

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

Case No: 2024-129654

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

IN THE MATTER BETWEEN:

LEGEND SPUNBOND (PTY) LTD

APPLICANT

AND

LESLEY RICHARD NEFDT

FIRST RESPONDENT

**UNLAWFUL OCCUPIERS UNIT [...]
OSTEND ROAD GERMISTON SOUTH**

SECOND RESPONDENT

This Judgment is handed down electronically by circulation to the Applicant's Legal Representative and the Respondents by email, publication on Case Lines. The date for the handing down is deemed 3 June 2025.

JUDGMENT

NAIR AJ

INTRODUCTION:

[1] This is an application for the ejectment of the First Defendant, Mr Lesley Richard Nefdt (hereinafter referred to as “Mr Nefdt”) together with the Second Defendant who are all the unlawful occupiers of Unit [...], 7[...] O[...] Road, G[...] S[...] from the property situated at Unit [...], 7[...] O[...] Road, G[...] S[...], G[...] (hereinafter referred to as the “premises”). It is alleged that Mr Nefdt is currently in occupation of the said premises in terms of a commercial lease agreement entered into between Mr Nefdt and the Applicant’s representative Mr Hui Jiang. The Applicant alleges that the premises is not being used for residential purposes and does not fall within the ambit of the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act 19 of 1998.

[2] At the commencement of the hearing of the application, the Mr Nefdt sought condonation for the late filing of his notice of intention to oppose this ejectment application as well as the late filing of his answering affidavit. Counsel for the Applicant Adv R Smith did not oppose the granting of condonation for the late filing of the Mr Nefdt’s notice of intention to oppose the application as well as his answering affidavit and condonation thereof is accordingly granted as requested by Mr Nefdt.

[3] Counsel for the Applicant however submitted that the Mr Nefdt only raised a point *in limine* in the matter and failed to raise any defence in respect of the merits of the main application for ejectment. As a consequence thereof, it was argued that should Mr Nefdt’s point *in limine* of *lis alibi pendens* be dismissed, that the application should be decided in favour of the Applicant based on Mr Nefdt’s failure to plead in respect of the main application.

FACTUAL BACKGROUND:

[4] On 24 August 2022 the Applicant, duly represented by Mr Hui Jiang, purchased the premises from Tiradeprops 6 (Pty) Ltd. The company Tiradeprops 6 (Pty) Ltd, was duly represented by Mr Hein Momberg. During September 2022 the Applicant, represented by Mr Hui Jiang and Mr Nefdt concluded an oral commercial lease agreement in terms of the premises. The terms of the oral commercial lease

agreement are set out in paragraph 14 of the Applicant's founding affidavit. Briefly they are that the Applicant would lease the premises to Mr Nefdt for commercial purposes and that the lease would commence on 1 September 2022. The rental amount for the premises would be R9000,00 per month, the electricity consumption would be R30 000,00 per month and the water consumption would be R2000,00 per month.

[5] Between October 2023 and April 2024 Mr Nefdt failed on various occasions to make payment of rental, electricity, consumption charges and water consumption charges to the Applicant. The arrears totalled an amount of R273 737, 65. As a result thereof on 1 April 2024 the Applicant decided to cancel the oral commercial lease agreement and afford Mr Nefdt a period of 30 days to vacate the premises which Mr Nefdt failed to do.

[6] The Applicant thereafter unlawfully locked Mr Nefdt out of the premises on 31 January 2024 resulting in Mr Nefdt successfully applying to the Germiston Regional Court for a *mandament van spolie* order restoring his possession of the premises. A final order to this effect was granted on 24 July 2024 in the Germiston Regional Court and is attached as FA 3 to the Applicant's founding affidavit. On 27 August 2024 the Applicant's attorney delivered via email a notice of termination of the commercial lease agreement to Mr Nefdt and LY Plastics Manufacturing and Recycling Engineering Polymers (Pty) Ltd. It is common cause between the parties that Mr Nefdt is the sole director of LY Plastics Manufacturing and Recycling Engineering Polymers (Pty) Ltd which company conducts its business from the premises. The said letter of termination is marked as FA 4.1 to the Applicant's founding affidavit. Due to Mr Nefdt's failure to comply with the Applicant's notice to vacate the premises as set out in annexure FA 4.1 to the Applicant's founding papers, the Applicant lodged this application for the ejectment of Mr Nefdt as the First Respondent and all the other unlawful occupiers of the premises as the Second Respondents. The company LY Plastics Manufacturing and Recycling Engineering Polymers (Pty) Ltd were not served with this application as Second Respondents.

