF SOUTH AFRICA

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

(1) REPORTABLE: NO (2) OF INTEREST TO OTHER JUDGES: NO (3) REVISED **24 JULY 2023** **FHD VAN OOSTEN**	**CASE NO: 3536/2022**

In the matter between

DOLLAR RENT A CAR	**FIRST APPLICANT**
THRIFTY RENT-A-CAR SYSTEM INC	**SECOND APPLICANT**
and	
YUNUS MOOLLA NO	**FIRST RESPONDENT**
IMRAAN MOOLLA NO	**SECOND RESPONDENT**
FOR THE TIME BEING	
THE TRUSTEES OF SAFY TRUST	**THIRD RESPONDENT**
SPRINGS CAR WHOLESALERS (PTY) LTD	**FOURTH RESPONDENT**

J U D G M E N T

(RULE 7 APPLICATION)

VAN OOSTEN J:

Introduction

[1] A unique and probably unprecedented situation has arisen in this case: the respondents' Rule 7 application which was initiated by a notice in terms of Rule 7 dated 4 February 2022, is now, after judgment has been delivered on the merits of the main application, being heard.

[2] A full set of affidavits was filed in the Rule 7 application and the determination thereof was reserved for hearing on the return day, by Vally J. When the hearing commenced before me, no attempt was made on behalf of the respondents to refer to and argue the rule 7 application. The hearing of the main application proceeded and travelled a long and winding road until final argument was heard and judgment delivered.

[3] The respondents filed an application for leave to appeal the judgment, which eventually, after the filing of heads of argument by both counsel, came up for hearing before me. One of the grounds in support of the application for leave to appeal was that no findings had been made in the judgment on the merits regarding the Rule 7 application.

[4] Counsel for the respondents contended that he 'was stopped' from arguing the Rule 7 application while presenting argument on the merits of the application and before judgment was delivered. The less said about this submission the better. It was the duty of counsel, as he was driven to concede, to ensure that the Rule 7 was called and heard at the opportune time. It is not for the court to *mero motu* issue directions as to when interlocutory applications should be heard. Regarding the Rule 7 application, the respondents are *domini litis* and counsel for the respondents was in duty bound to refer to the application and seek leave from the court to proceed with argument thereon, or to obtain directions from the court as to the hearing of the application. This counsel failed to do.

[5] The opportune time for the adjudication of a Rule 7 application, in general, is as soon as possible, which in the present case was when the matter was called for hearing on the return day, before me, and thus before the continuation of the hearing of the main application. The hearing of the matter on the first day, in any event, stood down for the filing of further affidavits, and no reason has been proffered, nor is there any, why the Rule 7 application was not called and continued with at that time. The

reason for a speedy determination of the application is immediately apparent from a reading of Rule 7: once authority is challenged, Rule 7 provides for the suspension of the hearing of the matter until the court is satisfied that authority has been established. It would accordingly make no sense for a Rule 7 application to be heard at the final stage of the hearing, even less so by raising it as an argument as part of the arguments presented on the merits of the application.

[6] I do not propose to say anything more on the procedure as it may well impact on the costs order eventually made in the Rule 7 application or this case. Suffice to say, both counsel in argument conceded that in the circumstances of this case, it would be just and equitable to hear the Rule 7 application, despite judgment in the main application having been delivered.

Application of Rule 7

[7] In argument before me, I raised with counsel the question whether Rule 7 applies regarding the issue requiring determination. Once again heads of argument were requested and both counsel complied. I am grateful to counsel for the helpful arguments presented on this novel point.

[8] Rule 7, under the rubric, Power of Attorney, provides as follows:

‘(1) Subject to the provisions of subrules (2) and (3) the power of attorney to act need not be filed, but the authority of anyone acting on behalf of a party may within 10 days after it has come to the notice of a party that such a person is so acting, or with leave of the court on good cause shown at any time before judgment, be disputed whereafter such person may no longer act unless he satisfied the court that he is so authorised to act, and to enable him to do so the court may postpone the hearing of the action or application.’

[9] Upon a strict interpretation of Rule 7, it applies only to challenges relating to the authority of anyone to act on behalf of a party. Although the Rule 7 application in this matter, addressed such authority, the original grounds relied on in the notice of motion, were abandoned, and the *locus standi* challenge raised and pursued. I agree with counsel for the respondents that the *locus standi* challenge was raised and ventilated in the Rule 7 application, and for that reason, the ambit of Rule 7 should, on the facts of this matter, be extended to include the *locus standi* challenge.

THE RULE 7 CHALLENGE

[10] In the notice of motion pertaining to the Rule 7 notice, the respondents dispute that the applicants have the appropriate authority to institute these proceedings in terms of Rule 7, and the applicants are called upon to demonstrate such authority with reference to, first, resolutions of directors of the first and second applicants duly authorising the applicants to bring these proceedings, second, resolutions of the appropriate trustees and/or liquidators and/or voluntary bankruptcy representatives who have been appointed in the liquidation proceedings, and third, such authority and/or powers of attorney demonstrating the authority of Dentons Attorneys to represent the applicants in these proceedings.

[11] None of these were persisted with at the hearing of the Rule 7 application. The goal post shifted to the single point taken that the second applicant, cited as Thrifty Rent-a-Car System Incorporated, is the incorrect party before court, does not exist and therefore lacks *locus standi* to claim the relief sought (the *locus standi* challenge), resulting in a 'fatal non-joinder'.

