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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO.: 002513/2025

- (1) **REPORTABLE: NO**
(2) **OF INTEREST TO OTHER JUDGES: [N]**
(3) **REVISED: [N]**
(4) **Signature:**
Date: 08/05/26

In the matter between:

MUNICIPAL EMPLOYEES PENSION FUND

First Applicant

PROCPROPS 60 (PTY) LTD

Second Applicant

and

GO CLOUD IT (PTY) LTD

First Respondent

ARNOLD STEYNBERG

Second Respondent

JUDGMENT

Kumalo J

Introduction

- [1] This is an opposed application for summary judgment against the First and Second Respondents, for payment of arrears of rental and other charges, interest, and costs.

- [2] The Applicants' claim arises from a commercial lease agreement concluded between the Applicants and the First Respondent, the subject matter of which is the commercial premises situated at Shop G[...] and G[...], Parkview Shopping Center, Moretela Park, Pretoria, Gauteng.

- [3] The Applicants contended that the First Respondent breached the terms of the lease agreement by failing to make full and punctual payment of the monthly rental amounts and ancillary charges, and was accordingly entitled to cancel the agreement and claim the eviction of the First Respondent, as well as payment of the indebtedness amount towards arrear rental and ancillary charges.

- [4] The Second Respondent is bound as surety and co-principal debtor.

- [5] For ease of reference, the parties will be referred to by their original citations as Plaintiff and Defendant.

- [6] The Plaintiffs' original claim, as per their summons, was for R361 642.03 and interest thereon at the rate of 11.75% per annum *a tempore morae*.

- [7] The plaintiffs also sought confirmation of the cancellation of the lease agreement and the eviction of the First Defendant and/or other occupants of the leased premises.
- [8] The Defendants pleaded and denied the liability as claimed by the Plaintiff. They state that, under the lease agreement entered into on 22 May 2022 by the parties, they were not liable for the payment of rent for the period from 1 October 2021 to 31 December 2021 in the amount of R258 779.78. Thus, the Defendants contended that the particulars of the claim do not disclose a cause of action to the extent that the Plaintiffs claim amounts for debts incurred before the pleaded commencement date of the lease agreement.
- [9] To this end, the Defendants raised a point in limine that the particulars of claim are excipiable.
- [10] The Defendants further, in their affidavit resisting summary judgment, raised another point in limine, namely that part of the Applicants' claim is prescribed.
- [11] Defendants further alleged that the Plaintiffs currently hold a deposit in the amount of R51 451.90, and based on the above, they are liable for R51 410.35 and tendered the same.
- [12] Further, the Defendants pleaded that the premises, namely the Parkview Shopping Center, are poorly maintained, with large cracks in the basement,

cracked walls, and a leaking roof, rendering the property untenable for occupation. Their complaints have been unattended to by the Plaintiffs for months, with no action taken to address the seeping water and the poorly maintained Shopping Center.

[13] In matters of a summary judgment application, it is trite that the defendant is required to disclose fully the nature and grounds of the defence and the material facts relied upon therefore. In *Breitenbach v Fiat SA (Edms) Bpk*¹ the locus classicus dicta was laid down that bold, vague and sketchy defences should not be countenanced.

[14] In the matter of *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture*², the Supreme Court of Appeal held that the rationale behind summary judgment applications are impeccable. The procedure is not intended to deprive a defendant with a triable issue or a sustainable defence of his/her day in court. In considering whether a defendant does indeed have a triable issue or sustainable defence, the court should first consider whether there was a sufficient disclosure by the defendant of the defence sought to be relied upon. Secondly, it should be considered whether the defence so disclosed is bona fide and good in law.

[15] In this matter, the Defendants allege that an implied term of the lease agreement was that the Plaintiffs would properly maintain the Shopping Center, and that the Plaintiffs have failed to do so.

¹ 1976 (2) SA 226(T) at 229F-H

² 2009 (5) SA 1 (SCA) at 11G-12D

[16] The Defendants further, took issue in the opposing affidavit with the Plaintiff's claim that is not encompassed by the lease agreement. In response to the above, the Plaintiff appears to have accepted the situation as outlined by the defendants and sought to proceed with a lesser amount of R141 845.46, seeking summary judgment for that amount.

[17] This, to my mind, is an admission that the claim as pleaded is open to attack. The defendants have raised a triable issue, and summary judgment cannot be granted in that regard. This, however, is not the end of the matter.

[18] The Defendants, in their own calculations, acknowledged that they are indebted to the plaintiffs in the amount of R51 410.35, calculated as follows:

Plaintiffs' claim:	R361 642.03
Less Rental 1/10 -31/12/2021	R258 779.78
Less: Deposit	R 51 451.90
TOTAL:	R 51 410.35

[19] As already alluded to in paragraph 10 above, the Defendants tendered the same to the Plaintiffs.

[20] The Plaintiffs, on the other hand, argued that they are entitled to R141 845.46. It was argued that this is because, under the agreement, the Defendants are

precluded from deducting any amounts from the rent. I am of the view that this also raises a triable issue.

[21] In the light of the fact that the Defendants tendered to pay the amount t that they conceded to owe to the Plaintiffs, I am of the view that Plaintiffs should carry the costs as the defendants have been the more successful party in these proceedings.

[22] In the circumstances, the following order is made:

1. Summary judgment is granted against the First and Second Defendants, jointly and severally, in solidum, the one paying the other to be absolved an amount of R51 410.35;
2. Summary judgment is refused for the remainder of the Plaintiffs' claim; and
3. The Plaintiffs are to pay the costs of this application on scale A, including costs of counsel.

MP Kumalo

Judge of the High Court, Pretoria

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines.

Appearances:

For the plaintiffs: Adv LA Pretorius

Instructed by: Mark Efstratiou Incs

For the defendants: Adv JJ Scheepers

Instructed by: Bennecke Thom Inc