[7] Mr Nefdt in filing his answering affidavit raised a special point in limine that the proceedings are *lis alibi pendens* in light of the fact that the Applicant has instituted

by way of summons with the inclusion of a rental interdict in the Germiston Regional Court by the Applicant under case number GRC 349/2024 (hereinafter referred to as the "Germiston matter") the same proceedings against the Respondents in this matter. Mr Nefdt only raised the aforementioned point *in limine* in his answering affidavit and did not answer on the merits of the main application of ejectment.

ISSUE TO BE DECIDED UPON:

[8] Apart from the fact that Mr Nefdt is the sole director of the company LY Plastics Manufacturing and Recycling Engineering Polymers (Pty) Ltd and entered into the commercial lease agreement for the lease of the premises with a representative of the Applicant, there are no other common cause facts between the parties due to the fact that Mr Nefdt failed to answer in his answering affidavit to the merits of the ejectment application. Mr Nefdt contends that the failure to respond to the merits of the ejectment application is due to the matter also pending before the Germiston Regional Court under case number GRC 349/2024. Mr Nefdt furthermore alleged that he also lodged a counter-claim against the Applicant in the Germiston matter which is based on the same commercial lease agreement which is the cause of action between the parties in this application.

[9] The parties were therefore in agreement that the issue for determination before me is whether the proceedings issued out by the Applicant in the Germiston matter is *lis alibi pendens*.

LEGAL PRINCIPLES:

LIS ALIBI PENDENS:

[10] In South African law, the doctrine of *lis alibi pendens* (Latin for "pending litigation") is a special plea that can be raised when a dispute between the same parties, based on the same cause of action and seeking the same relief, is already pending before another court.¹ It is closely related to the principle of *res judicata*, but applies when the matter is still ongoing rather than already decided.

¹ George v Minister of Environmental Affairs and Tourism 2005 (6) SA 279 EqC at paragraph 28

[11] A plea of *lis pendens* will succeed if the following three elements are present:

- a) The parties in both proceedings must be the same;
- b) The legal basis or grounds for the claim must be identical, i.e.; it must be the same cause of action;
- c) The remedy or relief being pursued must be the same.

[12] The doctrine of *lis pendens* aims to prevent a duplication of litigation and conflicting judgments.² If successfully raised, the second proceeding may be stayed or dismissed until the first is resolved.

[13] The doctrine of *lis alibi pendens* was explained in *Caesarstone Sdot-Yam Ltd versus The World of Marble and Granite 2000 CC and Others*³ by Wallis J as follows:

"[2] As its name indicates, a plea of lis alibi pendens is based on the proposition that the dispute (lis) between the parties is being litigated elsewhere and therefore it is inappropriate for it to be litigated in the court in which the plea is raised. The policy underpinning it is that there should be a limit to the extent to which the same issue is litigated between the same parties and that it is desirable that there be finality in litigation. The courts are also concerned to avoid a situation where different courts pronounce on the same issue with the risk that they may reach differing conclusions. It is a plea that has been recognised by our courts for over 100 years.

