

SOUTH AFRICA / JUDGMENT

Aheer and Another v Govender (7098/2020P; 7136/2020P) [2024] ZAKZPHC 7 (8 February 2024)

[2024] ZAKZPHC 7

COURT

Kwazulu-Natal High Court, Pietermaritzburg

BEFORE

Sibisi AJ

CASE / FILE NUMBER

7098/2020P; 7136/2020P

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Source record

IN THE HIGH COURT OF
SOUTH AFRICA
KWAZULU-NATAL
DIVISION, PIETERMARITZBURG
CASE
NO: 7098/2020P and 7136/2020P
In

the matter between:

KAJAL
AHEER
FIRST PLAINTIFF
VINESH
GOKUL
AHEER
SECOND PLAINTIFF
and
DEBORAH
GOVENDER
DEFENDANT
ORDER
The

- following order is made:
- (a)
The defendant is ordered to pay the first plaintiff the sum of R4 992 778.61.
 - (b)
The defendant is ordered to pay the second plaintiff the sum of R540 000.00.
 - (c)
The defendant is ordered to pay interest on the above amounts at the applicable legal rate of interest calculated from the date of judgment to date of final payment.
 - (d)
The defendant is to pay the plaintiffs' costs of suit,
- such costs are to include:
- (i)
all costs previously reserved;
 - (ii)
the costs of the plaintiffs' experts, costs of their reports and court attendances; and
 - (iii)
the costs of two counsel where both senior and junior counsel have been so employed.
 - (e)
The Registrar is directed to bring this judgment to the attention of the National Director of Public Prosecutions for consideration of instituting possible criminal proceedings against the defendant.

JUDGMENT

Delivered on 08 February 2024

Sibisi AJ

Introduction

- [1] The plaintiffs instituted two different actions against the defendant, Ms Deborah Govender, for the recovery of money that they paid her. On 4 August 2021, the two actions were consolidated to proceed as one action.
- [2] The second plaintiff is the father of the first plaintiff. The first plaintiff's mother died suddenly in July 2015 due to a heart attack. The first plaintiff was heartbroken and as a result thereof, engaged the services of the defendant who described herself as a psychic. Various amounts were paid for these services and later the defendant started blackmailing the first plaintiff, and the first plaintiff paid substantial amounts for the silence of the defendant.

- [3] The second plaintiff made various payments to the defendant on the understanding that they were for the purchase of the first plaintiff's beauty salon equipment. It, however, later emerged that such payments were not due to the defendant.
- [4] The plaintiffs are now claiming the repayment of these amounts against the defendant on the grounds of unjust enrichment.

Issues

- [5] The parties were not able to have a meaningful pretrial conference on 21 April 2022 due to the nonattendance by the defendant. The defendant's legal representative, who attended the conference

on 28 September 2021, was not in a position to engage meaningfully in the conference as she had not had an opportunity to fully familiarise herself with the matter. At least three different law firms have represented the defendant in the past. At the commencement of the trial, the defendant appeared in person. A summary of issues prepared by the plaintiffs' attorneys dated 6 December 2021 identifies the following as issues for determination (in that document Kajal Aheer is incorrectly referred to as the second plaintiff and Vinesh G. Aheer as the first plaintiff):

- '2. Whether the Second Plaintiff was at any time indebted to the Defendant, and, if so, the extent of such alleged indebtedness.
- 3. Whether the Defendant misrepresented to the First Plaintiff that the Second Plaintiff was indebted to the Defendant in the amount of R540,000.00.
- 4. Whether such representation on the part of the Defendant was intended to induce the First Plaintiff to act thereon and to conclude an agreement with the Defendant whereby he would accept liability for the Second Plaintiff's alleged indebtedness and to pay to the Defendant the amount of R540,000.00 in settlement of such alleged indebtedness.
- 5. Whether the First Plaintiff was induced by such representation on the part of the Defendant to:
 - (a) Conclude an oral agreement with the Defendant in terms of which he accepted liability for the Second Plaintiff's alleged indebtedness in the sum of R540,000.00;
 - (b) Pay an amount of R540,000.00 to the Defendant in accordance with such oral agreement concluded.
- 6. Whether any such oral agreement was in fact concluded between the First Plaintiff and the Defendant.
- 7. Whether the First Plaintiff assumed liability for the Second Plaintiff's alleged indebtedness to the Defendant in the amount of R540,000.00 or any other amount freely, of his own accord and without any undue influence being exerted upon him.

