

REPUBLIC OF SOUTH AFRICA



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

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

02 April 2026

Date

SIGNATURE

CASE NUMBER: 2024-072266

In the matter between:

ROSINA SEJA LEDIGA

FIRST APPLICANT

REGAL LIQUOR STORE (PTY) LTD

SECOND APPLICANT

and

CEHANLI BRINK

FIRST RESPONDENT

RAYMOND GRAVETT HOWELL

SECOND RESPONDENT

Heard: 27 October 2025

Delivered: 02 April 2026

This judgment is handed down electronically by circulating to the parties or their legal representatives by email and by uploading the judgment onto CaseLines. The date and time for hand down of the judgment are deemed to be 10:00 on 02 April 2026.

JUDGMENT

MATLAPENG A.J

INTRODUCTION

- [1] This application is predicated against the Notice of Motion¹, Founding Affidavit² Answering Affidavit³ as well as Replying Affidavits⁴ and the Annexure thereto.
- [2] In the main, the application concerns the cancellation of a sale agreement⁵ based on fraudulent misrepresentation alternatively final interdictory relief⁶.
- [3] The core issue is whether the Respondents, fraudulent misrepresented the validity of a liquor license in circumstances where such license, was allegedly renewed without the knowledge or consent of its lawful holder.
- [4] It is not in dispute that the First Applicant, purchased the business known as Regal Liquor Store (Pty) Ltd from the Respondents for an amount of R495,000.

¹ CaseLines: Notice of Motion 01-2-5

² CaseLines: Founding Affidavit -01-6-18

³ CaseLines: Answering Affidavit 14-1-13

⁴ CaseLines: Replying Affidavit 16-1-14

⁵ CaseLines: Founding Affidavit 01-10 para 11

⁶ CaseLines: Founding Affidavit 01-1- para 12

- [5] The agreement contemplated the provision and the use of a liquor license. It is also so that the Applicant paid the purchase price and operated the business as a going concern. In the main, the dispute concerns the lawfulness and validity of the liquor license.

THE FIRST POINT IN LIMINE

- [6] It is so that the Respondents raise two points *in limine* namely that the Applicants have failed to disclose a cause of action⁷ and that there exist material disputes of facts incapable of resolution on the papers.⁸

THE FIRST POINT IN LIMINE

- [7] It is trite that a pleading or Founding Affidavit discloses a cause of action if it sets-out the material facts relied upon and the legal basis for the relief sought. The test is whether, on every reasonable interpretation, the pleaded facts sustain a cause of action.
- [8] More pointed, the Court does not evaluate the probability of success, but only whether a legally recognisable claim is disclosed. The Applicant's Founding Affidavit clearly sets-out the conclusion of the sale agreement, the representation by the Respondents that the liquor license was valid, the falsity of the representation and the fact that the license was renewed without the knowledge or consent of the lawful holder.
- [9] These allegations, if proven, establish fraudulent misrepresentation which entitles the Applicants to cancellation and consequential relief. In sum, the

⁷ CaseLines: Answering Affidavit 14-14-16

⁸ CaseLines: Answering Affidavit 14-16-18

Applicants have sufficiently pleaded all the elements and the first point *in limine* is accordingly bad in law and must be dismissed with costs.

THE SECOND POINT IN LIMINE

[10] The Respondents' alleged disputes are not genuine as they fail to deal with the central allegation that the liquor license was renewed without the consent of its lawful holder.

[11] The Respondents fail to provide documentary proof of lawful renewal and rely on bare denials and speculative assertions. More pointed, the Respondents fail to produce confirmatory affidavits from key individuals which the Respondents make reference to in their Answering Affidavit and the dispute raised is not real, genuine nor *bona fide*.

[12] In sum, there is no genuine dispute of facts which exist, and the matter is properly capable of determination on the papers. The second point in *limine* must thus fail and is dismissed with costs.

THE ISSUES

[13] It is so that the determinative question to answer is whether the Respondents misrepresented the validity of the liquor license and that such misrepresentation, induced the conclusion of the contract.