[3] The plea bears an affinity to the plea of res judicata, which is directed at achieving the same policy goals. Their close relationship is evident from the following passage from Voet 44.2.7:

'Exception of lis pendens also requires same persons, thing and cause. - The exception that a suit is already pending is quite akin to the exception of res

² See *Nestle (South Africa) (Pty) Limited vs Mars Inc 2001 (4)(SA) 542 (SCA)*

³ *Caesarstone Sdot-Yam Ltd versus The World of Marble and Granite 2000 CC and Others* [2013] ZASCA 129; 2013 (6) SA 499 (SCA).

judicata, inasmuch as, when a suit is pending before another judge, this exception is granted just so often as, and in all those cases in which after a suit has been ended there is room for the exception of res judicata in terms of what has already been said. Thus the suit must already have started to be mooted before another judge between the same persons, about the same matter and on the same cause, since the place where a judicial proceeding has once been taken up is also the place where it ought to be given its ending."

[14] In the matter of *Cook and Others versus Muller*⁴, Milne J said the following:

"Even if this does not strictly constitute a defence of lis alibi pendens, it is clear that the Court may, in the exercise of its discretion in controlling the proceedings before it, debar a person from ventilating a dispute already decided against him under the guise of an action against another party. See Burnham v Fakheer, 1938 N.P.D. 63. Although the previous proceedings had not even been between the same parties, the Court there held that for the respondent to attempt to re-try an issue which had already been decided merely by changing the form of his action was an abuse of the processes of the Court, and was vexatious. See also Niksch v Van Niekerk and Another, 1958 (4) SA 453 (E) at p. 456, and the English decision of Reichel v. Magrath, (1889) 14 A.C. 665 (H.L.)."

[15] In *Loader versus Dursot Bros (Pty) Ltd*⁵ it was held that:

"It is clear on the authorities that a plea of lis alibi pendens does not have the effect of an absolute bar to the proceedings in which the defence is raised. The Court intervenes to stay one or other of the proceedings, because it is prima facie vexatious to bring two actions in respect of the same subject-matter. The Court has a discretion which it will exercise in a proper case, but it is not bound to exercise it in every case in which a lis alibi pendens is proved to exist"

⁴ *Cook and Others versus Muller* 1973 (2) SA 240 (N) at 245H-246B

⁵ *Loader versus Dursot Bros (Pty) Ltd* 948 (3) SA 136 (T) at 138

APPLICATION TO THE FACTS:

[16] The Applicant contends that in the present matter the relief for ejectment is sought against Mr Nefdt in his personal capacity but in the Germiston matter the relief sought is against the LY Plastics Manufacturing and Recycle Engineering Polymers (Pty) Ltd is for a rent interdict, confirmation of the cancellation of the commercial lease agreement, payment of an amount in damages and ejectment of LY Plastics Manufacturing and Recycle Engineering Polymers (Pty) Ltd from the premises. The Applicant contends that no relief is sought against Mr Nefdt in the Germiston matter. It is undisputed that Mr Nefdt is the sole director of LY Plastics Manufacturing and Recycle Engineering Polymers (Pty) Ltd and entered into the commercial lease agreement with the Applicant in his representative capacity as the director of the company. He can safely be regarded as the only person running the said company and for purposes of litigation the only person mandated to represent the company in the Germiston matter. Having regard to the *Cook*⁶ case *supra* that the matter in the Germiston Court need not be between the same parties, I am of the view that if an order for ejectment is granted in the Germiston matter as requested, Mr Nefdt would be directly affected by such order of ejectment as the sole director of LY Plastics Manufacturing and Recycle Engineering Polymers (Pty) Ltd.

[17] The uncontradicted evidence in this matter is that the lease was a commercial lease and therefore I can only interpret this to mean that Mr Nefdt entered into the lease agreement as the sole director on behalf of LY Plastics Manufacturing and Recycle Engineering Polymers (Pty) Ltd and not in his personal capacity. This may very well be the reason that no relief is sought against Mr Nefdt in the Germiston matter.