8. Whether the First Plaintiff effected payment of the amount of R540,000.00 or any other amount to the Defendant.
9. Whether the First Plaintiff suffered damages by reason of the aforesaid misrepresentation on the part of the Defendant to him.
10. In the alternative, whether any payments made by the First Plaintiff to the Defendant were made in the bona fide and reasonable but mistaken belief that the Second Defendant (sic) was indebted to the Defendant in the amount of R540,000.00, which indebtedness the First Plaintiff accepted liability for.
11. Whether the Defendant was unjustifiably enriched at the expense of the First Plaintiff and the First Plaintiff impoverished in the amount of R540,000.00 by reason of the Defendant having accepted payment which was not owing to her.
12. Whether during or about 2017 and at or near Greytown the Second Plaintiff and the Defendant concluded an oral agreement in terms of which:
 - (a) The Second Plaintiff would make payments of varying amounts to the Defendant as requested by the Defendant from time to time, either directly to the Defendant or to such third parties as nominated by the Defendant;
 - (b) Such payments made by the Second Plaintiff to or on behalf of the Defendant would constitute compensation for the Defendant not divulging and/or publishing private and personal information regarding the Second Plaintiff which was within the Defendant's knowledge;
13. Whether such oral agreement concluded between the Second Plaintiff and the Defendant is illegal and null and void by reason of:
 - (a) The purported transaction forming the subject matter of the agreement amounts to extortion, alternatively blackmail of the Second Plaintiff on the part of the Defendant;
 - (b) It being against public policy and/or good morals.
14. Whether the Second Plaintiff is entitled to restitution of any and/or all such amounts paid from time to time to the Defendant and to third parties as nominated by the Defendant.
15. Whether payments made by the Second Plaintiff to or on behalf of the Defendant were made:
 - (a) By reason of the Second Plaintiff having engaged the services of the Defendant to perform services as a clairvoyant, which involved tarot card readings;
 - (b) For services rendered by the Defendant to the Second Plaintiff to conduct spells, rituals and reasons at the request of the Plaintiff (sic);
 - (c) As payment for amount(s) agreed upon between the parties.

16. Whether the Defendant complied with any requests for such services on the part of the Second Plaintiff and whether the Defendant was paid by the Second Plaintiff for such services rendered.
17. Whether the Defendant has been unjustifiably enriched by such payments made by the Second Plaintiff to her or to third parties nominated by her.
18. Whether the Second Plaintiff made payment to or on behalf of the Defendant in accordance with the oral agreement referred to above in the total amount of R5,172,678.00.
19. In the alternative, whether any payments made by the Second Plaintiff to the Defendant were made in the bona fide and reasonable but mistaken belief that she was obliged to make such payments and indebted to the Defendant for not divulging and/or publishing private and personal information about her which was within the Defendant's knowledge.
20. Whether the Defendant was unjustifiably enriched at the expense of the Second Plaintiff and the Second Plaintiff impoverished in the amount of R5,172,678.00 by reason of the Defendant having accepted payments made to her or on her behalf and which were not owing to her.
21. Whether the Second Plaintiff and the Defendant at any time concluded an oral agreement in terms of which:
 - (a) The Second Plaintiff leased salon space from the Defendant where she would render beauty services to members of the public;
 - (b) The Second Plaintiff would order beauty products from the Defendant which she would then sell to members of the public, the cost of which the Second Plaintiff would be liable for;
 - (c) The Second Plaintiff leased storage space at the Defendant's home where she would store furniture and some of her personal belongings.
22. Whether the Second Plaintiff was indebted to the Defendant in the amount of R290,000.00 pursuant to such oral agreement.
23. Whether the First Plaintiff assumed liability for any indebtedness on the part of the Second Plaintiff to the Defendant pursuant to any such oral agreement.
24. Whether any amount paid by the First and/or Second plaintiffs' to the Defendant was pursuant to the Second Plaintiff's alleged indebtedness to the Defendant in terms of such oral agreement.'

- [6] The trial initially came before Rasool AJ. Mr Pammenter and Ms Franke appeared for both plaintiffs and the defendant appeared in person. The defendant unsuccessfully applied for a postponement of the trial. After the refusal of the application for a postponement, the defendant applied for the recusal of the judge on the grounds that she belongs to the same group of advocates as Mr Pammenter. The judge recused herself and this matter came before me.

