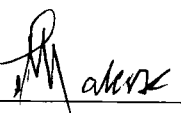




IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: ☒ YES / NO
(2) OF INTEREST TO OTHER JUDGES: ☒ YES / NO
(3) REVISED
2015.03.20
DATE

SIGNATURE

CASE NUMBER: 61116/13

DATE: 20 March 2015

GERT FREDERIK GROBLER

Applicant / Plaintiff

V

GREENFIELD GROWING SYSTEMS (PTY) LTD

Respondent / Defendant

JUDGMENT

MABUSE J:

- [1] This is an application by the applicant in terms of Rule 30A of the Uniform Rules of Court. It is brought against the respondent on the basis that the respondent has failed to comply with Rule 18(6) of the Uniform Rules of Court.

- [2] The applicant is a major male farmer of Koringfontein in the district of Middelburg in the province of Mpumalanga. He is the plaintiff in the main action of the current interlocutory application. The respondent is a company duly registered in terms of the Companies Statutes of this country with its registered address situated at 7 Barrat Road, Unit 13, Faktoria, Krugersdorp, Gauteng Province. The respondent is the defendant in the main action. For purposes of convenience I shall refer to the parties by the names they chose to call themselves in the main action.
- [3] By the combined summons issued by the registrar of this Court on 20 September 2013, the plaintiff claims from the defendant payment of the sum of R569,140.92 together with further ancillary relief. The plaintiff's claim is allegedly based on an oral agreement concluded between the parties either at or near Groblersdal or alternatively Krugersdorp during December 2012.
- [4] Having been served with a copy of the combined summons, the defendant pleaded to the said summons. On 14 February 2014 a copy of its plea was served on the plaintiff while the original thereof was filed with the registrar of this Court on an unknown date. It is not in dispute though that the defendant has delivered its plea.
- [5] In paragraph 4 of the said plea, the defendant had pleaded that:
- "In amplification of the aforesaid denial the Defendant pleads that on or about 23 November 2012, the Plaintiff and the Defendant, both duly represented, entered into*

a written agreement. A copy of the agreement is annexed hereto marked as Annexure GGS1."

Despite the assertion contained in the said paragraph 4 that a copy of the agreement was attached to the plea as Annexure 'GGS1', no such annexure was attached.

- [6] The failure of the defendant to attach the said written agreement marked Annexure 'GGS1' to the plea, prompted the plaintiff to deliver a notice in terms of Rule 30A on the defendant on 5 March 2014. The first paragraph of the said Rule 30A notice stated that:

"GELIEWE KENNIS TE NEEM dat die Eiser die Verweerder hiermee kennis gee dat sy pleit (paragraaf 4 daarvan) nie voldoen aan die bepaling van Reel 18(6) deurdar hy beweer dat daar 'n skriftelike kontrak is en dat hy versuim het om gemelde kontrak aan te heg."

Then the second paragraph continued as follows:

"GELIEWE KENNIS TE NEEM dat tensy gemelde skriftelike kontrak binne 10 (tien) dae na ontvangs van hierdie kennisgewing in hierdie kantoor beteken word, 'n aansoek in bogemelde Agbare hof gebring sal word om die Verweerder te verplig om aan die reël te voldoen alternatiewelik dat die Verweerder se verweer geskrap word en dat die Eiser se eis toegestaan word met koste."

Then the defendant's attorneys were Attorney McCabe. Despite service of the said Rule 30A notice on it, the defendant still failed to react to it.

[7] This led to the plaintiff taking a further step. On 22 April 2014, the plaintiff delivered on the defendant another application in terms of Rule 30A, this time seeking an order compelling the defendant to supply “the plaintiff / applicant with a copy of the agreement as referred to in AD paragraph 3 of its plea and referred to as *“GGS1 within 10 (ten) days from service of the order ...”*”

This application was supported by the affidavit of the plaintiff’s attorney, one Mr. Jasper Van der Westhuizen. In the said affidavit the plaintiff’s attorney had complained that despite various telephone requests, then letters of demand followed by a notice in terms of Rule 30A the defendant had blatantly refused to co-operate by supplying a copy of the agreement. The said attorney pointed out the difficulty of proceeding with the matter without the said written agreement. The hearing of this application was scheduled for 19 June 2014. The defendant had at this stage seemingly engaged the services of a new set of attorneys. The above application was served on the new attorneys.

