

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: **2023-125881**

(1)	REPORTABLE: YES	(NO)
(2)	OF INTEREST TO OTHER JUDGES: YES	(NO)
(3)	REVISED: YES	(NO)
		
6 March 2025		
DATE		SIGNATURE

In the matter between:

PETERSEN, IZAK SMOLLY N.O.

First plaintiff

ASMAL, RIDWAAN N.O.

Second plaintiff

AZIZOLLAHOFF, BRIAN HILTON N.O.

Third plaintiff

JUNKOON, JUJDEESHIN N.O.

Fourth plaintiff

and

KGOPELANG MEDICAL SERVICES INC

Defendantt

JUDGMENT

HA VAN DER MERWE, AJ:

[1] This is an application for summary judgment.

- [2] The plaintiffs seek summary judgement for payment of R120 650.10 as rent and other charges due under a lease agreement concluded between the plaintiffs and the defendant. The claim for which the plaintiffs seek summary judgment pertains to the period between April 2023 and November 2023. The validity of the lease agreement on which the plaintiffs rely for this period is in issue in this application.
- [3] It is not disputed that, before April 2023, a different lease agreement was in force between the plaintiffs and the defendant and that the defendant took occupation of the leased premises pursuant to that agreement.
- [4] The document on which the plaintiffs rely as constituting the lease agreement for the period in question is titled "Offer to Lease". Clause 24 of this document provides, in relevant part:

"This document, once signed by the Tenant and received by the Landlord, constitutes a firm and irrevocable offer which may be accepted in writing and which shall remain open for acceptance by the Landlord within a reasonable period of time..."

- [5] At the foot of the document, another provision states:

"SIGNING THIS DOCUMENT SHALL CONSTITUTE THE IRREVOCABLE OFFER TO LEASE WHICH SHALL BE OPEN TO THE LANDLORD FOR ACCEPTANCE IN WRITING

- [6] The document makes provision for the tenant's signature, a name, designation of the signatory and a date. The defendant's representative's name, (Ms Ramatsetse) appears on the document in manuscript. Next to "designation," the word "Director" appears in manuscript, and next to "Date" is written "18/10/2022." Ms Ramatsetse's initials appear on this page of the document and on every other page. These facts are common cause.
- [7] It is also common cause that Ms Ramatsetse, after appending her initials to the document (and presumably writing the manuscript entries referred to above), sent the document to the plaintiffs by email. The email itself states: "Please receive the attached."

[8] In form, as its title suggests, the document is an offer made by the defendant to the plaintiffs, which, if accepted, would constitute a lease agreement.¹

[9] The question is whether the absence of Ms Ramatsetse's signature, where provision is made for it on the document, means that a valid lease agreement was not concluded between the plaintiffs and the defendant.

[10] Mr Dobie, who appeared for the plaintiffs, referred me to the judgment in *Van Niekerk v Smith*², where Murray J found:

"Nor am I any more impressed by the contention that the letter of exercise is not 'signed'. Signature does not necessarily mean writing a person's Christian and surname but any mark which identifies it as the act 'of the party' - *Morton v Copeland*, 16 C.B. 517 *per* MAULE, J., at p. 535. To sign, as distinguished from writing one's name in full is to make such a mark as will represent the name of the person signing. (*In re Trollip*, 12 S.C. 243 at p. 246, *per* LORD DE VILLIERS.) See also *R v Matanda*, 1923 AD at p. 436. Pencil signatures, signature by initials or by means of a stamp, or by mark, or by a party's writing below a printed heading are all sufficient under the Statute of Frauds (*vide* Halsbury, *Laws of England*, Vol. 7, para. 179, Hailsham Ed.)"³

[11] In *Spring Forest Trading CC v Wilberry (Pty) Ltd t/a Ecowash*⁴ Cachalia JA found

"Commonly understood, a signature is 'a person's name written in a distinctive way as a form of identification. But this is not the only way the law requires a document to be signed. In the days before electronic communication, the courts were willing to accept any mark made by a person for the purpose of attesting a document, or identifying it as his act, to be a valid signature. They went even further and accepted a mark made by a magistrate for a witness, whose participation went only as far as symbolically touching the magistrate's pen.'"⁵
(footnotes omitted)

[12] From the facts set out above, it is clear enough to me that Ms Ramatsetse's name, designation, and initials on the document, taken together, indicate that it

¹ It is trite that the acceptance of a valid offer creates a contract: *Legator McKenna Inc v Shea* 2010 (1) SA 35 (SCA)

² 1952 (3) SA 17 (T)

³ At 25D-E

⁴ 2015 (2) SA 118 (SCA)

⁵ Para [25]

was an “*act of*” the defendant. In so doing, they fulfilled the function of a signature and, on the authorities referred to above, should be regarded as a valid signature. Had it been Ms Ramatsetse’s version that she did not intend the document to be an offer, the matter might have been different. The absence of her signature at the designated space could, at most, suggest that she did not intend to make a binding offer on behalf of the defendant. However, there is no such evidence.

[13] Ms Ramatsetse is also the deponent to the defendant’s affidavit opposing the summary judgment application. She would know better than anyone what her intention was at the time, yet even when dealing with this defence in her affidavit, she says nothing to suggest that she did not intend the document to be a valid and binding offer.

[14] In argument, Mr Nkangala, on behalf of the defendant, raised various other defences. However, none of these appear in the defendant’s affidavit opposing the application for summary judgment and thus cannot assist the defendant.

[15] I am therefore satisfied that the defendant does not have a *bona fide* defence and that the plaintiffs are consequently entitled to summary judgment. The plaintiffs did not seek summary judgment in respect of claim 2 as formulated in the particulars of claim. I therefore make no order in respect of claim 2.

[16] I make the following order:

- (a) Summary judgement is granted against the defendant for payment of R120 650.10;
- (b) The defendant is liable for interest on the above amount at the prevailing prime rate of interest, from time to time, plus 2% per annum, calculated from 11 December 2023 to date of payment;
- (c) The defendant is liable for the plaintiffs’ costs of the summary judgement application, as between party and party, on scale B.

A handwritten signature in black ink, appearing to read 'H A Van der Merwe', is positioned above a solid black rectangular redaction box. A horizontal line extends from the left edge of the redaction box across the page.

H A VAN DER MERWE
ACTING JUDGE OF THE HIGH COURT

Heard on: 6 March 2025

Delivered on: 6 March 2025

For the plaintiff: Adv J G Dobie instructed by Rooseboom Attorneys

For the first and second defendants: Mr Nkangala, Ngkangala Attorneys

