

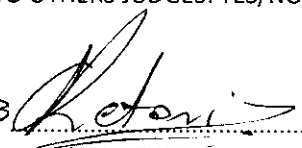


IN THE HIGH COURT OF SOUTH AFRICA

(NORTH GAUTENG HIGH COURT)

Case number: 56749/2010

Date: 15 October 2013

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHERS JUDGES: YES/NO
(3)	REVISED
15/10/2013	
DATE	SIGNATURE

In the matter between:

1st CLASS VEHICLE INSPECTIONS (PTY) LTD
(formerly known as SAFE DRIVE MIDRAND (PTY) LTD)

Applicant

and

SAFE DRIVE HOLDINGS (PTY) LTD

Respondent

APPLICATION FOR LEAVE TO APPEAL JUDGMENT

PRETORIUS J.

[1] The applicant is applying for leave to appeal against the judgment and order of 5 September 2013. The application for rescission of judgment was dismissed on that date. The respondent is opposing the

application for leave to appeal. The applicant has not set out which part of the judgment it is appealing against, but the court heard the application for leave to appeal in any event.

[2] The first ground set out by the applicant is that the court erred in finding that there is no indication in the founding affidavit that Mr Deon Delport represented the respondent in the conclusion of the sale agreement and the addendum agreement. It is clear that the addendum agreement had not been signed by Mr Delport's wife, but by a Ms Yolande Barnard and therefor the applicants contention in the application for leave to appeal is incorrect.

[3] The equipment was never physically delivered after the sale agreement, but the applicant found the equipment at the premises.

[4] It must be reiterated that on 25 July 2007 the applicants entered into a sale agreement with 1st Car Inspect Midrand Franchise, who was not the respondent. Even the addendum agreement of 31 January 2008 did not involve the respondent, but 1st Car Inspect Midrand Franchise.

[5] There is absolutely no indication on the papers before court that Mr Delport represented the respondent at all during the conclusion of the agreement and the addendum agreement. I am of the opinion that another court will not find that the applicant has provided a *bona fide*

defence which would entitle it to have the rescission application granted.

[6] In terms of Rule 31(2)(b) the application for rescission of judgment should be made timeously. The applicant did not deny that on 1 June 2012 the Applicant was present during a section 417 enquiry and that was the date that the applicant had to be aware of the default judgment. The applicant waited until 10 August 2012 to file and serve the application for rescission of judgment. There is no explanation for the long delay of at least 71 days before action is taken. There is no explanation as to why it is out of time.

[7] The applicant contends that the court erred by finding that proper service had taken place at the *domicilium et executandi*. The applicant provided no particulars as to the business where the summons was served being open on the particular day, but makes a broad allegation that:

“normally be open for business and as such the summons was supposed to have been served on either one of the Applicant’s employees”

This allegation does not contend that the summons was not served properly in terms of the rules.

[8] The fourth ground, according to the applicant, is that the court did not find that Delport's estate should be joined, cannot be entertained as it did not form part of the evidence at all, but was only mentioned during argument.

[9] In these circumstances I am of the opinion that there is no prospect that another court will come to a different conclusion.

[10] Therefore the application for leave to appeal is dismissed with costs.

A handwritten signature in black ink, appearing to read 'Pretorius', is written over a horizontal line.

Judge Pretorius

Case number	: 56749/2010
Heard on	: 10 October 2013
For the Plaintiff	: Adv Ngustshane
Instructed by	: Koikanyang INC
For the Defendant	: Adv Venter
Instructed by	: Carter Smith

Date of Judgment : 15 October 2013