Application for postponement

- [7] When the trial commenced before me, and despite the fact that the postponement application had been dealt with, the defendant made a fresh application for a postponement on the grounds that she was not able to deal with the trial. This application was opposed by the plaintiffs.
- [8] On 11 April 2023, the trial which had been set down for 29, 30 and 31 August 2023, was postponed sine die, and time limits were set for the appointment of expert witnesses, in the event that the defendant elected to do so. The defendant was directed to pay the wasted costs. This matter was granted preference for the trial to proceed on 6, 7, 8 and 9 November 2023.

- [9] In *National Police Service Union and others v Minister of Safety and Security and others*[1] it was held as follows:

‘The postponement of a matter set down for hearing on a particular date cannot be claimed as of right. An applicant for a postponement seeks an indulgence from the Court. Such postponement will not be granted unless this Court is satisfied that it is in the interests of justice to do so. In this respect the applicant must show that there is good cause for the postponement. In order to satisfy the Court that good cause does exist, it will be necessary to furnish a full and satisfactory explanation of the circumstances that give rise to the application.’ (Footnote omitted.)

- [10] The defendant failed to support her application for a postponement and accordingly, I refused it.
- [11] In the plea, the defendant alleges, inter alia, that the first plaintiff was indebted to her and denies the amounts claimed by both plaintiffs.
- [12] The defendant was present in court on the first day of trial. On the second day of trial, I was advised by Mr Pammenter that the defendant reported via an anonymous caller, who made contact with a member of the court staff, that the defendant had fallen ill. No further details were provided. The matter stood down for the plaintiffs’ attorneys to investigate the whereabouts of the defendant. On resumption, I was advised that the plaintiffs’ attorney, Mr S Pillay, attempted to communicate with the defendant. Mr Pillay testified under oath on his investigations, namely that he sent a WhatsApp message to the defendant and made a phone call to her. Mr Pillay sought to find out from the defendant the details of her reported illness. Furthermore, Mr Pillay provided documentary evidence of his attempts in the form of images of the WhatsApp message that he sent on 7 November 2023 at 09:54 and phone calls

made thereafter.

- [13] After hearing the evidence of Mr Pillay and the submissions made on behalf of the plaintiffs, I ordered that the trial should proceed in terms of the provisions of Uniform rule 39(1) in the absence of the defendant and ordered the plaintiffs to lead evidence.[2] In the absence of an appearance by the defendant, she was regarded as being in default.

Evidence

- [14] The first plaintiff testified that during 2017, she was living in Greytown with her father, the second plaintiff, and that her mother had passed away in July 2015. The first plaintiff had a close relationship with her late mother and she regarded her as a friend and a confidant. On the other hand, the first plaintiff had an 'on and off' relationship with the second plaintiff, which could be described as 'bumpy'. She testified that she had one sibling. The first plaintiff completed her matric in 2010, and then studied at Varsity College where she obtained her degree in business

principles and practice in 2013. After she had completed her degree, she studied beauty therapy and qualified in 2016. The first

plaintiff's mother passed away suddenly due to a heart attack. She had no opportunity for bid farewell and her heart was broken. The first plaintiff battled to cope with the death of her mother and in 2017, she saw an advertisement by the defendant offering psychic services, on Gumtree, responded to it and started to communicate with the defendant. The advertisement described the defendant as being able to connect with the dead. The defendant represented to her that she was able to connect with the first plaintiff's mother and that she could communicate with her. The first plaintiff desperately wanted those services because she wanted closure and felt that she did not get a chance to say goodbye to her late mother. The first plaintiff and defendant both follow the Hindu religion. The first plaintiff believed that the defendant had supernatural powers, which enabled her to pray to a deity and connect with the dead. The defendant's fees were, at best, loosely discussed.

- [15] After establishing contact with the defendant, the first plaintiff relocated from Greytown to Durban in order to be closer to the defendant.
- [16] The first plaintiff was not present when the defendant communicated with her late mother. She received updates on these communications from the defendant. At some stage in the beginning of their relationship, the defendant advised the first plaintiff that her late mother was very happy that she was in contact with her and forming a relationship with the defendant. The first plaintiff felt a sense of relief when she received updates from the defendant and she commenced making various payments. According to the first plaintiff, she was happy to pay the defendant in the initial stages of their relationship but not after 20 October 2017, which was when the defendant started blackmailing the first plaintiff. The first plaintiff believed that the defendant was communicating with her late mother. The defendant told the first plaintiff that there were people who wanted to harm her. The first

plaintiff testified that the defendant offered a solution and assured her that she will stop people from harming her by putting a spell on them. The defendant then demanded money from the first plaintiff for protection. The defendant indicated to the first plaintiff that she was going to connect with the first plaintiff's deceased mother when no one was present.

