

SELMED INVESTMENTS (PRIVATE) LIMITED
versus
SOUTHERN CROSS LOGISTICS SOUTH AFRICA

HIGH COURT OF ZIMBABWE
CHIWESHE JP
HARARE, 07 July 2017 and 12 July 2017

Opposed Matter

Ms L. Rufu, for the plaintiff
H. Mutasa, for the defendant

CHIWESHE JP: On 14 December 2016 the plaintiff issued summons against the defendant, a peregrine, in terms of which it sought to recover the sum of \$30 963.95 being the value of a consignment that was consumed by the defendant. It also claimed interest at the prescribed rate and costs of suit.

The defendant entered appearance to defend on 17 January 2017 and, on 13 April 2017, it filed a special plea wherein it pleaded specially to the plaintiff's summons on the basis that such summons was a nullity as it was issued before the provisional order for attachment of property to found or confirm jurisdiction had been granted. For that reason the defendant prays that the plaintiff's summons be struck out and the claim be dismissed with costs.

The background facts are succinctly summarised by the defendant as follows. The plaintiff is a duly incorporated Zimbabwean company. The defendant is a peregrine, being a company incorporated in terms of the laws of South Africa. On 14 December 2016, the plaintiff instituted the present action. Thereafter it further instituted an application wherein it sought an order for the attachment of the defendant's truck to found or confirm jurisdiction. A provisional order was issued on 28 December 2016 authorising the attachment of the defendant's truck and its trailer. Same were subsequently attached pursuant to that

provisional order. The defendant has now pleaded specially to the plaintiff's summons. It avers that the summons is a nullity as it was issued before the grant of the order for the attachment of the property to found or confirm jurisdiction. In support of the special plea the defendant has argued that the plaintiff's summons is, for that reason, "incurably defective".

There is no merit in the special plea. I agree with the plaintiff's submission that where, as in this case, the defendant has property within Zimbabwe, it is not necessary for the plaintiff to seek leave of the Court in order to issue summons against the peregrinus. Indeed that is the import of s 15 of the High Court Act [*Chapter 7:06*]. Section 15 of the Act provides as follows:

"15 Exercise of jurisdiction founded on or confirmed by arrest or attachment

In any case in which the High Court may exercise jurisdiction founded on or confirmed by the arrest of any person or the attachment of any property, the High Court may permit or direct the issue of process, within such period as the court may specify, for service either in or outside Zimbabwe without ordering such arrest or attachment, if the High Court is satisfied that the person or property concerned is within Zimbabwe and is capable of being arrested or attached, and the jurisdiction of the High Court in the matter shall be founded or confirmed, as the case may be, by the issue of such process."

Thus actual attachment of the peregrinus' property and or his actual arrest is not necessary as long as it has been established that there is within the jurisdiction of the court property which can be attached or that the defendant being within the jurisdiction, can be arrested. See *Exparte Mor-Tal Construction Ltd* 1962 (2) SA 664.

The plaintiff further submits that the order for attachment that it obtained was meant to ensure that there would be property available to satisfy the judgment it may obtain against the defendant. That is one of the purposes of attachment. "Although the main object of the attachment is to find or confirm jurisdiction, a further object of the attachment is to furnish an asset against which execution can be levied to satisfy the judgment which may be given so that the Court's sentence will not be rendered nugatory or, as it has been called a *brutum fulmen*." Per Herbstein and Van Winsen, *The Civil Practice of the High Courts of South Africa* 5th Ed Vol (1) p 97.

For these reasons the special plea must be dismissed with costs. It is so ordered.