

3/6/09

IN THE HIGH COURT OF SOUTH AFRICA

(NORTH GAUTENG HIGH COURT)

Dates: 25 May, 3 June 2009

Not reportable

In the matter between:

CASE NO: 21572/2007

LEOPARD'S LAIR DEVELOPMENT
COMPANY (PTY) LTD

Applicant

and

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO.	☒ YES
(2) OF INTEREST TO OTHER JUDGES: YES/NO.	☒ YES
(3) REVISED.	☐
21/6/09 DATE	<i>[Signature]</i> SIGNATURE

V & V CONSULTING ENGINEERS (PTY) LTD

pp Van Rooyen AJ
Respondent

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL BY APPLICANT

Van Rooyen AJ

[1] An application for leave to appeal was filed against my judgment in favour of the Respondent in this matter:

[2] The main argument put forward by Mr *De Wet*, on behalf of the applicant, was that there were reasonable prospects that Applicant would be able to show a bona fide defence in that there had never been a contract and that correspondence which referred to the R500 000 did not constitute such a contract. The contract which had to be proved was the contract as pleaded, not promises to pay later. Secondly he argued that the claim was indivisible and that the Court had not been justified in ordering that only a part of the claim should be referred to trial.

[3] I have considered the matter on the basis whether there are reasonable prospects that another court might come to a different conclusion. My conclusion is that there are no such reasonable prospects. The reasonable inference from the correspondence and the circumstances taken as a whole is that a contractual relationship existed. The division of the matter is reasonable in the light of the acknowledgements and there is no reason why a trial court could not be placed in a position to decide whether more than the R500 000 is owing. The core of the matter is that the Applicant was unable to show that there is a bona fide defence as to the R500 000. The amount of R500 000 was acknowledged time and again. Any argument that the result of the trial could be that less than R500 000 is owing is not supported by a bona fide defence.

The application for leave to appeal is dismissed with costs.



JCW van Rooyen

3 June 2009

Acting Judge of the High Court

For the Applicant : TIN De Wet instructed by Cilliers and Reynders Attorneys c/o Potgieter,
Penzhorn & Taute Inc., Pretoria

For the Respondent : WJ Roos instructed by Von Reiche Inc, Pretoria