



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

Case Number: 15935/2021

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
	
E.M. KUBUSHI	
DATE: 20 FEBRUARY 2023	

In the matter between:

PIETER STEENKAMP

APPLICANT

and

SASFIN BANK LIMITED

FIRST RESPONDENT

SUNLYN (PTY) LTD

SECOND RESPONDENT

In re:

SASFIN BANK LIMITED

FIRST PLAINTIFF

SUNLYN (PTY) LTD

SECOND PLAINTIFF

and

PIETER STEENKAMP

FIRST DEFENDANT

WERNER GUNTHER HATTINGH

SECOND DEFENDANT

JUDGMENT

KUBUSHI J

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 10h00 on **20 February 2023**.

INTRODUCTION

[1] The application turns on the reconsideration of the default judgment granted by the Registrar.

[2] The Respondents had instituted action against the Applicant and one Werner Gunther Hattingh ("Mr Hattingh"). The Applicant and Mr Hattingh did not defend the action, and the First Respondent applied to the Registrar for a default judgment against them. The Registrar granted the default judgment on 23 September 2021.

[3] The Applicant has, pursuant to the said judgment, approached this Court in terms of Uniform Rule 31(5)(d), for the reconsideration of the judgment, on the grounds that he is not in wilful default and has a *bona fide* defence to the Respondents' claims.

FACTUAL MATRIX

[4] The Respondents' action against the Applicant and Mr Hattingh was based on four distinct contractual claims. Claims A, B and C were claims instituted against the Applicant, whereas Claim D was a claim instituted against Mr Hattingh. The Respondents' claims arise from several hiring contract for supplying and renting electronic equipment ("the Master Rental Agreements") that a company known as Brits Poles (Pty) Ltd ("Brits Poles") entered into before its liquidation, with a concern called CopyStar (Pty) Ltd ("CopyStar") and a company known as Digicore Financial Services (Pty) Ltd ("Digicore").

[5] Three of the Master Rental Agreements were concluded with CopyStar and form the subject matter of Claims A, B and C. One Master Rental Agreement was concluded with Digicore and forms the subject matter of Claim D. The Applicant and Mr Hattingh are said to have also concluded a number of continuing covering Guarantees in terms of which they each signed as sureties and co-principal debtors for the debts owed by Brits Poles.

[6] The various Master Rental Agreements (and the associated Guarantees) were in due course ceded to the First Respondent. Brits Poles is said to have breached each of the various Master Rental Agreements as a consequence of non-payment of rentals, which resulted in the First Respondent cancelling each of the Master Rental Agreements. Consequently, Brits Poles became indebted to the First Respondent in terms of the various Master Rental Agreements in respect of (i) arrear rental, and (ii) accelerated future rentals that the First Respondent would have received had the various Master Rental Agreements run their course.

[7] When Brits Poles went into liquidation, the First Respondent claimed the monies due from the Applicant and Mr Hattingh, alleging that the Applicant was jointly and severally liable with Brits Poles to the First Respondent, in respect of Claim A, B and C; and, that Mr Hattingh was jointly and severally liable, with Brits Poles to the First Respondent, in respect of Claim D.

APPLICABLE LAW

[8] Uniform 31(5)(d) provides that any party dissatisfied with a judgment granted or direction given by the Registrar may, within 20days after such party has acquired knowledge of such judgment or direction, set the matter down for reconsideration by the Court.

[9] It has been held that the power accorded to the Court under subrule 31(5)(d) was that of substituting its discretion for that of the Registrar.¹ The good cause criteria applicable under subrule 31(2)(b) were held to be applicable when a Court, in terms of subrule 31(5)(d), reconsiders a default judgment granted by the Registrar.²

[10] Rule 31(2)(b) provides that a Defendant may within 20days after acquiring knowledge of such judgment [judgment granted in default], apply to Court upon notice to the Plaintiff to set aside such judgment, and the Court may, on good cause shown, set aside the default judgment on such terms as it deems fit.

[11] The requirements for an application for rescission of judgment under subrule 31(2)(b), have been stated and restated in numerous judgments. The author, *Erasmus*,³ restated them as follows:

- a. He (that is, the Applicant) must give a reasonable explanation of his default. If it appears that the default was wilful or that it was due to gross negligence the Court should not come to his assistance.
- b. His application must be *bona fide* and not made with the intention of merely delaying the Plaintiff's claim.
- c. He must show that he has a *bona fide* defence to the Plaintiff's claim. It is sufficient if he makes out a *prima facie* defence in the sense of setting averments which, if established at the trial, would entitle him to the relief asked for. He need not deal fully with the merits of the case and produce evidence that the probabilities are actually in his favour.

