

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 69476/2012

(1)	REPORTABLE: YES / <u>NO</u>
(2)	OF INTEREST TO OTHER: YES / <u>NO</u>
(3)	REVISED. JUDGES
	<u>2013.06.14</u> <u>[Signature]</u>
	DATE SIGNATURE

14/6/2013

In the matter between:

CHRISTA ROSSOUW

Plaintiff

and

UNITED CHURCH SCHOOL

Defendant

J U D G M E N T

MAKGOKA, J:

[1] This judgment has taken unnecessarily long to deliver. The application was argued before me on 25 April 2013. An administrative error occurred in my office which resulted in the matter not being placed on my list of reserved judgments. As a result, the matter did not receive my immediate attention. I regret any inconvenience caused by the delay.

[2] This is an opposed application for summary judgment. The plaintiff claims from the defendant, an amount of R91 000. The plaintiff claims that it entered into a lease agreement with the defendant on 20 November 2007, in terms of which the plaintiff let to the defendant certain property for a fixed period of 3 years starting on 1 January 2008 until 31 December 2010, against payment of rental in the amount of R5 500 per month. According to the plaintiff, it was also agreed that the defendant would be liable for payment of the water and electricity supplied to the property.

[3] During October/November/December 2010, so alleges the plaintiff, the parties concluded an oral lease agreement in terms of which the plaintiff leased to the defendant the same property for a further period of 3 years, commencing on 1 January 2011, at the rental of R6 500 per month. The plaintiff alleges that the defendant failed to pay rental for the months of October 2011 to November 2012. The plaintiff alleges that it has cancelled the agreement after the defendant had failed to pay the arrear rental (of R91 000) after having been requested to do so.

[4] In order to stave off summary judgment, the defendant has to disclose a *bona fide* defence. This means a defence set up *bona fide* or honestly, which if proved at the trial, would constitute a defence to the plaintiff's claim (*Bentley Maudesley & Co. Ltd v "Carburol" (Pty) Ltd and Another* 1949 (4) SA 873 (C); *Lombard v Van der Westhuizen* 1953 (4) SA 84 (C) at 88).

[5] In its defence, the defendant states that it conducts business as a school. It purchased among others, the property in issue. The plaintiff is a founder member of the school. As the school did not have sufficient cash at that stage to buy the property cash, it was agreed between the school and the plaintiff that the plaintiff would act as the defendant's representative. The deed of sale would be signed between her and the seller, and that the property would be registered in the deeds office in her name and not the defendant. It was further agreed that as soon as the property was paid off, the property would be transferred from the plaintiff to the name of the defendant. The defendant further states that a number of properties were acquired on a similar basis, and were indeed, transferred to the defendant's name. It is only in respect of the property in question that the plaintiff refuses to transfer the property into the defendant's name.

[6] With regard to the alleged lease agreement, the defendant denies that a lease agreement was entered into between itself and the plaintiff. It admits that the defendant paid an amount for rental to the plaintiff whilst she was employed by the defendant, on the advise of the defendant's auditors. This, the defendant explains, constituted part-payment of the plaintiff's salary, and did not distract from her obligation to transfer the property to the defendant. When the plaintiff terminated her employment with the defendant, she refused to sign the transfer documents for the property to be transferred to the defendant's name. As a result of the above, the defendant contends that it intends to counter-claim for the registration of the property into its name.

[7] Before I consider the contentions on behalf of the parties, I deem it pertinent to set out the jurisprudential framework within which an application for summary judgment

should be considered, which is trite and established. The defendant must satisfy the court that he has a *bona fide* defence to the plaintiff's claim and the full nature and grounds thereof. In *Oos-Raandse Bantoesake Administrasieraad v Santam Versekeringsmaatskappy Bpk*¹ it was stated that not a great deal is required of a defendant but that he must lay enough before the court to persuade it that he has a genuine desire and intention of adducing at the trial, evidence of facts which, if true, would constitute a valid defence. All that the court enquires into is whether the defendant has 'fully' disclosed the nature and grounds of his defence and the material facts upon which it is founded and whether, on the facts disclosed so disclosed the defendant appears to have a defence which is *bona fide* and good in law. See *Maharaj v Barclays National Bank*².

[8] The remedy of summary judgment is an extraordinary and drastic one, which has the hallmark of a final judgment in that it closes the doors of the court to the defendant and permits a judgment to be given without a trial. In *Dowson and Dobson Industrial Ltd v Van der Werf*³ it was noted that an ever increasing reluctance to grant summary judgment in the face of opposition, was evident from the South African courts. See also *District Bank Ltd v Hoosain*⁴, and *Standard Krediet Korporasie v Botes*⁵. Therefore the

¹ 1978 (1) SA 164 (W) at 171

² 1976 (1) 418 (A) at 426

³ 1981 (4) SA 417 (C) AT 419

⁴ 1984 (4) SA 544 (C) AT 550

⁵ 1986 (4) SA 946 (SWA)

court must always be reluctant to deprive the defendant of his normal right to defend, except in a clear case. See *Standard Bank of SA Ltd v Naude*⁶.

[9] In the present matter, I am more than satisfied that the defendant has disclosed a *bona fide* defence. There is nothing inherently implausible about the defendant's version. If established at the trial, it will be a complete answer to the plaintiff's claim. I therefore take a view that the defendant's point regarding the alleged agreement between the parties has merit, and thus constitutes a *bona fide* defence worthy of ventilation in a trial.

[10] Considering the conspectus of all the relevant factors – the facts and the proper approach to applications for summary judgments, I am satisfied that the defendant's defence is *bona fide* and not raised solely for the purpose of delay.

[11] In the result the defendant is granted leave to defend. Costs are in the main action.



TM MAKGOKA
JUDGE OF THE HIGH COURT

⁶ 2009 (4) SA 669 (E) at 672C-676D

DATE OF HEARING : 25 APRIL 2013

JUDGMENT DELIVERED : 14 JUNE 2013

FOR THE PLAINTIFF : ADV Z MARX

INSTRUCTED BY : JOHN TRIBELHORN ATTORNEYS, PRETORIA

FOR THE DEFENDANT : ADV W SAAIMAN

INSTRUCTED BY : BREYTENBACH MOSTERT SKOSANA INC, PRETORIA