[17] At some stage, the defendant went behind the first plaintiff's back and bought a beauty salon, La Vida Spa, which the first plaintiff had intended to purchase. The first plaintiff was operating

as a beauty therapist at La Vida Spa. After the purchase, the first plaintiff became the defendant's tenant and paid monthly

rentals to her.

[18] The first plaintiff testified on the various entries in exhibit 'C', being the various amounts of money that she paid to the defendant using her bank accounts and/or bank accounts of other people, as directed by the defendant. Exhibit 'C' also documents certain entries with amounts not forming part of the claim. The amounts listed in exhibit 'C' correspond with various entries in the first plaintiff's bank statements.

[19] The first plaintiff also testified about a payment to an entity called 'Ford'. According to her, it was a payment demanded by the defendant which she made for the purchase of a Ford Mustang on behalf of the defendant.

[20] The testimony of the first plaintiff dealt with the details of the relevant transactions that appear below, which have been taken from exhibit 'C'. The exhibit has dates for the various transactions, describes the nature of each transaction, the amounts involved, explanations (in which the parties are referred to by their first names) and the corresponding page numbers in the bundle. Those transactions that have been specifically waived by the first plaintiff, and those before 20 October 2017, have been excluded. The first plaintiff persists with the entries quoted below:

Date	Transaction	Amount	Explanation	Trial bundle page number
06/11/2017	Cash withdrawal	R30 000.00	Deborah began demanding more money and threatening to expose information and pictures of Kajal, if Kajal did not pay her	Vol 1: Page 69
15/11/2017	Cash withdrawal	R20 000.00	Deborah forced Kajal to withdraw cash and threatened to ruin her reputation if she did not give her the money	Vol 1: Page 72
01/12/2017	Cash withdrawal	R40 000.00	Deborah extorted Kajal, forcing her to withdraw the cash	Vol 1: Page 75
01/12/2017	Cash withdrawal	R40 000.00	Deborah extorted Kajal, forcing her to withdraw the cash	Vol 1: Page 75
08/12/2017	Internet bank transfer	R122 400.00	Deborah extorted Kajal, forcing her to transfer the cash	Vol 1: Page 77
14/12/2017	Internet bank transfer	R21 720.00	Deborah blackmailed Kajal and threatened to expose her, if she did not purchase jewellery, in the form of gold bangles	Vol 1: Page 78
18/12/2017	Internet bank transfer	R100 000.00	Deborah knew that Kajal was expecting money from her late mother's estate and she forced Kajal to transfer the money to her bank account	Vol 1: Page 79
13/01/2018	Cash withdrawal	R50 000.00	Deborah demanded that Kajal withdraw the cash and pay same to her or	