[12] The *locus standi* challenge came to the fore in the affidavits filed in the Rule 7 application, in particular the respondents' rebuttal affidavit. The applicants filed a resolution and power of attorney by Thrifty Rent-A-Car System Incorporated in the opposing affidavit in the Rule 7 application, regarding the second applicant, cited in the founding affidavit in the main application, as Thrifty Rent-A-Car System Incorporated, described as 'an American company duly incorporated in Tulsa Oklahoma, USA, with registration number 1900254253, and having its registered address at 5330 East 31 Street, Tulsa, Oklahoma 74135, United States of America', in respect of which the second applicant's 'certificate of incorporation' is attached. The 'certificate of incorporation' attached to the founding affidavit, comprising two certificates, reflect that Thrifty Rent-A-Car System LLC has filed in the office of the Oklahoma Secretary of State, 'duly authenticated evidence of a conversion, as provided for by the laws of the State of Oklahoma'. The certificate does not refer to the name Thrifty Rent-A-Car System Incorporated at all, nor that Thrifty Rent-A-Car System Incorporated has been converted to Thrifty Rent-A-Car System LLC. A number '1900254253' appears in-between two printed paragraphs on the second

certificate, which evidently was inserted by hand. No explanation exists for the presence of this number in manuscript, on the document.

[13] In response hereto, the respondents' attorney, in the rebuttal affidavit, states that a search conducted on the official website of Oklahoma Corporation and Business Entity Search, produced the result of showing three similar Thrifty entities, with names, Thrifty Rent-A-Car System Incorporated, with registration number 1900254253, Status: Inactive; Thrifty Rent-A-Car System LLC, with registration number 3512563636, Status: In Use; and Thrifty Rent-A-Car with registration number 1910250224, Status: Active. Only the first name and particulars reflect the details provided by the applicants regarding the second applicant. The deponent accordingly concluded that the second applicant was and is inactive and non-existent.

[14] In response hereto, the applicants filed a further resolution and power of attorney, this time under the name Thrifty Rent-A-Car System LLC, with registration number 1900254253. The applicants' explanation tendered is that Thrifty Rent-A-Car System Incorporated was converted to Thrifty Rent-A-Car System LLC.

ANALYSIS

[15] The citation and description of the second applicant, as well as the powers of attorney and resolutions filed, leave a distorted picture as to the identity and existence of the second applicant, or its conversion to Thrifty Rent-A-Car System LLC. The final resolution and power of attorney filed by the applicants reflect the name Thrifty Rent-A-Car System LLC, but the registration number is that of the second applicant, as cited. The certificate of conversion bears a handwritten number which is the registration number of the second applicant, while the website search, I have referred to, reveals the registration number of Thrifty Rent-A-Car System LLC as '3512563636'. If a conversion of the second applicant to Thrifty Rent-A-Car System LLC had in fact been affected, the citation of Thrifty Rent-A-Car System Incorporated, as the second applicant, appears to be incorrect. In any event the second applicant, as cited, is shown on the website as inactive, and although this evidence may be considered as hearsay evidence, I consider it necessary, in the

light of all the other considerations I have mentioned, to allow the evidence until proper proof of the identity of the second applicant has been presented.

CONCLUSION

[16] A dispute of fact exists as to the identity and existence of the second applicant. Had the Rule 7 application been heard at the commencement of the hearing of the return day, an order for referral of the *locus standi* challenge for the hearing of oral evidence, would have followed. Rule 7 clearly contemplates that when a challenge is made in terms of any party's authority to act or institute proceedings, the court may not proceed to hear the matter unless it is satisfied that the party before Court has the necessary authority to act, and provides for the postponement of the matter to enable proof of authority.

[17] I accordingly propose to grant the applicants the opportunity by way of presenting oral or documentary evidence, to prove the *locus standi* and effect the proper citation of the second applicant.

ORDER

[18] In the result, I make the following order:

1. The respondents' challenge relating the *locus standi* of the second applicant, is referred for the hearing of oral and/or documentary evidence before Van Oosten J, on a date to be arranged.

2. The following directions shall apply to the hearing contemplated in paragraph 1 above:

    2.1 The applicants shall within 30 days of the date of this order furnish the respondents with a list setting out the full names of the witnesses the applicants intend to call to testify, and a description of all documents to be used at the hearing.

    2.2 The respondents shall within 15 days thereafter furnish the applicants with a list setting out the full names of the witnesses the respondents intend to call to testify and a description of all documents to be used at the hearing

2.3 The applicants and respondents shall be entitled to request copies of all such documents discovered in terms of paragraphs 2.1 and 2.2 above.

2.4 The hearing will be conducted virtually by way of a Teams link to be provided, once a date for the hearing has been determined.

2.5 The parties are granted leave to approach this court for such further directions as may become necessary.

3. The further hearing of the application for leave to appeal is suspended until after the final determination of the *locus standi* challenge.

4. Costs are reserved.

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FHD VAN OOSTEN
JUDGE OF THE HIGH COURT

COUNSEL FOR APPLICANT	***ADV AJ JANSEN VAN VUUREN***
APPLICANTS' ATTORNEYS	***DENTONS***
COUNSEL FOR RESPONDENTS	***ADV GM AMEER SC***
RESPONDENTS' ATTORNEYS	***RAEES CHOTIA ATTORNEYS***
DATE OF HEARING	***10 MAY 2023***
DATE OF JUDGMENT	***24 JULY 2022***