¹ See *Pansolutions Holdings Ltd v P&G general Dealers & Repairers CC* 2011 (5) SA 608 (KZD) at 611F.

² *FirstRand Bank Ltd v Maleke and Three Similar Cases* 2010(1) SA 143 (GSJ) at 152F - G and 152I - J.

³ *Erasmus*: Superior Court Practice Volume 2 pD1-366.

THE ISSUE FOR DETERMINATION

[12] The issue of default by the Applicant is not contested in these proceedings. The parties are in agreement that it is clear from the papers that service of the summons had not come to the attention of the Applicant. It is, also, not this Court's understanding that the requirement of a *bona fide* application, is at issue. What, in this Court's view, remains at issue, is the requirement of a *bona fide* defence. The question being whether the Applicant has in these papers, established that he has a *bona fide* defence to the Respondents' claims.

THE APPLICANT'S DEFENCE

[13] The Applicant raised a number of defences in his papers supporting his allegation that he has a *bona fide* defence against the Respondents' claims. However, in oral argument, counsel for the Applicant, limited the said defences to two *in limine* points and a defence on the merits. For the decision that this Court finally comes to, it found it necessary to deal only with the defence to the merits. The two points *in limine* are, therefore, not dealt with in this judgment.

[14] In establishing whether or not he has a *bona fide* defence, the Applicant relies on the rectification defence. He contends that the written Master Rental Agreements he signed, do not accurately record the agreement between the parties, and must be rectified to record the true agreement between the parties.

[15] He contends that the averments in the Respondents' Particulars of Claim, that he signed all the Master Rental Agreements with Copystar as director of Brits Poles, are incorrect. The Applicant's allegation, as contained in his Plea, is that he was never a director of Brits Poles, nor did he hold himself out to be one, and that it is Mr Hattingh who was the sole director of Brits Poles.

[16] According to the Applicant, he did not negotiate the transactions. The transactions had been concluded by Mr Hattingh and he was authorized in his capacity as the Financial Manager, in Mr Hattingh's absence, to sign the agreements in respect of the further equipment that was to be supplied by the same party and on the same terms and conditions.

[17] The Applicant, further, alleges that CopyStar's representative completed the documents and indicated where he (the Applicant) had to sign, without explaining any of the documents to him. He, also, did not ask because as far as he was concerned, the transaction had been fully negotiated by Mr Hattingh, and all the terms and conditions already agreed to. It was never his intention to commit himself as surety for Brits Poles' debts, nor was it agreed or required of him to do so, as he was, merely, an employee of Brits Poles. If any sureties were required, Mr Hattingh or the shareholders of Brits Poles would have had to provide such surety or security.

DISCUSSION

[18] The test for whether a *bona fide* defence has been made out for purposes of rescission applications, which it has been held is also applicable in reconsideration applications against a judgment granted by the Registrar in default, is as set out in *Erasmus* above. The Applicant should only make averments which, if established at trial, would entitle him to the relief asked for.

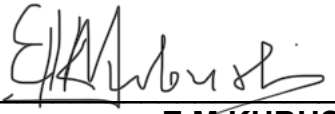
[19] This Court is satisfied that the averments made out by the Applicants in his founding affidavit and as specifically orally argued before this Court, in support of his defence against the Respondents' claims, if established at trial, are sufficient to can avail him of the relief he seeks.

[20] It is trite that the purpose of a rescission application, is to give an opportunity to the parties to ventilate a real dispute at trial. Similarly, it is the purpose of a reconsideration application to give the parties a chance to ventilate their dispute at trial. Having found that the Applicant has a *bona fide* defence to the Respondents' claims, he ought to be granted an opportunity to defend the claims against him.

ORDER

[21] Accordingly, the following order is made:

1. The application is granted.
2. The Applicant is granted leave to defend the main action.
3. Costs of this application are reserved for adjudication in the main action.



E.M KUBUSHI
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES:

APPLICANT'S COUNSEL:	JE PIENAAR
APPLICANT'S ATTORNEYS:	MOLLER & PIENAAR ATTORNEYS
RESPONDENTS' COUNSEL:	ADV E FASSER
RESPONDENTS' ATTORNEYS:	WRIGHT, ROSE-INNES INCORPORATED