[8] In response to the said application in terms of Rule 30A the defendant’s attorneys, now McCabe, delivered the Annexure ‘GGS1’ which they erroneously dubbed *“Annexure GGS1 of the Plaintiff’s Particulars of Claim.”* The said annexure was titled PROFORMA INVOICE. It was dated 23 November 2012 and had the words “Attention Gert Grobler”. It had four columns. In the first column was the figure “1”. In the second column was a lengthy description of the items involved. In the third column was the sum “R491,446.70” which represented the unit price. In the amount column, the fourth and last column, was the same amount that appeared in the third

column. The total, after adding 14% of VAT of R68,802.54, was R560,249.24. All these details appear in the first of the two pages of Annexure 'GGS1'.

[9] On the second page firstly appear the following words:

"GREENFEED® GROWING SYSTEMS PAYMENT TERMS AND CONDITIONS OF QUOTATIONS."

These was followed by:

"OUR STANDRARD PAYMENT TERMS".

which were then followed in that order by:

"CONDITIONS OF QUOTATIONS".

"STANDARD CONDITIONS OF ERECTING AND NORMAL PROCEDURE". and

"GENERAL".

Almost at the bottom it has the words:

"PURCHASER TO FILL OUT AND SIGN".

which is followed by a provision for the full names of the purchaser signifying his acceptance of the quotation and its conditions. This space has not been signed. In other words no one has filled in his names in that space as the purchaser. There is at the foot of this page space for the date and the signature of the purchaser. This page too has not been completed. The details required herein have also not been furnished.

[10] In a letter dated 18 June 2014 to McCabe Attorneys, the plaintiff's attorneys had indicated that they would proceed with the application in terms of Rule 30A on 19

June 2014. In a subsequent letter dated 18 June 2014, the plaintiff's attorneys indicated that the Rule 30A application would on 19 June 2014 be postponed *sine die* and that costs would be reserved. On 25 July 2014 the plaintiff's attorneys served a new Rule 30A application on the defendant's attorneys. This took place despite the fact that on 13 June 2014 the defendant's attorneys had delivered Annexure 'GGS1', the written agreement.

[11] On 22 August 2014 the defendant delivered its answering affidavit supported by the affidavit of one Emma Jane Burnett, an adult female attorney. In this affidavit the said attorney contended that Annexure "*GGS1 of the Particulars of Claim*" had been served on the plaintiff's attorneys on 13 June 2014. She further stated that Annexure 'GGS1' was a copy of the written agreement entered into between the parties.

[12] There is no doubt in my view that the Defendant has delivered what it considered to be a written agreement even if the Plaintiff has a different view. The decision whether the document is a contract should be left for the determination of the trial court. The duty of this court is to investigate the Plaintiff's and having done so to decide whether or not the Defendant has complied with such a request. As was correctly pointed in the Defendant's counsel's heads, it is clear that at the heart of the dispute is the question whether a written agreement when as contemplated by Rule 18(6), refers to a signed agreement only. Quite evidently the crux of the Plaintiff's , as encapsulated in the following paragraphs of his counsel's heads, is

that the agreement that the Defendant refers to as Annexure GGs1 has not been signed and for that reason the Defendant has not complied with Rule 18(6). In the middle of her heads of argument, the Plaintiff's counsel had this to say in paragraph 3.5:

"I humbly submit that an unsigned copy of an agreement can never constitute an agreement entered into between the parties. The defendant is thus obligated to provide the Plaintiff with a TRUE copy and/or the true agreement as pleaded in the defendant/respondent's plea."

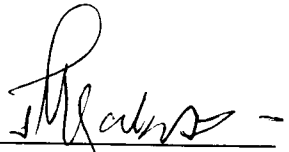
The last sentence of paragraph 3.6 of the same heads states as follows:

"To date the defendant/respondent alleges that they have supplied the plaintiff with a copy of the alleged written agreement and once again refers to unsigned copy of same."

[13] Rule 18(6) does not require a party who relies on a written agreement to deliver a signed written agreement. The application by the Plaintiff, having been served with what the Defendant, rightly or wrongly refers to as a written agreement, to seek to compel the defendant to deliver a signed written agreement is, in my view, misguided. The authorities that Mrs Spangenberg referred this court to were unhelpful on the issue raised in the preceding paragraph.

I have not been persuaded that the Plaintiff has made out a good case for the relief he seeks with his application. The application can therefore not succeed.

Accordingly the application is refused with a further order that the costs of this application be costs in the main action.



P. M. MABUSE

JUDGE OF THE HIGH COURT

Appearances:*Counsel for the Applicant:**Adv. C. Spangenberg**Instructed by:**Jasper Van der Westhuizen & Bodenstein Inc.**Counsel for the respondents:**Adv. L. Steyn**Instructed by:**McCabe Attorneys**Date Heard:**17 March 2015**Date of Judgment:**20 March 2015*