



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

Case Number: 3198/2022

In the matter between:

**GLOBAL CONNECT TRADING (PTY) LTD
WILLEM CRISTOFFEL DE JAGER
STEFHANUS HENDRIK DE JAGER
JACOBUS HENDRIKUS DE JAGER**

**First Applicant
Second Applicant
Third Applicant
Fourth Applicant**

and

**SOUTH AFRICAN SECURITISATION PROGRAMME
(RF) LTD
SASFIN LTD
SUNLYN (PTY) LTD**

**First Respondent

Second Respondent
Third Respondent**

HEARD ON: 15 March 2024

CORAM: JORDAAN, AJ

DELIVERED ON: 28 May 2024

[1] This is an application for leave to appeal against the whole of the judgment of this Court and the order issued in terms thereof, delivered on the 31st day of January

2024, in terms of which summary judgment was granted in favour of the Respondents for payment by the First to the Fourth Applicants, jointly and severally, the one paying the other to be absolved, of the sum of R142 758,34.

[2] The Applicants contend that the appeal has reasonable prospects of success.¹ The application is based on the grounds as listed in the Notice of Application for Leave to Appeal dated 21 February 2024.

[3] The Court directed that the application for leave to appeal would be dealt with by written representations as provided for in Rule 16.5 of the Free State Practice Rules and directed the dates for filing of representations.

[4] Section 17 of the Superior Court's Act² provides as follows:

'(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that-

(a) (i) the appeal would have a reasonable prospect of success; or

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;

(b) the decision sought to appeal does not fall within the ambit of section 16(2)(a);

and

(c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.'

[5] *In casu* the Applicants in their application for leave to appeal failed to expressly quote the provision in the Superior Court Act 10 of 2013 relied upon, however, properly construed, the Applicants brought their application for leave to appeal based on section 17(1)(a)(i).³

[6] The test to be applied by a court in considering an application for leave to appeal, Bertelsmann J in **The Mont Chevaux Trust v Tina Goosen & 18 Others** 2014 JDR 2325 (LCC) at para 6 stated the following:

'It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted

¹ Notice of Application for Leave to Appeal dated 21 February 2024 page i

² Act 10 of 2013

³ Notice of Application for Leave to Appeal dated 21 February 2024 page i

was a reasonable prospect that another court might come to a different conclusion, see *Van Heerden v Cronwright & Others* 1985 (2) SA 342 (T) at 343H. The use of the word "would" in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.'

[7] In **S v Smith**⁴ it was stated:

'In order to succeed, therefore, the appellant must convince this Court on proper grounds that he has prospects of success on appeal and that those prospects are not remote, but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorized as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.'

[8] The Applicants, raised four defences in their plea, which were dealt with in the judgment for which leave to appeal is sought, so too the point *in limine* raised in the summary judgment application.

[9] The Applicants submit that the court erred in finding the terms and conditions to the Summons and Particulars of claim are legible. The Respondent replied that the purported defence is incapable of establishing a *bona fide* defence in law and it highlights their lack of *bona fides*. The legibility of the agreement was confirmed by the Applicants when in paragraph 6.4 of their plea, they asserted that the rental agreement does not contain a *force majeure* clause.

[10] The Applicants, submitted that the court erred in placing undue reliance on secondhand hearsay evidence, relying on the **Shackleton Credit Management**⁵ case. The Respondents submitted that the same case held that firsthand knowledge of every fact which goes to make up the applicants cause of action is not required, and... where the applicant is a corporate entity the deponent may well legitimately really on records in the company's possession for their personal knowledge of at least certain of their 11 facts and the ability to sway positively to such facts.

⁴ 2012 (1) SACR 567 (SCA)

⁵ 2010 (5) SA 1212 (KZN)

[11] The Applicants contended that the court erred in finding that the Applicants failed to disclose, as opposed to the implied imputation that they failed to prove, a bona fide defence of cancellation of the contract and consequently the reduction of a penalty. The Respondent contend that it is not the Applicants pleaded case that the rental agreement was cancelled because of breach. Cancellation can only take place in terms of the cancellation clause in the rental agreement itself which the applicants did not comply with.

[10] The applicants raised the defence of *force majeure* while on their own version they were already in areas on 10 March 2020, which is prior to the events leading to alleged supervening impossibility to perform. The Respondent submitted that the Applicants cannot be released from their contractual obligations in the circumstances, having regard to case law.

[11] After due consideration of the grounds of appeal and the respective heads of argument, I conclude that there is a reasonable prospect that another court would come to a different conclusion on the order of court.

ORDER

[11] Consequently the following order is made:

- 11.1 Leave to appeal is granted to the Appellants to the full court of this division of the High Court.
- 11.2 The costs of the application for leave to appeal to be costs in the appeal



M.T. JORDAAN

ACTING JUDGE OF THE HIGH COURT, BLOEMFONTEIN

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