



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

CASE NO: 2021/20343

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

31/1/2023
DATE

J Moorcroft
SIGNATURE

In the matter between:

CHLOORKOP MOTOR CITY CC

Plaintiff

and

MYBUYA AFRICA PANEL BEATING AND MECHANICAL CC

Defendant

JUDGMENT

MOORCROFT AJ:

Summary

Summary judgment – not a suitable remedy when claim not clearly established – Rule 30 application – non-compliance with time periods in Rule 32 – rendered moot by judgment on the summary judgment application

Order

[1] In this matter I make the following order:

1. *The application for summary judgment is dismissed;*
2. *The plaintiff is granted leave to defend and to file a replication, if so advised, as well as a plea to the counterclaim within fifteen (15) days from the date of this order;*
3. *The application in terms of Rule 30 is dismissed;*
4. *The costs of both applications shall be costs in the cause of the action.*

[2] The reasons for the order follow below.

Introduction

[3] The plaintiff seeks summary judgment and relies on an oral lease agreement entered into in May 2018 in terms of which the plaintiff would let property to the defendant for a monthly rental consideration of R12 500.00 payable in advance on the first day of every month. The lease commenced on 1 May 2018 on a month-to-month basis.

[4] It is alleged that the defendant breached the lease by failing to pay monthly rental and charges, and that the defendant was in arrears in the sum of R402 935.56 as at March 2021. In substantiation of the allegation the plaintiff relies on a statement listing

outstanding invoices totalling R402 935.56.

[5] The plaintiff then terminated the lease agreement but the defendant refused to vacate the property. The plaintiff has however since obtained an eviction order in the Magistrates' Court and the only relief sought in this application is the money judgment for arrear rental.

[6] In the plea the defendant relies on an oral lease agreement entered into in 2012 in terms of which the defendant took occupation on 1 May 2012, which was superseded in May 2013 by a sale agreement in terms of which the property was sold to the defendant. A copy of this agreement is annexed to the plea and counterclaim. It is alleged that the plaintiff breached the agreement of sale and the defendant in its counterclaim prays for judgment in the amount of R755 000.00, being the amount allegedly paid towards the purchase price.

[7] In the affidavit in support of the summary judgment application the plaintiff's deponent (the sole member of the plaintiff) purports to verify the causes of action contained in the summons. The deponent deals with the draft agreement of sale of 2018¹ that it is common cause was never signed but fails to deal with comprehensively with the agreement of sale signed in 2013.

[8] It is also alleged that the plaintiff's claim is founded upon liquid documents² but a perusal of the pleadings indicate that the claim is not founded on liquid documents.

[9] The plaintiff in its affidavit in support of the summary judgment application makes

¹ Paragraph 20 of affidavit. The reference to a proposed deed of sale implies a reference to the 2018 draft rather than the 2013 deed of sale that the defendant relies on.

² Paragraph 35 of affidavit.

the bald statement that the agreement of sale of 2013 is invalid.³ Questions relating to the validity and breach of the agreement of sale of 2013 need not be decided in this application but the failure of the deponent to deal more fully with the agreement of 2013 is not satisfactory.

[10] The plaintiff also relies on a 'letter annexed to the plea.' This letter is in fact a letter written by the plaintiff's attorneys setting out the plaintiff's instructions. It does not constitute evidence of anything more than that.

[11] The defendant also refers to and attaches the draft deed of sale dated in 2018, and alleges that the defendant coerced the defendant into signing the agreement. This allegation is at odds with the document itself: The document was signed by the plaintiff as seller but not by the defendant as purchaser. It is therefore common cause on the papers that there is no valid agreement of sale dated in 2018.

[12] The authors of *Superior Court Practice*⁴ state with reference to the remedy of summary judgement that: "*The remedy should be resorted to and accorded only where the plaintiff can establish his claim clearly and the defendant fails to set up a bona fide defence.*" The plaintiff has not succeeded in establishing its claim clearly and leave to defend should be granted.

[13] The plaintiff launched its application for summary judgment after expiry of the 15-day period provided for in Rule 32. This prompted the defendant to bring an application in terms of Rule 30, alleging that the summary judgment constituted an irregular step. The plaintiff countered by referring to correspondence in support of the argument that the

³ Paragraph 28 of affidavit.

⁴ Van Loggerenberg & Bertelsmann *Erasmus: Superior Court Practice* RS 17, 2021, D1-383. See also the analysis by the Supreme Court of Appeal in *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture* 2009 (5) SA 1 (SCA)

parties had expressly agreed to hold time periods in abeyance pending settlement discussions that eventually failed. When the discussions failed the plaintiff served its application for summary judgment.

[14] The summons was served on 4 October 2021 and appearance to defend was entered on 15 October 2021. The plea, special plea and counterclaim was served on 18 October 2021 and in November 2021 there were settlement discussions between the parties' legal representatives. It was agreed to hold over the time periods pending settlement discussions.

[15] The discussions broke down in January 2022 and the summary judgment application was then delivered on 25 January 2022. The notice in terms of Rule 30 followed on 21 February 2022.

[16] When the Rule 30 application came before Matsemela AJ on 16 May 2022 the learned Judge ordered that the Rule 30 application be heard with the summary judgment application.

[17] The issue of non-compliance with the notice period in Rule 32 could have been raised in the summary judgment application. There was no need for a separate application in terms of Rule 30. Because of the view I take of the summary judgment application the application in terms of Rule 30 has become moot.

[18] I therefore make the order as set out above.


J MOORCROFT

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

**GAUTENG DIVISION
JOHANNESBURG**

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **1 FEBRUARY 2023**.

COUNSEL FOR THE PLAINTIFF:	MS N LATIF
INSTRUCTED BY:	STUPEL & BERMAN INC
COUNSEL FOR DEFENDANT:	MS A C ROESTORF
INSTRUCTED BY:	TENTE I RASJNYALO INC
DATE OF THE HEARING:	26 JANUARY 2023
DATE OF ORDER:	1 FEBRUARY 2023
DATE OF JUDGMENT:	1 FEBRUARY 2023