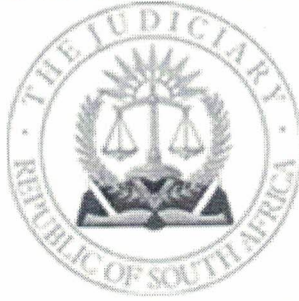


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 037765/2023

(1)	REPORTABLE: YES / (NO)
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
18/5/2023	
DATE	SIGNATURE

In the matter between:

CHERRIE PINK PTY LTD

Applicant

and

MONTANA STEEL CORD PTY LTD

Respondent

Neutral citation: *Cherrie Pink (Pty) Ltd v Montana Steel Cord (Pty) Ltd* (Case No. 037765/2023) [2023] ZAGPJHC 511 (May 2023)

JUDGMENT

MAKUME J:

- [1] On the 24th April 2023 the Applicant issued this Notice of Motion in accordance with the provisions of Rule 6 (12) of the Uniform Rules of Court and seeks the following relief:

- 1.1 That the Respondent be interdicted and restrained from directly or indirectly reconnecting the electrical supply to the property known as Erven 160, 166 and 180 Vulcania Extension 2 Brakpan situated at Vulcania, Industrial Complex, Uranium Road Vulcania Brakpan.
- [2] The Respondent was required to notify the Applicant of its intention to oppose by the 26th April 2023 and to file their Answering Affidavit by the 3rd May 2023.
- [3] The Applicant is the registered owner of the properties mentioned in 1.1 above. The Respondent is one of 18 entities that have concluded a lease of the property with the Applicant.
- [4] The lease agreement between the Applicant and the Respondent which was concluded during July 2020 lapsed due to effluxion of time. Despite such lapse the Respondent has remained on the leased property on a month to month lease.
- [5] The Applicant buys electricity from the Municipality via one Electrical supply agreement and resells it to the tenants of all 18 factories. Each month when the Applicant received its electricity account from the Ekurhuleni Municipality it calculates each tenants' monthly consumption and provides such tenant with a statement for payment. In the event such a tenant fails to make payment of its prorata share of

the electricity consumed the Applicant has the right to disconnect supply to such a tenant.

- [6] The Respondent as at February 2023 owes the Applicant well over R500 000.00 (Five Hundred Thousand Rand) being in respect of not only occupational rental but for electricity consumed on the property.
- [7] Despite promises to pay the Respondent failed to do so as a result on the 23 February 2023 the Applicant disconnected electricity supply to the unit occupied by the Respondent. On the 24th February 2023 the Applicant reconnected electricity after one of the Respondent's Directors had pleaded that payment would be forthcoming.
- [8] As on the 1st March 2023 the Respondent owed the Applicant an amount of R619 473.99 being for electricity consumption as well as occupational rent. The Respondent could only make payment of an amount of R280 000.00 as a result on the 19th March 2023 the Applicant disconnected electricity supply to the Respondent's leased unit.
- [9] The Respondent illegally reconnected the supply on two occasions after it had been disconnected by the Applicant. On the 4th April 2023 John Habib one of the Respondent's director chased the Applicant's director and threatened him with physical violence should he disconnect

- [10] The Respondent appeared before this Court on the 8 May 2023 represented by Advocate Coetzee whilst the Applicant is represented by Advocate Norman. By agreement the application was stood down to Friday the 12 May 2023 to enable the Respondent to file its Answering Affidavit by Wednesday the 10 May 2023 and the Applicant to file its Replying Affidavit by the 11th May 2023.
- [11] The Respondent filed its Answering Affidavit as well as Counterclaim basically alleging that the Applicant by disconnecting electricity supply had spoliated such. Secondly the Respondent for the first time in answer raised the issue about the correctness of the amount owing. This is absurd because prior to that during February 2023 after the Applicant had disconnected the Respondent did not dispute the amount owing and made an offer of settlement.
- [12] The Counter application is likewise an absurdity. It is firstly procedurally incorrect in that there is no notice of motion setting out what relief the Respondent seeks. In any event such request falls short of satisfying the requirements of a *mandament van spolie*.
- [13] In the first place to succeed with such application it had to have been launched soon after the first disconnection in February 2023 the Respondent did not do so because it knows that it had not been spoliated because it is bound by a contractual agreement.

[14] To succeed with the application for a spoliation the Respondent is required to prove the following:

- (a) That it was in peaceful and undisturbed possession; and
- (b) That it was unlawfully deprived of such possession.

[15] It is common cause that at the time that this application was launched the Respondent is currently in possession so there is nothing to restore. It is trite law that disconnection of electricity supply does not amount to spoliation.

[16] The Court in the matter of **Wilrus Trading CC and Another v Dey Street Properties (Pty) Ltd Case No 1750/2021 Gauteng Division** held as follows:

“The mere existence of such supply is in itself insufficient to establish a right constituting an incident of possession of the property to which it is delivered....The rights that flow from a contractual nexus between the parties are insufficient as they are purely personal and a spoliation order in effect would amount to an order of specific performance in proceedings in which a Respondent is precluded from disproving the merits of the Applicants claim for possession.”

[17] There is no merit in the Counterclaim because the Respondent reconnected itself illegally and presently has electricity supply.

[18] The Applicant in this matter is the owner of the property and is responsible to pay to the Municipality the total amount debited to it for electricity consumption. The Applicant thus has a clear right to demand payment of the Respondent share of electricity consumed in terms of the lease agreement.

[19] The Applicant has no other remedy after it had successfully applied for a money judgement against the Respondent which amount remains unpaid.

[20] I am satisfied that the Applicant has made out a case both on urgency and on the merits whilst on the other hand the Respondent has failed to prove that it has been spoliated.

[21] I the result I make the following order

ORDER

1. That the normal forms and service, provided for in the rules, be dispensed with and that this application be heard as one of urgency in terms of Rule 6(12).
2. That the Respondent is ordered to allow the Applicant to access the leased premises, as well as the electricity meter on the premises, which is situated at Erven 160, 166 and 180, Vulcania

Extension 2, Brakpan situated at Vulcania Industrial Complex, 1 Uranium Road, Vulcania, Brakpan.

3. The Respondent is interdicted from directly or indirectly reconnecting the electricity supply to the aforementioned premises
4. The counter application is dismissed with costs.
5. The Respondent is ordered to pay the wasted costs of the 9th May 2023.

DATED at JOHANNESBURG this the 18th day of MAY 2023.



M.A. MAKUME
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

DATE OF HEARING : 12 MAY 2023
DATE OF JUDGMENT : 18 MAY 2023
FOR APPLICANT : ADV L NORMAN
INSTRUCTED BY : MESSRS DIPPENAAR ATTORNEYS
FOR RESPONDENT : ADV COETZEE
INSTRUCTED BY : MESSRS PETER COETZEE ATTORNEYS