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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case number: 2022/055474

[1] REPORTABLE: NO
[2] OF INTEREST TO OTHER JUDGES: NO
[3] REVISED: NO

SIGNATURE

DATE: 20 FEBRUARY 2024

In the matter between:

ENGEN PETROLEUM LIMITED

Applicant

and

SEDIA GROUP T/A ENGEN NORTHMEAD

Respondent

Summary:

Eviction – *Commercial eviction.*

JUDGMENT

Z KHAN AJ

INTRODUCTION

[1] This is an application for the eviction of the Respondent from commercial premises, more particularly a fuel garage site.

[2] The parties concluded a written lease agreement commencing on 1 July 2015 and ending on 31 March 2020. The Applicant cancelled the Respondents agreement of lease on 18 March 2020. The agreement was cancelled on the basis of the Respondents continuous breach of the terms of the lease agreement, including a failure to purchase sufficient fuel stock and allowing the site to 'run dry', meaning that there was not sufficient fuel stock on hand to sell to customers of the site.

[3] The Respondents representative, Mr Donald Tshukudu acknowledged receipt of the termination letter in an email dated 25 March 2020 and he went on to state '*I do acknowledge challenges that have been happening in the business, which resulted in the terminator letter that I've just received. Could you please given me 30 days to sell the business, if after 30 days, I haven't sold the site, you may immediately terminate our contract.*'.'

[4] The agreement of lease ended by efflux of time on 31 March 2020. On 8 December 2022, the sheriff of the court served the application process in this matter on the Respondents at the business premises. The sheriffs return of service and accompanying photographs of the premises recorded that the premises was vacant and no business was being conducted at the premises. Prima facie, it would appear that the premises had already been vacated.

[5] The Respondent puts up two defences in the papers, a failure to afford the Respondent 12 months notice before terminating the lease and conduct of the Applicant that led to the financial collapse of the Respondents business.

[6] I am satisfied on the papers that the Respondent was afforded numerous opportunities to remedy breaches. Written notices were delivered to the Respondent and Respondents own admissions annexed to the papers put paid to this defence. In any event, the agreement of lease has ended by the efflux of time and the

Respondent cannot rely on a lease agreement that has ended to extend its occupation, which according to the Sheriff is non-existent.

[7] The Respondent also raises a defence related to a refurbishment ('revamp') of the site by the Applicant that gave rise to the Respondents financial difficulties. The revamp was carried out in 2018 for a period of 2 months. Applicant further refers to the contract between the parties allowing Applicant to carry out such refurbishments to the site. There is no counterapplication for damages nor has Respondent indicated that it has issued a summons for damages arises from such alleged prejudice suffered at the hands of the Applicant.

[8] I am also not certain what to make of Respondents allege claim that arose in June 2018 and this application being issued in December 2022. What appears evident is that Respondent has done nothing to further its claim for damages. Notwithstanding, such a claim in damages is no bar to the eviction.

[9] The Respondent version in relation to the revamp is terse and unsubstantiated by documentation relating to a dispute, prejudice or a loss of profit. It would appear that Respondent attempted to sell the business (or the right to trade in terms of a retail operators licence) and the Applicant was not agreeable to such sale. The Respondent has no right in law to compel the Applicant to agree to sell the business to any third party.

[10] The Respondent argues that it must be allowed to sell the business. I cannot agree with such a submission.

[11] The Respondent argues that the lease agreement remains valid in terms of clause 44 of the agreement of lease. I cannot agree with this submission. Even if the Respondent is correct that there ought to be 12 months' notice, then I accept that the Notice of Motion in this application serves as notice. 12 months have passed. Clause 44.2 states

'If the Company intends or elects for any reason not offering the Dealer another opportunity to lease the Premises from the Termination Date of this Agreement, the Company shall endeavour to advise the Dealer in writing at least twelve months prior to the Termination Date of this Agreement. If such an advise is not provided at least twelve months prior to the Termination Date of this Agreement, the Company may still provide such advice at any time prior to the Termination Date of this Agreement provided that the Dealers' tenure at the Premises will then be extended for a period beyond the Termination Date of this Agreement to ensure that the Dealer will have received at least twelve months' notice....' (*sic*)

[12] The Applicant says the agreement has been properly cancelled. I agree. Even if the Respondents version is to be accepted then the Respondent has received 12 months' notice by virtue of the Notice of Motion in this application and the Respondent could have vacated 12 months after receipt of the Notice of Motion and avoided any cost implication.

[13] The Respondent argues that the parties must attempt to resolve their differences in terms of the dispute resolution mechanism of the lease agreement. I cannot agree with this submission. The Respondent presents no right for the ouster of the court's jurisdiction.

[14] I have considered the Respondents argument relating to contractual fairness arising from Beadica and other judgments. The contract before the court is objectively fair. The contract is likewise subjectively fair and the Respondent has not placed any material facts and information before this court to exercise an equity discretion.

[15] In the result the following order is made:

1. The Respondent (and all persons holding occupation through the Respondent) are ordered to vacate the premises situated at Portion 1 of Erf 6[...] B[...] T[...] situated at C[...] 1st S[...] & 9[...] A[...] N[...], B[...] i, G[...].

2. The Sheriff is authorised, mandated and directed to forthwith do and take all necessary steps to give effect to and execute the order above and, if necessary, to obtain the assistance of the South African Police Service in this regard.

3. The Respondent shall pay the cost of this application on the attorney client scale.

Z KHAN

ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

This judgment was handed down electronically by circulation to the parties' and/or parties' representatives by email and by being uploaded to Caseline. The date and time for hand-down is deemed to as reflected on the Caseline computer system.

DATE OF HEARING: 20 FEBRUARY 2024

DELIVERED: 20 February 2024

APPEARANCES:

COUNSEL FOR THE APPLICANT: ADV. D MOKALE

**ATTORNEY FOR THE APPLICANT: GOVENDER DLADLA
PATEL ATTORNEYS**

COUNSEL FOR THE RESPONDENT: IN PERSON

ATTORNEY FOR THE RESPONDENT: PAUL T LEISHER INC