



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: 341/2015

In the matter between:

LA FARGE INDUSTRIES SA (PTY) LTD

Applicant

and

HIGH SIGHTS CC

Respondent

Court:	Canca, AJ
Date of Hearing:	8 December 2016
Date of Judgment:	13 December 2016

JUDGMENT

1. The applicant seeks leave to appeal to a Full Bench of this Court, alternatively to the Supreme Court of Appeal, against the whole of my judgment handed down on 8 November 2016 when I dismissed the applicant's rescission application with costs. This application is opposed by the respondent.

2. The judgment is attacked on approximately 19 grounds. The applicant contends that there are reasonable prospects that a Court of Appeal will find that I erred in one or more of these grounds. I do not consider it necessary to set out these grounds or to

transverse them separately for purposes of this judgment. They are set out in detail in the notice of the application for leave to appeal. I will only deal with the facts where it is necessary to do so as some are set out comprehensively in my judgment.

3. It was contended on behalf of the applicant that I erred, *inter alia*, in finding the explanation by the applicant's attorney, Ms Palm, to be unsatisfactory and that her partner's (Hollander) confirmatory affidavit (as the person who was seized with the matter before she took it over) unhelpful in clarifying the reasons for the default. The essence of Palm's explanation for the default was that Hollander failed to place a hard copy of the respondent's application to compel in the physical file on the matter. That application remained in electronic format in Hollander's computer, so the contention continued. I have dealt with this aspect of the matter in paragraph 10 of my judgment. However, even if I was wrong in finding that the applicant's explanation was not reasonable, the applicant's still had to satisfy two further requirements in order to have succeeded with her rescission application.

4. In paragraph 12 and 13 of the judgment, I set out my reasons for finding that the defence put up by the applicant was neither *bona fide* nor had any *prima facie* prospects of success in the event that rescission was granted. Repeating those reasons here does not justify judicial time as they are set out in detail in the aforementioned paragraphs.

5. In a parting shot and as the last arrow in her quiver, Ms Lombard argued that I also erred in not finding that the tender made on behalf of the applicant, at the hearing of the matter, to pay the respondent's costs of the application on an attorney and client scale, was a sufficient '*soothing balm*' in respect of any prejudice the respondent would suffer should I grant the rescission. Had I been inclined to grant the rescission

application on that basis, would have meant ignoring longstanding precedent on the grounds upon which rescission is granted. I was not persuaded by that argument and remain so.

6. Having considered all of the applicant's grounds of appeal to a Superior Court, I do not consider any of the grounds raised to attack my judgment sufficiently convincing that another Court would come to a decision which will differ from mine. Not only is this application lacking in merit, but patently, in my view, contains no basis which will convince a Court of Appeal to overturn my judgment.

7. In the result, I order as follows:

The application for leave to appeal is dismissed with costs.

CANCA, AJ

Appearances

For the Applicant:	Adv N Lombard
Instructed by:	Palm Hollander Attorneys Florida Johannesburg

For the Respondent:	Adv M Ipser
Instructed by:	Schliemann Inc Cape Town