



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2023/055449

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

DATE: 17 February 2025

In the matter between:

SUSANNA JACOBA CROCKER

Plaintiff

And

DOROTHY CHARMAIN PRINSLOO

First Defendant

JAYDENE CLAUDIA SMITH

Second Defendant

K2017/488562/07

Third Defendant

JUDGMENT

H M VILJOEN A J

- [1] This is an application for summary judgment brought by the plaintiff, Susanna Jacoba Crocker, against the defendants, Dorothy Charmaine Prinsloo, Jaydene Claudia Smith, and K2017488562 (South Africa) (Pty) Ltd.¹ Although plaintiff's particulars of claim include further relief, the application for summary judgment is restricted to the ejectment of the defendants from the immovable property at 7 Second Avenue, Florida, Roodepoort.
- [2] Despite the withdrawal of the defendants' attorneys on 24 January 2025 and the defendants' absence, the matter proceeded with counsel for the plaintiff addressing the defences raised in the defendants' affidavit.

FACTS

- [3] The plaintiff and the defendants initially entered into an oral agreement for the sale of a nursery school business and the property from which it operated. This oral agreement was subsequently formalised in two written documents: a written acknowledgment of debt for R1,260,000.00, signed on 11 August 2017, covering the sale of the business (including movable assets and goodwill); and a written instalment sale agreement for R1,792,145.37, signed on 30 October 2017, covering the sale of the immovable property.

¹ The name of the third defendant is cited in the summons as K2017/488562/07. However, CIPC documents indicate the correct name to be K20174882 (South Africa) (Pty) Ltd. The plaintiff did not move an amendment to rectify the third defendant's name. Nevertheless, to pre-empt any further dispute, I intend to order the correction.

- [4] The defendants are said to have defaulted on their payment obligations under both the acknowledgment of debt and the instalment sale agreement. This prompted the plaintiff to cancel the agreements. She instituted action against the defendants for relief pursuant to the cancellation, including the ejectment of the defendants from the immovable property. It is undisputed that all three defendants are currently occupying the premises.

ISSUES

- [5] The application for summary judgment complies with Rule 32.
- [6] The defendants contest their ejectment from the property on the following four bases:
- 6.1. The alleged invalidity of the oral agreement for the sale of land due to non-compliance with Section 2 of the Alienation of Land Act, 1981.
 - 6.2. The alleged absence of arrears at the date of cancellation.
 - 6.3. The alleged existence of a counterclaim for specific performance of the plaintiff's obligations in terms of the instalment sale agreement.
 - 6.4. The plaintiff's alleged non-compliance with clause 16 of the instalment agreement and Section 19(2) of the Alienation of Land Act, and the consequent prematurity of the cancellation.

ANALYSIS

Validity of the Sale Agreement

- [7] The defendants argue that the initial oral agreement for the sale of the land is invalid because it does not comply with the formalities prescribed by Section 2 of the *Alienation of Land Act*. Section 2 requires that any alienation of land be contained in a deed of alienation signed by the parties or their agents acting on their written authority.
- [8] This contention is perplexing as the defendants themselves rely on the agreement in their plea, counterclaim and answering affidavit. Moreover, it is undisputed that the terms of the oral agreement were subsequently incorporated into the two documents mentioned above.
- [9] It follows that there is no triable issue in the defendants' first defence.

Absence of Arrears

- [10] The defendants' claim that they were not in arrears at the time of cancellation lacks clarity and consistency. While they assert having overpaid on the instalment agreement, they have provided not even the scantest of supporting evidence. Their excuse for the absence of evidence—that they need the plaintiff's account statements to verify payments—is unconvincing, as they should possess their own payment records. Their claim of overpayment directly contradicts their assertion that they cannot determine the exact extent of their arrears.

[11] This inconsistency undermines their *bona fides*. In summary judgment proceedings, a defendant must provide a clear, consistent and detailed defence. As established in *Breytenbach v Fiat SA (Edms) Bpk*,² vague or unsubstantiated claims are insufficient. The defendants' statements fall short of this standard.

Counterclaim for Specific Performance

[12] The defendants' counterclaim for specific performance is contingent upon them proving full compliance with their payment obligations. As discussed, they have failed to demonstrate such compliance. Their vague and contradictory statements regarding payment are insufficient to substantiate the counterclaim and raise a *bona fide* defence.

Prematurity of Cancellation and Non-Compliance with Clause 16 and Section 19(2)

[13] The defendants' claim of premature cancellation of the instalment agreement rests on the argument that the plaintiff failed to comply with the notice requirements of clauses 16.2 and 16.3 of the agreement and Section 19(2) of *the Alienation of Land Act*. These provisions require the seller to issue a breach notice granting the purchaser at least 30 days (or 7 days for repeat breaches within a year) to rectify the breach before cancellation.

² 1976 (2) SA 226 (T)

- [14] On 20 February 2023, the plaintiff sent a breach notice to the defendants. In my estimation, the breach notice complies in all material respects with the requirements for such a notice laid down in clause 16.3 and Section 19(2).
- [15] The *initial* termination notice was dated 17 March 2023 (and allegedly served on 22 March 2023). Subsequently, in response to the defendants' objection that the termination notice was premature, the plaintiff confirmed the cancellation on 30 March 2023.
- [16] A third notice of cancellation is found in paragraph 21 of the plaintiff's particulars of claim, served on the defendants on 12 June 2023. The paragraph contains a clear statement of cancellation "herewith" in the alternative to an allegation that the agreement had earlier been cancelled. In *Shrosbree NO v Simon*,³ the court held that cancellation by way of summons is permissible if the summons unequivocally conveys the election to cancel and the contract imposes no formality for cancellation.
- [17] Therefore, regardless of any dispute about the timing of the *initial* termination, the cancellation became definitively effective no later than 12 June 2023, which is well beyond 30 days after the breach notice.

CONCLUSION

- [18] It follows that the defendants have failed to establish any *bona fide* defence to the claim for ejectment.
- [19] In light of the foregoing, I grant the following order:

³ 1999 (2) SA 488 (SE)

ORDER:

1. *The name of the third defendant used in the summons is amended to read:
“K2017488562 (South Africa) (Pty) Ltd”*
2. *Summary judgment is granted in favour of the plaintiff as follows:*
 - 2.1 *The defendants are directed to vacate the immovable property situated at 7 Second Avenue, Florida, Roodepoort, within 7 days of this order.*
 - 2.2 *In the event of the defendants' failure to comply with the order, the Sheriff or his deputy is authorised to evict the defendants from the premises.*
3. *The defendants, jointly and severally, are to pay the costs of the summary judgment application on scale B.*

**H M Viljoen****ACTING JUDGE OF THE HIGH COURT****GAUTENG DIVISION OF THE HIGH COURT, JOHANNESBURG**

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 email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 17 February 2025.

Date of hearing: 4 February 2025

Date of judgment: 17 February 2025

Appearances:

Attorneys for the plaintiff: Louise Tonkin Inc

Counsel for the plaintiff: Adv. SN Davis

No appearance for the defendants