

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

CASE NO: 70936/15

In the matter between:

**LINDE'S TRADING ENTERPRISE CC**

Applicant

(Registration number: 2006/16367/23)

and

**AFRICAN DYNAMICS GROUP (PTY) LTD**

Respondent

(Registration number: 2004/023060/07)

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**JUDGMENT**

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**Brand AJ**

**Introduction**

- [1] This is an application for the rescission of a final order for the liquidation of the Applicant granted in favour of the Respondent on 1 June 2016 by my brother Vorster ('the final liquidation order'). This final liquidation order was granted in confirmation of a rule *nisi* for provisional liquidation of the Applicant granted by my brother Ranchod on 18 April 2016 ('the provisional liquidation order').
- [2] The Applicant, Linde's Trading Enterprises CC ('Linde's Trading') is a close corporation with registration number 2006/16367/23 and registered address No 355 Muledane, Block J, Thohoyandou, 0905. Its sole member is one Lindelani Dzivhani, also the deponent to the Applicant's founding affidavit.

- [3] The Respondent is African Dynamics Group (Pty) Ltd ('African Dynamics'), a company with limited liability, duly registered as such in terms of the company laws of the Republic and with its principal place of business at 11 Sunbeam Street, Icon Industrial Park, Sunderland Ridge, Centurion.
- [4] The Applicant had not, as required by the Practice Directives of this court, filed a practice note or heads of argument at any time prior to the hearing of the matter. At the day of the hearing there was no appearance for the Applicant at court. Counsel for the Respondent handed up a list of correspondence with the Applicant's attorneys about the pending hearing of this matter, dating from 1 August to 16 October 2018, to show that the attorneys had been aware of the date of hearing. Counsel also informed me from the Bar that he had called the Applicant's attorneys shortly before the hearing was due to commence at 9:00 to find out whether they would be at court to proceed with the application. He spoke with a member of the firm, who simply informed him that they would not be at court.
- [5] Against this background it is appropriate for me to proceed to decide the application in the absence of the applicant, in particular given that this matter has been dragging on for two years, since the granting of the final liquidation order – finality is required.
- [6] Two issues must therefore be decided: whether the application may be granted; and the issue of costs.

### **The application for rescission**

- [7] The application for rescission of the final liquidation order is based on two grounds: that the Applicant was not aware of the proceedings instituted against it that resulted in the liquidation order and only became aware of it when summons was served to appear at a meeting of creditors on 14 March 2017; and that the Applicant had a 'proper defence' against the Respondent's

claims, being in sum that it had never entered into an agreement with the Respondent or received goods from the Respondent, so that it was in no way indebted to the Respondent.

- [8] In opposition the Respondent first raises three points *in limine*: that the founding affidavit to the rescission application was not properly commissioned; that the deponent to the founding affidavit was not authorised to attest to an affidavit on behalf of the Applicant; and that the duly appointed liquidators had not been joined as respondents. I deal with each these in turn.

**Founding affidavit not properly commissioned:**

- [9] Only the last page of the founding affidavit is signed by the deponent and the commissioner of oaths. None of the other pages of the affidavit are initialled by either. This means that the founding affidavit is not properly commissioned and as such not properly before this court. On this ground alone the application stands to be dismissed.

**Deponent to founding affidavit not authorised:**

- [10] The applicant having been finally liquidated by order of this court on 1 June 2016, and two liquidators duly having been appointed for the applicant's estate any legal proceedings brought by the applicant have to be authorised by liquidators.
- [11] The liquidators have not authorised this application and have specifically also not authorised the deponent to the founding affidavit to depose to that affidavit on the applicant's behalf. This results in the founding affidavit on a second count being irregular for lack of authorisation. Also on this ground the application stands to be dismissed.



### **Liquidators not joined:**

- [12] As stated above, the applicant having been finally liquidated and liquidators having been appointed for it, no legal proceedings may issue without the knowledge, authorisation and participation of the liquidators.
- [13] The liquidators should have been given notice of these proceedings and should have been cited as parties, given that they have a clear substantial interest in this application. Neither of these were done.
- [14] Also on this third point *in limine* the application should be dismissed.
- [15] Despite the application having already failed at the preliminary stage, I nevertheless proceed to its merits. Here also it fails.
- [16] The deponent to the applicant's founding affidavit's allegation that neither she nor the applicant had any knowledge of the proceedings against the applicant before the applicant was in June 2017 summoned to appear at a meeting of creditors is manifestly untrue. On the papers it is clear that the application for the applicant's liquidation was duly served on the applicant through a copy being handed to the deponent's domestic worker at the address that the applicant had agreed to for service of documents. It is also clear that the notice of set down and a copy of the liquidation application was served on the deponent for the Applicant (its only member) personally, at the same address, as was the order for the applicant's provisional liquidation. The Applicant clearly had knowledge of the proceedings against it and of the orders resulting from that, despite the deponent's denial.
- [17] As clearly untrue is the applicant's denial that it ever entered into an agreement with, received goods from and was indebted to the respondent. A signed agreement is on the papers before this court.
- [18] Also on the merits, therefore, the application must fail.

[19] All that remains is the issue of costs.

[20] The applicant's dilatory conduct in prosecuting its own application, culminating in its failure to appear at court on the day of the hearing and the inaccuracies and untruths contained in the founding affidavit persuade me that the application for rescission was brought only to further delay proceedings and postpone the conclusion of the liquidation process.

[21] In this light a punitive costs order is warranted.

[22] Accordingly I order as follows:

The application is dismissed with costs as between attorney and client.



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**JFD Brand**

**Acting Judge of the High Court**

Date of Hearing : 29 October 2018

Date of Judgment : 09 November 2018