[18] The difficulty arises when one has regard to the counter-claim lodged by Mr Nefdt in the Germiston matter which is essentially based on a breach of the oral commercial lease agreement entered into between him and the Applicant during September 2022. In my view this is the same cause of action and same commercial

⁶ *Cook and Others versus Muller* 1973 (2) SA 240 (N) at 245H-246B

lease agreement relevant to the current application and premises. This is also pleaded in the Applicant's Particulars of Claim in the Germiston matter as the same oral commercial agreement relied upon by the Applicant in its claim for ejectment of Mr Nefdt in this matter. It is concerning to think that the Applicant would rely on the same oral commercial lease agreement against Mr Nefdt as well as LY Plastics Manufacturing and Recycle Engineering Polymers (Pty) Ltd yet claim that the cause of actions are different against Mr Nefdt and LY Plastics Manufacturing and Recycle Engineering Polymers (Pty) Ltd. It is clear from paragraph 7 of the Applicant's Particulars of Claim in the Germiston matter and paragraph 14 of the Applicant's founding affidavit in the current matter, that the wording of the pleadings in both matters are essentially the same. It is further apparent from the letter of demand in the current matter marked as FA 4.1 to the Applicant's Founding affidavit which was sent to Mr Nefdt and LY Plastics Manufacturing and Recycling Engineering Polymers (Pty) Ltd jointly that the Applicant seeks the ejectment of both Mr Nefdt and LY Plastics Manufacturing and Recycling Engineering Polymers (Pty) Ltd from the premises. I am satisfied that the requirement that we are dealing with the same cause of action in the current matter and the Germiston matter has been fulfilled.

[19] One also begs to ask the question that if Mr Nefdt entered into the lease agreement as a commercial lease agreement why then would he in his personal capacity be required to vacate the property in the current matter. The intention in my view by the Applicant is to obtain an order for all those who occupy the premises through and under Mr Nefdt to vacate the premises simultaneously with Mr Nefdt and this would include the company LY Plastics Manufacturing and Recycle Engineering Polymers (Pty) Ltd. This would ultimately have the same effect of the relief sought in the Germiston Court. The citation of the Second Respondent as all other occupiers of Unit [...], 79 Ostend Road, Germiston South, Germiston in the current application would have the effect of having the company LY Plastics Manufacturing and Recycle Engineering Polymers (Pty) Ltd ejected from the premises if an order is granted against the Second Respondent. I am therefore satisfied that part of the relief sought against LY Plastics Manufacturing and Recycle Engineering Polymers (Pty) Ltd in the Germiston matter is the same relief sought in the current matter.

[20] Under the circumstances in exercising my discretion and having regard to the *Nestle*⁷ and *Caesarstone*⁸ matters *supra*, I am satisfied that Mr Nefdt has proved on a balance of probabilities that the proceedings in the Germiston matter are *lis alibi pendens* and that Mr Nefdt's *point in limine* to this effect should be upheld.

[21] Counsel for both parties submitted that in the event that I uphold the point in limine of *lis alibi pendens* that the current application be stayed pending the outcome of the Germiston matter. I agree with this submission by both counsel after having regard to the Loader case *supra*.

COSTS:

[22] In upholding the *point in limine* it should follow that the Applicant should pay the wasted costs of the application, however, the First and Second Respondent's actions in failing to file the notice of intention to oppose the application and the First Respondent's actions in failing to file the answering affidavit timeously as well as answer the merits of the Applicant's case is not without fault. Given the fact that the parties agreed that the current matter be stayed pending the outcome of the Germiston matter, I am of the view that a true determination of costs for this application should be reserved for determination at the end of the matter.

ORDER:

[23] Under the circumstances the following order is granted:

[23.1] The First Respondent's point in limine raised of *lis alibi pendens* is upheld;

⁷ Nestle (South Africa) (Pty) Limited vs Mars Inc 2001 (4)(SA) 542 (SCA)

⁸ Caesarstone Sdot-Yam Ltd versus The World of Marble and Granite 2000 CC and Others [2013] ZASCA 129;
2013 (6) SA 499 (SCA)

[23.2] The determination of the current application is stayed pending the outcome of the action lodged in the Germiston Regional Court under case number GRC 349/2024;

[23.3] The costs of the application is reserved for final determination until the end of the hearing of the application.

M NAIR
ACTING JUDGE OF THE
HIGH COURT
JOHANNESBURG

Date of appearance: 20 May 2025

Date Judgment delivered: 3 June 2025

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