ANALYSIS

[14] The law regarding fraudulent misrepresentation is settled law and a contract if induced by fraud, is voidable. It is so that fraud requires:

6.1 A representation;

- 6.2 Falsity.
- 6.3 Intention to mislead.
- 6.4 Inducement.
- 6.5 Prejudice.

[15] In the matter of Odendaal vs. Ferraris⁹ the Supreme Court of Appeals held the following regarding voetstoots and the consequences thereof:

“[29] It is trite that if a buyer hopes to avoid the consequences of a voetstoots sale, he must show not only that the seller knew of the latent defect and did not disclose it, but also that he or she deliberately concealed it with the intention to defraud (dolo malo).¹⁰ Where a seller recklessly tells a half-truth or knows the facts but does not reveal them because he or she has not bothered to consider their significance, this may also amount to fraud.¹¹ But as this court has said, fraud will not lightly be inferred, especially when sought to be established in motion proceedings.¹² And where a party seeks to do so the allegation must be clear and the facts upon which the inference is sought to be drawn succinctly stated.¹³

[16] It is also so that fraud neutralises contractual protections and excludes exclusion clauses. The representation in this matter, is not merely express, it is inherent in

⁹ (4) SA 313 (SCA) at para 29

¹⁰ R H Christie The Law of Contract in South Africa 5 ed (2006) p 295; Van Der Merwe v Meades 1991 (2) SA 1 (A) at 8E-F.

¹¹ Christie (above) at p 295.

¹² Loomcraft Fabrics CC v Nedbank Ltd and another 1996 (1) SA 812 (A) 822H-I.

¹³ Breedts v Elsie Motors (Edms) Bpk 1963 (3) SA 525 (A).

the sale of a licensed liquor business. The Respondents represented that the business was lawfully operatable and was supported by a valid license.

[17] It is so that the evidence established that the license was renewed without the knowledge or consent of the lawful holder and that no lawful authority for such renewal, has been demonstrated by the Applicants.¹⁴

[18] A liquor license is a statutory instrument and its validity, depends on strict compliance with regulatory requirements. A license renewed without the consent of its holder, is invalid in law.¹⁵

[19] The Respondent's failure to explain the renewal process is decisive of this case.¹⁶ The only reasonable inference is that the representation was false and made with knowledge, or at least recklessness on the part of the Respondents to the Applicants.

[20] It is so that the Applicants were induced to conclude the agreement on the strength of that representation which was made by the Respondents. This prejudice, is self-evident.

[21] In their defence, the Respondents raise the absence of warranties and on the facts, this absence of an express warranty does not avail a party who has committed fraud. Fraud is not dependent on contractual wording.

¹⁴ CaseLines: Founding Affidavit 01-12 at para 20 as well as para 7.23-24 of the Answering Affidavit where the Respondents failed to respond directly to the allegations regarding the registration of the owner of the license, and Annexure "**RSJ5**" which is the license the Applicants received from the Respondents.

¹⁵ CaseLines: Founding Affidavit 01-13 para 21 as well as the Answering Affidavit where the Respondents give a bare denial as to what the Applicants alleged regarding the true identity of the owner of the license and the role played by the Respondents in the renewal of the license.

¹⁶ See above.

[22] Regarding the voetstoots clause, cannot shield fraudulent contract this was confirmed in the matter of Odendaal vs Ferraris above.

[23] Regarding acquiescence, continued performance does not bar cancellation where fraud has been established by the Applicant. This election, requires full knowledge of material facts.

The Answering Affidavit of the Respondents

[24] The Answering Affidavit of the Respondents is deficient in material respects. I say so because it fails to engage with the central allegation of unlawful renewal of the license and it contains hearsay allegations and the absence of confirmatory affidavits and more pointed, general denials on the part of the Respondents while they have knowledge of the full spectrum of the facts.

