

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG

Case Number: **2023-124486**

|       |                                     |
|-------|-------------------------------------|
| (1)   | REPORTABLE: YES / NO                |
| (2)   | OF INTEREST TO OTHER JUDGES: YES/NO |
| (3)   | REVISED: YES/NO                     |
| _____ | _____                               |
| DATE  | SIGNATURE                           |

In the matter between:

**ZEVI 151 (PTY) LTD**

Plaintiff

and

**RETAIL MARKET FARM (PTY) LTD**

First defendant

**LEEKO LYNETTE MAKOE**

Second defendant

**RONNIE JAMES MCKENZIE**

Third defendant

---

**JUDGMENT**

---

**HA VAN DER MERWE, AJ:**

[1] This is an application for summary judgement.

[2] The claims made in the particulars of claim, insofar as they are relevant for present purposes, proceed along the following lines. The plaintiff and the first defendant concluded a rental agreement on or about 15 March 2023, in terms of

which the plaintiff leased a printer to the first defendant. Also, on or about 15 March 2023, the plaintiff and the first defendant concluded what is called a “*service agreement*”, in terms of which the plaintiff undertook to maintain the printer leased to the first defendant under the rental agreement. On or about 24 March 2023, the plaintiff and the first defendant concluded another rental agreement, in terms of which the plaintiff leased a “*Nashua YVBX System*” to the first defendant. Also, on or about 24 March 2023, the plaintiff and the first defendant concluded a service agreement pertaining to the “*Nashua YVBX System*”. A third set of rental and service agreements were concluded on or about 30 March 2023. On or about 15 May 2023, the plaintiff and the first defendant concluded what is called a “*subscriber agreement*”. In terms of this agreement, the plaintiff leased a “*certain Voice and Data Connection*” to the first defendant.

- [3] All of these agreements provide for monthly rental or service fees payable to the plaintiff. They also contain provisions to the effect that, if the first defendant fails to pay an amount due under those agreements, the plaintiff shall be entitled to claim immediate payment of all amounts that would have fallen due for the remaining periods of those agreements (**the accelerated amounts**).
- [4] The defendants do not dispute the conclusion of the aforesaid agreements.
- [5] The second and third defendants also do not dispute that they are bound as sureties and co-principal debtors together with the first defendant for the first defendant’s debts to the plaintiff.
- [6] The defendants also do not dispute that the first defendant failed to pay the amounts due to the plaintiff in terms of the rental and service agreements.
- [7] In their plea, the defendants admit that the plaintiff is entitled to claim payment of the accelerated amounts. However, they plead that the plaintiff is not entitled to claim the accelerated amounts for as long as the plaintiff is in possession of the goods leased to the first defendant. Although not pleaded in so many words, it is fair to read the plea as alleging by implication that the plaintiff came into possession of some of the leased goods at a time after the rental agreements were concluded. In other instances, the defendants plead that the plaintiff is not

entitled to claim both the accelerated amounts and delivery of the leased goods. By implication, in those instances, I take the plea to mean that the plaintiff is not in possession of those goods. As the plaintiff does not claim delivery of any goods in the summons, this part of the plea appears to be irrelevant.

[8] In the affidavit resisting summary judgment, it is alleged that in respect of “*the CCTV*” (which, in context, appears to refer to the goods leased under the “*Nashua YVBX System*” agreement, though this is not entirely clear), a representative of the plaintiff conveyed to the first defendant that payment for the CCTV need only be made once the defendant was operational, and that the first defendant has not yet become operational. There is no allegation that any of this was reduced to writing or signed by either party. Any defence along these lines is neutralised by the boilerplate “non-variation” and “whole agreement” clauses contained in the agreements concluded between the plaintiff and the first defendant.<sup>1</sup> Furthermore, this defence does not feature in the plea.

[9] The affidavit resisting summary judgment does not, in terms, deal with the defences raised in the plea — namely, that the accelerated amounts are not due if the plaintiff is in possession of the leased goods, or when the plaintiff claims delivery of the goods. Even if it did, the express terms of the rental agreements render such defences nugatory. In terms of each rental agreement, pending payment of the accelerated amounts, the plaintiff is:

“... entitled to be in possession of the Goods until full payment by [the first defendant], whereupon the Goods will be returned to [the first defendant] for the remainder of the unexpired period of this Contract...”

[10] The plaintiff is entitled to attorney-and-client costs under the agreements concluded with the first defendant. I see no reason why I should not make a costs order consistent with the parties’ agreement.

---

<sup>1</sup> *Brisley v Drotsky* 2002 (4) SA 1 (SCA)

[11] In the result, the defendants do not have a bona fide defence to the plaintiff's claims. I accordingly grant summary judgement against the defendants as follows, jointly and severally:

[9.1] Payment of the amount of R138 816.67;

[9.2] Interest on the aforesaid amount, at the rate of 16.75% per annum from 24 October 2023 to date of final payment;

[9.3] Payment of the amount of R9 841.20;

[9.4] Interest on the aforesaid amount, payable at the rate of 11.75% per annum from 24 October 2023 to date of final payment;

[9.5] Payment of the amount of R86 474.18;

[9.6] Interest on the aforesaid amount, at the rate of 16.75% per annum from 24 October 2023 to date of final payment;

[9.7] Payment of the amount of R18 058.23;

[9.8] Interest on the aforesaid amount, at the rate of 11.75% per annum from 24 October 2023 to date of final payment;

[9.9] Payment of the amount of R828 870.73;

[9.10] Interest on the aforesaid amount at the rate of 16.75% per annum from 24 October 2023 to date of final payment;

[9.11] Payment of the amount of R46 723.73;

[9.12] Interest on the aforesaid amount, at the rate of 11.75% from 24 October 2023 to date of final payment;

[9.13] Payment of the amount of R89 576.09;

[9.14] Interest on the aforesaid amount, at the rate of 15.75% per annum from 24 October 2023 to date of final payment;

[9.15] Costs on the scale as between attorney and client.



---

**H A VAN DER MERWE**  
**ACTING JUDGE OF THE HIGH COURT**

Heard on: 3 March 2025

Delivered on: 6 March 2025

For the plaintiff: Adv AM Raymond instructed by Louw & Heyl Attorneys

For the first defendant: Ms L L Makoena (a layperson, in her capacity as a director of the first defendant)

For the second defendant: In person

For the third defendant: No appearance

