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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION PRETORIA**

CASE NO: 2024-014083

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED: YES/NO

DATE: 01/24/2024

SIGNATURE:

In matter between

IMAN PROP HOLDINGS (PTY) LTD

Applicant /Plaintiff

and

KNOWLEDGE OBJECTS HEALTHCARE (PTY) LTD Respondent/Defendant

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 24 January 2025

JUDGMENT

LESUFI AJ

Introduction

[1] This is an opposed application for summary judgment brought in terms of Rule

32 of the Uniform Rules of Court as amended, pursuant to the Plaintiff's main action claiming: the cancellation of a lease agreement; payment of an amount of R 1 404 206.87 in respect of the arrear rent; all other amounts provided for in the lease agreement; the ejectment of the defendant from the commercial leased property; morae interests and legal costs.

Point in limine

[2] Before I deal with the application I need to firstly deal with the Respondent's points *in limine* relating to the non –compliance with Rule 32(2) of the Uniform Rules of this court.

[3] I do not intent to rehash the points raised verbatim but only the crux thereof. I agree with the Applicant that Mr Preshaan Ramsamy in his capacity as the Senior assets manager demonstrated that by virtue of his position and responsibilities, having considered the lease agreement and reconciling statements was convinced that the amount was correctly calibrated.

[4] I a m therefore convinced that the affidavit deposed by him complied with Rule 32(2) (a).

[5] Regarding Rule 32(2)(b) it is clear that the main action is premised on the terms of the lease agreement. The Respondent does not dispute the arrear amount calculated and claimed by the Applicant in this application. The Respondent's defence is premised on its interpretation of the contract. This simply requires that I determine if their defence raises a triable issue.

[6] The Respondent's defence is that the Applicant failed to comply with the obligations under the lease agreement by *inter alia* failing to maintain the leased property in terms of clause 15.1 of the lease agreement despite several requests from the Respondent to do so.

[7] The Applicant on the other hand submitted that the Defendant has no *bona fide* defence specifically because clause 22.1 of the same lease agreement states that:

“the Defendant shall have no claim or right of action of whatsoever nature against the Plaintiff for *inter alia* loss or otherwise, nor shall it be entitled to remission of rent by reason of inter alia any electrical fault, by reason of the premises or any part of the building or property being in a defective condition or falling into despair or any particular repairs not being effected by the Plaintiff or any other cause.”

[8] It is therefore clear from the papers that the Applicant complied squarely with Rule 32(2) (b).

[9] The points *in limine* stands to be dismissed.

[10] I now shall revert to the application for a summary judgement.

[11] It is common cause that the parties concluded a lease agreement in relation to a commercial property. It is also common cause that the Respondent occupied the property and is still in occupation of the property.

[12] The Applicant communicated its election to cancel the lease agreement in consequence of the breach averred in the summons. The Defendant withheld agreed monthly payments.

[13] The Respondent’s defence is that the Applicant failed to maintain and repair defects in the premises.

[14] I now have to determine whether the Respondent has a *bona fide* defence. On the contrary the Respondent have to prove that they at the very least have a defence and state the material facts upon which his defence is based. This enables the Court to decide as to whether a *bona fide* defence has been established or not. The Respondent need not deal exhaustively with all the facts and evidence relied on to substantiate a defence, but the essential material facts on which the defence is based must be disclosed with sufficient completeness, particularly to enable the Court to decide whether or not the affidavit discloses a *bona fide* defence.¹

¹ *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A) at 426C-E

[15] A *bona fide* defence is not scrutinised according to the strict standards of pleadings. In a summary judgment it is the material and factual defence and not the Respondents who must be *bona fide*. In *Maharaj v Barclays National Bank Ltd*² the Court held that in determining whether the Respondent has established a *bona fide* defence the court has to enquire whether the Respondent has sufficient particularity disclosed the nature and grounds of his defence and the material facts upon which his defence is based. It is expected of the Applicant on the other hand to convince the Court that he has made out a case for summary judgment as stated above.

[16] The Court has an overriding discretion whether on the facts averred by the Applicant, it should grant summary judgment or on the basis of the defence raised by the Respondents, it should refuse it. Such discretion is unfettered. If the court has a doubt as to whether the Applicant's case is unanswerable at trial such doubt should be exercised in favour of the Respondent and summary judgment should be refused. The test for the granting of a summary judgment is whether the Respondent has satisfied the Court that he has a *bona fide* defence to the Applicant's claim. What this entails is whether the facts put up by the Respondent raised a triable issue and a sustainable defence in law deserving of their day in court.

[17] I conclude that the Respondent presented no *bon fide* defence entitling them to withhold the monthly rental payment for any reason whatsoever.

[18] I conclude that the defence raised by the Respondent raises no triable issue and therefore the application must succeed.

Order

[19] It is therefore ordered that:

19.1 Summary judgement is granted in favour of the Applicant and against the Defendant in the following terms:

1. The Respondent/ Defendant is ordered to pay to the Plaintiff/Applicant an amount of R 1 404 206.871.2
2. 1.2 The Respondent/ Defendant is ordered to pay interest on the

² 1976 (1) SA 418 (A).

aforesaid amount at the prescribed rate of 10.5 %per *annum tempora morae*, calculated from date of issuing of the summons to date of the summons to date of final payment.

2. The Respondent/ Defendant and all those occupying by, through or under the Respondent/Defendant is forthwith evicted from the premises described as Units B[...], B[...], B[...], B[...], Corporate park 6[...] , corner of Lenchen Avenue and Von Willich Avenue, Centurion , Gauteng;
3. The Respondent/ Defendant is ordered to pay to the Plaintiff/ Plaintiff/Applicant costs of suit on party and party scale.

B LESUFI

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

APPEARANCES:

For the Applicant/ Plaintiff:

Adv. W Wannenburg

Instructed by:

Fourie van Pletzen Inc. Attorneys

For the Respondent/ Defendant:

Adv. Carien van der Linde

Instructed by:

Knowles Huisain Lindsay Inc.

Date of the hearing:

24 October 2024

Date of judgement:

24 January 2025