[25] In Wightman T/A JW Construction vs Headfour (Pty) Ltd 2008 (3) SA 371 (SA) and at para 13, the Supreme Court of Appeal held as follows:

“A real, genuine and bona fide dispute of fact can exist only where the Court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed.”

[26] It is so that the Respondents do not meet this standard. There is no documentary evidence which is provided by the Respondents that demonstrate the authority to renew the license and compliance with the licensing requirements.

[27] The Respondents silence, on this issue alone is dispositive of the matter.

[28] It is so that credibility and probabilities, in motion proceedings are governed by the *Plascon-Evans* rule. However, where a version is unattainable it may be rejected, and this was neatly summarised in the matter of *NDPP vs Zuma* ¹⁷:

[26] Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special they cannot be used to resolve factual issues because they are not designed to determine probabilities. It is well established under the Plascon-Evans rule that where in motion proceedings disputes of fact arise on the affidavits, a final order can be granted only if the facts averred in the applicant's (Mr Zuma's) affidavits, which have been admitted by the respondent (the NDPP), together with the facts alleged by the latter, justify such order. It may be different if the respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting them merely on the papers.¹⁸ The court below did not have regard to these propositions and instead decided the case on probabilities without rejecting the NDPP's version.¹⁹

¹⁷ 2009 (2) SA 277 (SCA) at para 26

¹⁸ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) 634-5; *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA) para 55; *Thint (Pty) Ltd v National Director of Public Prosecutions*; *Zuma v National Director of Public Prosecutions* 2008 (2) SACR 421 (CC) para 8-10.

¹⁹ *Sewmungal NNO v Regent Cinema* 1977 (1) SA 814 (N); *Trust Bank van Afrika Bpk v Western Bank Bpk NNO* 1978 (4) SA 281 (A).

[29] The Respondent's version is unsupported by evidence and is inherently improbable and contradicted by objective facts contained in the Founding Affidavit of the Applicants.

[30] The Respondents also failed to explain how a liquor license could be validly renewed without the holder's consent. In the matter of *Elgin Brown and Hamer (Pty) Ltd vs Industrial Machinery Supplies (Pty) Ltd*²⁰ where the Court dealt with exemption clauses and held:

“... The clause is in my view to be construed as affording limited protection to the plaintiff against faults or imperfections in the product of its labours, which is otherwise substantially in accordance with the contract.

CONCLUSION

[31] The Applicants have established fraudulent representation, unlawfulness of the license, the entitlement to cancellation of the agreement. The Respondent's defences must thus fail.

[32] The parties must thus be put to the original position prior to the conclusion of the agreement.

ORDER

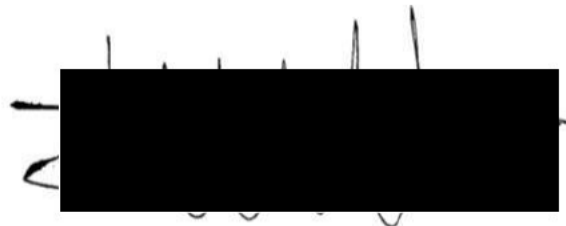
²⁰ 1993 (3) SA 424 (A)

[33] The following order is made:

39.1 The sale agreement between the First Applicant and the First Respondent for the purchase of the Second Applicant being the Real Liquor Store (Pty) Ltd is hereby declared void *ab initio*.

39.2 The First Respondent is ordered and directed to repay the First Applicant the purchase price for the liquor store as well as the license, being an amount of R495 000.00 immediately upon being served with the Court Order.

39.3 That the Respondents, jointly and severally be liable for the costs of this application and costs of appearance on Scale B.

A handwritten signature in black ink, appearing to be 'MT Matlapeng', is written over a large black rectangular redaction box. The signature is somewhat stylized and extends slightly above and below the box.

MT Matlapeng
Acting Judge of the High Court, Gauteng
Division, Pretoria

Appearances:

Applicant's Counsel:

Adv C.T Malatji

Applicant's Attorneys:

NG Dlamini Attorneys

Respondents Counsel:

Adv J.C Viljoen

Respondents Attorneys:

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