



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

Case No: 2566/2021

In the matter between:

THE TRUSTEES OF THE N GEORGIU TRUST

Applicant for
leave to appeal

In re the intervention application of:

THE TRUSTEES OF THE N GEORGIU TRUST

Intervening Party

In re the matter between:

SYDNEY CLARENCE WILLIAM POOLE

Applicant

and

LUKE BERNARD SAFFY N.O.

RESPONDENT

DELETE WHICHEVER IS NOT APPLICABLE

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

DATE

SIGNATURE

JUDGMENT

HF JACOBS, AJ:

[1] On 5 February 2024 I dismissed the application to intervene as respondents brought by the trustees of the N Georgiou Trust in the sequestration proceedings of the estate of late Mr Georgiou and granted the provisional sequestration order returnable 29 April 2024. This is an application for leave to appeal against the dismissal of the application to intervene and dismissal of the application for postponement of the sequestration proceedings. The law applicable to applications for leave to appeal are recorded in *Hunter*¹ and I do restate the applicable principles here.

[2] Leave to appeal is sought on the basis that the appeal would have reasonable prospects of success on three grounds namely:

- (1) That another court may find that the trustees of the trust have the required standing in law that amounts to a real and substantive interest in the litigation and, therefore, a “*legal right*” to apply and be allowed to intervene in the sequestration proceedings as respondents;
- (2) That the two trustees have the capacity to intervene in the sequestration proceedings on a proper, contextual and purposeful interpretation of the trust deed, especially mindful of the content of clause 5 thereof; and
- (3) That the trustees have the right to intervene by reason of the legal consequences of the adopted Business Rescue Plan by

¹ *Hunter v Financial Services Board* 2017 JBR 0941 (GP)

the substantial majority of the body of creditors of the company mentioned in the main judgment.

[3] The trustees contend for a finding on the facts of the case that a provisional order for sequestration should not have been issued but that the proceedings should have been postponed and the trustees joined as respondents to have their rights considered later. In my opinion, for reasons recorded in the main judgment, the evidence does not justify such relief and that no prospect of success exists on appeal in this connection.

[4] Cumulatively to the above grounds of appeal leave to appeal is also sought in terms of sub-section 17(1)(a)(ii) of Act 10 of 2014 on the basis that doubt about the contextual interpretation of sub-section 152(4) of the Companies Act of 2008 exist and uncertainty prevails about its application to the facts of the present matter that require that leave to appeal should be granted to the Supreme Court of Appeal to resolve the mischief.

[5] I am not of the opinion that appeal would have reasonable prospects of success or that there exist conflicting judgments on the application of sub-section 154(2) of the Companies Act of 2008 or that there exist any other compelling reason why leave to appeal should be granted.

[6] The application for leave to appeal is refused with costs.

H F JACOBS
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand-down is deemed to be 14h00 on the 18th March 2024.

APPEARANCES

Applicant's counsel: Adv R Du Plessis SC

Applicant's attorneys: Mr Stefan Redelinghuys

Respondent's counsel: Adv L Bolt

Respondent's attorneys: Le Grange Attorneys