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

Case Number: 2024-109469

(1) REPORTABLE: NO

(2) OF INTEREST TO THE JUDGES: NO

(3) REVISED.

DATE: 29 August 2025

SIGNATURE:

In the matter between:

CENTPRET PROPERTIES (PTY) LTD

Applicant

and

THAMAE OCCUPATIONAL HEALTH SOLUTION CC

First Respondent

MOSENYA SOLOMON THAMAGA

Second Respondent

SUCCESS MATAITSANE

Third Respondent

JUDGMENT

VIVIAN AJ

Introduction

[1] The applicant seeks an order evicting the respondents from a commercial property.

[2] It is common cause that the applicant is the owner of the property and that the first respondent is in occupation of the property. The first respondent took occupation pursuant to a lease agreement concluded in 2017. The first lease was for a period of three years commencing on 1 March 2017 and terminating on 29 February 2020. A second lease was concluded for a period of two years commencing on 1 March 2020 and terminating 28 February 2021.

[3] The second lease expired, but its terms provided that it continued on a month-to-month basis until conclusion of the third lease. A third lease agreement was concluded for a period of one year commencing on 1 September 2021 and terminating on 31 August 2022.

[4] A fourth lease agreement was concluded for a period of one year commencing on 1 September 2022 and terminating on 31 August 2023. After the expiry of the term of that lease, it continued on a month-to-month basis, subject to either party giving 30 days' notice of termination. The issue in this application is whether the fourth lease agreement was validly terminated.

[5] The second and third respondents signed deeds of suretyship for the payment by the first respondent to the applicant for all or any sum or sums of money from whatsoever cause arising. They should not have been cited as respondents in this application for reasons that I set out below.

[6] The applicant contends that the first respondent failed to pay amounts due under the lease agreement. It gave notice of default on 9 November 2023. The

respondent did not remedy its default, and the applicant terminated the lease on 30 May 2024.

[7] The first respondent argues that it has not breached any terms of the lease agreement. It disputes certain charges levied by the applicant.

[8] The first respondent contends that the applicant has failed to prove a cause of action for eviction.

[9] In his heads of argument, the respondents' counsel, Mr Janse van Rensburg, relied on two defences. First, he argued that the breach was not common cause. Second, he argued that the issue as to whether there was a breach is an issue in a matter pending before another court and that the doctrine of *lis alibi pendens* should be applied. I deal with these in reverse order.

Lis alibi pendens

[10] The First Respondent relies on the dilatory defence of *lis alibi pendens*. It has instituted an action in the Regional Court, Pretoria. It contends that, because those proceedings were instituted before this application, this application should be stayed pending the finalisation of those proceedings.

[11] In **Caesarstone**, Wallis JA explained that there are traditionally three elements to the defence of *lis alibi pendens*, namely:

- 11.1. The litigation is between the same parties;
- 11.2. The same cause of action;
- 11.3. The same relief is sought in both matters.¹

[12] Each of the three requirements can be relaxed in appropriate circumstances. In respect of the same cause of action requirement, Wallis JA held: "... the

¹ CAESARSTONE SDOT-YAM v WORLD OF MARBLE AND GRANITE 2000 2013 (6) SA 499 (SCA) at para 12

*requirement of the same cause of action is satisfied if the other proceedings involve the determination of a question that is necessary for the determination of the case in which the plea is raised and substantially determinative of the outcome of that latter case."*²

[13] I agree with Mr Janse van Rensburg that the primary issue in this application is whether the first respondent was in breach of its obligations under the lease agreement at the time when it was given notice of breach and at the time of cancellation. The summons was issued before the application was issued. Accordingly, if the issue in the question of whether the first respondent was in breach at the relevant times is substantially determinative of the outcome of the Regional Court case, then the requirement of same cause of action may be met.

[14] The particulars of claim in the Regional Case reveal that the first respondent advances two alternative contentions. The complaint is that the fact that the first respondent was liable for additional costs such as a *pro rata* share of rates and taxes and utilities was not immediately apparent from the schedule that formed part of the agreement.

