

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

Case No: 32355/2020

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE 23 NOVEMBER 2023

SIGNATURE

In the matter between:

ROAD ACCIDENT FUND

Applicant

And

NEWNET PROPERTIES (PTY) LTD

Respondent

J U D G M E N T

MAKHOBHA, J

[1] The applicant seeks an order to rescind and set aside the default judgment granted against it on 9 December 2020.

[2] The applicant is the Road Accident Fund, a Schedule 3 public entity, established in terms of Section 2 (1) of the Road Accident Fund Act, 56 of 1996 [“the RAF Act”] having its principal place of place of business situated at

4[...] W[...] -H[...] Avenue, E[...] -G[...] 2, Centurion, Tshwane, Gauteng Province.

- [3] The respondent is Newnet Properties (PTY) LTD, a private company duly registered and incorporated with limited liability in accordance with the laws of the Republic of South Africa. The respondent is a private hospital, which provides hospital accommodation and medical service and goods to its patients.
- [4] The application is brought in terms of Rule 42 of the Uniform Rules of Court and the common law relating to the rescission of judgment. Furthermore, the applicant is asking this court to condone the late filing of this application.
- [5] On 29 July 2020, the respondent issued summons against the applicant for past medical and hospital expenses incurred in respect of a patient who was involved in a motor vehicle collision.
- [6] On 12 August 2020 the respondent applied for a default judgment against the applicant in the amount of R 2 603 834.68. On the 9 December 2020 the default judgment was granted in the amount of R 2 603 834.68.
- [7] The applicant contends that for default judgment to succeed, the respondent should have furnished the court with an affidavit by a medical practitioner in order to prove its damages.
- [8] The applicant submitted that the reasons why it failed to file its application on time is due to various reasons that included the data breach that occurred at the applicant's offices during 2021. The applicant argues that the judgment was erroneously granted.
- [9] The respondent submitted that the applicant has already paid and only R47 149.29 is outstanding.

- [10] When the applicant made payment in my view, the applicant accepted the judgment, in other words the applicant acquiesced to the judgment.
- [11] It is only in exceptional circumstances that the court will correct, alter, or supplement its judgment see *Firestone SA (Pty) Ltd v Gentiruco AG 1977 (4) SA 298 (A)*.
- [12] It is apparent from the papers that the applicant knew that default judgment is to be taken against it and did nothing to stop it but acquiesced to the judgment.
- [13] I therefore conclude that applicant failed to satisfy the requirement of a rescission in terms of Rule 42 (1) (a) of the Uniform Rules of Court.
- [14] The conduct of the applicant by failing to defend both the action and the default judgment but instead apply for rescission of judgment must be frowned upon and deserve to pay costs on a punitive scale.
- [15] The application is dismissed, applicant to pay costs on attorneys and client scale.

MAKHOB A J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD AND RESERVED JUDGMENT: 16 OCTOBER 2023

JUDGMENT HANDED DOWN ON: 23 NOVEMBER 2023

Appearances:

For the Applicant: Adv C M Rip (instructed by) Malatji & Co Attorneys

For the Respondent: Adv M van Rooyen (instructed by) Kritzingers Attorneys.