[15] This is advanced on at least three grounds. The first is based on Section 41(1)(b) of the Consumer Protection Act 68 of 2008 (CPA), which provides:

"(1) In relation to the marketing of any goods or services, the supplier must not, by words or conduct-

(a)

(b) use exaggeration, innuendo or ambiguity as to a material fact, or fail to disclose a material fact if that failure amounts to a deception ... "

[16] The second is that the term of the lease requiring such conduct is unfair, unreasonable or unjust in terms of Section 48(1) of the CPA.

² *CAESARSTONE SDOT-YAM v WORLD OF MARBLE AND GRANITE 2000, supra* at para 21

[17] The first respondent accordingly seeks an order in terms of Section 52(3) of the CPA. It seeks a refund for overpayment of expenses and an order that the applicant account to the first respondent.

[18] In the alternative, the first respondent asserts that the applicant was not entitled to delegate its responsibility to pay rates and taxes to the first respondent as a matter of public policy or in terms of the Local Government: Municipal Property Rates Act 6 of 2004. It asserts that the applicant (through its utility management company) wrongly charged fees in respect of electricity in excess of the tariffs approved by NERSA.

[19] I do not comment on the merits of the Regional Court case. However, it is immediately apparent that there is no contention in the particulars of claim that the first respondent was not in breach of its obligations in terms of the lease agreement. The Regional Court action and this application do not seek the same relief, nor do they turn on the same cause. Here the applicant invokes its entitlement to possession after a valid cancellation. In the Regional Court, the first respondent seeks relief under the CPA or public-policy regarding past charges.

[20] Whether the first respondent was entitled to withhold payment is not determinative of the Regional Court claim. Clause 5.4 of the lease in any event precludes withholding. Indeed, I do not expect that the first respondent will contend that, because of the findings in this application, it cannot proceed with its action in the Regional Court.

[21] The defence of *lis alibi pendens* is not established.

The breach

[22] Mr Janse van Rensburg rightly accepted that, if the first respondent was in breach of its obligations under the lease agreement when the notice of breach was given, it remained in breach when the termination notice was given. He also did not contend that either of these notices did not comply with the provisions of the lease agreement.

[23] The rent was R17 250 per month, inclusive of Value Added Tax.

[24] Clause 5 of the fourth lease agreement provided for payment of amounts and charges. It expressly listed the charges for which the first respondent was liable. These included the monthly rent, electricity, water, sewerage, and other services.

[25] Clause 5.4 provided that the first respondent was not entitled to withhold or defer payment of any charge for which it was liable under the agreement.

[26] The applicant annexed a statement of transactions to its founding affidavit. The statement shows sporadic payments. In September 2023, the first respondent paid R10 000. In December 2023, it paid R6 300. In April 2024, it paid R5 000. Yet it paid R20 000, R30 000 and R50 000 in other months.

[27] Significantly, the statement shows that the first respondent was in arrears as at the date of the notice of breach and remained in arrears as at the date of termination.

[28] It does not assist the first respondent that it has instituted proceedings in the Regional Court. The lease requires it to pay all amounts for which it is liable in terms of the lease. Even if the first respondent succeeds in the Regional Court, the relief that it seeks is a refund of monies paid to the applicant on the basis of a declaration by the Court in terms of the Consumer Protection Act or on the basis of public policy or the Local Government: Municipal Property Rates Act. Even if the Regional Court grants relief, that relief would operate through the accounting and refund remedies pleaded by the first respondent. It does not translate into a present right to withhold payment in the face of the plain wording of the lease requires the first respondent to pay all the amounts for which it agreed to be liable in terms of the lease.

[29] It is telling that the first respondent has concluded four leases with the applicant. Each is in substantially the same term. It asserts that it never had any issues in respect of the first two leases. The second respondent, who is the first respondent's sole member, says he did not scrutinize the first two leases.

[30] The second respondent says that the problems arose towards the end of 2021 and the beginning 2022. He noticed an increase in the total monthly bill. He says he raised a query with the applicant's administrator, who understood to investigate the issue.

[31] Notably, the second respondent says that he protested against entering into a new lease without the resolution of his queries. He says that the applicant undertook to resolve issues such as metering of water and electricity and circuit breaker charges. He then signed the fourth lease.

[32] The second respondent, as the controlling mind of the first respondent, was accordingly aware of the provisions in the lease relating to charges when he signed the fourth lease.

[33] The fourth lease provided that for the first three months of that lease, the first respondent did not have to pay any rental. It remained liable for other charges. The first respondent made payments during these months, which were applied to arrears and to current charges. The overall amount outstanding reduced to some R13 710,79 by 1 December 2022.

[34] Thereafter, the first respondent continued to pay less than the total amount of the monthly charges in most months.

[35] The notice of default was sent on 9 November 2023. At that time, the arrears were R144 192,14.

[36] The first respondent made payments of R20 000 on 1 November 2023 and R10 000 on 28 November 2023. It paid R6 500 on 1 December 2023, R20 000 on 5 January 2024 and R17 000 on 19 January 2024. In February 2024, it paid amounts of R10 000, R15 000 and R15 000. These payments resulted in the overdue amount being slightly reduced.

[37] On 28 February 2024, the first respondent's attorneys sent a letter to the applicant. The reference line included the following: "Settlement proposals to write off part of debt". The letter contained no such proposals, but did request various documents.

[38] The first respondent then paid R20 000 on 26 March 2024 and R5 000 on 30 March 2024. It made no payments in April 2024 and paid R15 000 on 2 May 2024.

[39] Unsurprisingly, by 2 May 2024, the balance owing to the applicant had ballooned to R210 148,60.

[40] The notice of termination was sent on 30 May 2024. At the time when it was sent, the first respondent had not even paid the rental for the previous three months.

[41] In my view, the first respondent was plainly in breach as at the date of the notice of default. It remained in breach as at date of the notice of termination. The fact that it disputed some of the charges does not assist it as clause 5.4 prevented it from withholding payment.

[42] The lease agreement was accordingly validly terminated.

The position of the second and third respondents

[43] As noted above, the second and third respondents appear to have been cited on the basis that they stood surety for the first respondent's indebtedness to the applicant.

[44] The applicant seeks an order evicting the first, second and third respondents from the premises. There is no allegation that the second or third respondents occupy the premises in their personal capacity. It is the first respondent who is in occupation.

[45] An order evicting the second and third respondents would ignore separate corporate personality.

[46] I consider that the second and third respondents were wrongly joined in this application. However, as they did not raise the point or seek costs, I will simply make no order against them. This does not prevent the applicant from seeking to recover any debts owed by the first respondent, including the costs order in this application, from the second and third respondents in due course.

Conclusion

[47] The applicant has made out a proper case for an order for eviction.

[48] The applicant seeks orders cancelling the third and fourth leases. Such orders are neither appropriate nor necessary. The third lease has terminated through the effluxion of time. The fourth lease has been terminated for breach. The Court cannot again cancel the lease. The ejectment of the first respondent is the natural consequence of the fact that it no longer has a right to occupy the premises.

[49] The lease makes provision for attorney and client costs and it is appropriate to order such costs. As a result, it is not necessary to make provision for the scale of counsel's fees.

[50] I accordingly make the following order:

- 50.1. The first respondent, and all persons holding by, through or under it, are evicted from Workshop 0001 Rosnew, 6[...] P[...] R[...] Street, Rosslyn, Pretoria, Gauteng Province ("the premises").
- 50.2. The first respondent and all such persons shall vacate the premises within 15 days of the date of service of this order on the first respondent. Service shall be effected at the premises.
- 50.3. Should the first respondent or any such person fail to vacate the premises within 15 days of the date of service of this order upon it, the sheriff is authorised and directed to evict the first respondent and any

such person from the premises and to give vacant possession to the applicant.

50.4. The first respondent is to pay the costs of this application on the scale as between attorney and client.

Vivian, AJ
Acting Judge of the Gauteng Division
of the High Court of South Africa

Appearances

For the Applicant: Z Schoeman
 Instructed by Savage Jooste & Adams Inc

For the Respondent: E Janse van Rensburg
 Instructed by SJ van den Berg Attorneys

Date of hearing: 13 August 2025

Date Delivered: 29 August 2025

MODE OF DELIVERY: *This Judgment was handed down electronically by circulation to the parties' and or parties' representatives by email and by being uploaded to CaseLines. The date and time for the hearing are deemed to be 10h00 on 29 August 2025*