she will expose her and ruin her life Vol 1: Page 81 13/01/2018 Internet bank transfer R25 000.00 Deborah threatened to expose Kajal's personal information and demanded that she make the internet bank transfer if she did not comply (sic) Vol 1: Page 81 13/01/2018 Internet bank transfer R25 000.00 Deborah threatened to expose Kajal's information and demanded that she make the internet bank transfer if she did not comply (sic) Vol 1: Page 81 13/01/2018 Internet bank transfer R25 000.00 Deborah threatened to expose Kajal's personal information and demanded that she make the internet bank transfer if she did not comply (sic) Vol 1: Page 81 13/01/2018 Internet bank transfer R25 000.00 Deborah threatens to expose Kajal's personal information and demanded that she make the internet bank transfer if she did not comply (sic) Vol 1: Page 81 16/01/2018 Eldorado Jewellers *Annexure "A" R10 000.00 R10 000.00 Deborah blackmailed Kajal and threatened to expose her, if she did not purchase jewellery, in the form of a gold chain Vol 1: Page 83 This entry changed during the evidence from R18 800.00 to R10 000.00 when the first plaintiff admitted that she was not claiming R8 800.00 in this entry 20/01/2018 Internet bank transfer R50 000.00 [R25 000.00 + R5000.00+R20 000.00] Deborah was aware that money came from Kajal's trust account and demanded various payments Vol 1: Page 85 22/01/2018 Cash withdrawal R50 000.00 Deborah was aware the money came from Kajal's trust account and demanded various cash withdrawals Vol 1: Page 85 16/02/2018 Cash withdrawal R146 000.00 Deborah was aware that money came from Kajal's trust account and demanded a large cash withdrawal, she threatened to ruin Kajal's life if Kajal did not comply Vol 1: Page 90 24/03/2018 Cash Withdrawal R400 000.00 Deborah blackmailed Kajal and forced her to withdraw the cash. She threatened to ruin her life if she did not comply Vol 1: Page 98 07/04/2018 Internet Bank Transfer R20 000.00 Deborah threatened to expose Kajal's personal information should she not satisfy her demands for money. She also demanded that the transfers be done to separate bank accounts Vol 1: Page 100 07/04/2018 Internet Bank Transfer R23 500.00 Deborah threatened to expose Kajal's personal information should she not satisfy her demands for money. She also demanded that the transfers be done to separate bank accounts. Deborah had two separate bank accounts Vol 1: Page 100 07/04/2018 Internet Bank Transfer R20 000.00 Deborah threatened to expose Kajal's personal information should she not satisfy her demands for money. She also demanded that the transfers be done to separate bank accounts. Deborah had two separate bank accounts Vol 1: Page 100 07/04/2018 Internet Bank Transfer R20 000.00 Deborah threatened to expose Kajal's personal information should she not satisfy her demands for money. She also demanded that the transfers be done to separate bank accounts. Deborah had two separate bank accounts Vol 1: Page 100 25/05/2018 Interbank Bank Transfer R12 000.00 Vol 2: Page 110 07/06/2018 Internet Bank Transfer R700 000.00 Vol 2: Page 109 12/06/2018 Internet Bank Transfer R450 000.00 Deborah demanded that Kajal withdraw money from a Policy that she had and make two payments to her Vol 2: Page 110 12/06/2018 Internet Bank Transfer R6 000.00 Vol 2: Page 110 12/06/2018 Internet Bank Transfer R51 758.61 Vol 2: Page 110 12/06/2018 Cash Withdrawal R400 000.00 Deborah demanded that one payment be made via EFT and the other be a cash withdrawal Vol 2: Page 110 22/08/2018 Internet Bank Transfer R16 000.00 Vol 2: Page 123 06/09/2018 Internet Bank Transfer R6 700.00 Vol 2: Page 126 07/12/2018 La Vida R6 700.00 Vol 2: Page 145 12/12/2018 La Vida R20 000.00 Deborah blackmailed Kajal into transferring various amounts of money to the Spa owned by Deborah – La Vida Vol 2: Page 145 01/02/2019 La Vida R6 000.00 Deborah demanded

constant payments of R6 000.00 into two separate La Vida bank accounts (she had two bank accounts for the Spa she owned – La Vida) Vol 2: Page 154 08/02/2019 La Vida R6 700.00 Deborah knew that Kajal collected this amount as her monthly interest from Investment, Deborah demanded that this amount be paid to the Spa that Deborah owned – called La Vida Vol 2: Page 155 25/02/2019 La Vida R6 000.00 Deborah demanded constant payments of R6 000.00 into two separate La Vida bank accounts, (she had two bank accounts for the Spa she owned – La Vida) Vol 2: Page 158 07/03/2019 La Vida R6 700.00 Deborah knew that Kajal collected this amount as her monthly interest from Investment, Deborah demanded that this amount be paid to the Spa that Deborah owned – called La Vida. Vol 2: Page 160 09/03/2019 La Vida R50 000.00 Deborah demanded Kajal pay larger sums of money into La Vida bank account, from her trust monies Vol 2: Page 160 11/03/2019 Internet Bank Transfer R10 000.00 Deborah was aware that money came from Kajal's trust account and demanded various payments Vol 2: Page 160 19/03/2019 La Vida R30 000.00 Deborah demanded Kajal pay larger sums of money into La Vida Bank account, from her trust monies Vol 2: Page 163 19/03/2019 La Vida R20 000.00 Deborah demanded Kajal pay larger sums of money into La Vida Bank account, from her trust monies Vol 2: Page 163 19/03/2019 La Vida R100 000.00 Deborah demanded Kajal pay larger sums of money into La Vida Bank account, from her trust monies Vol 2: Page 163 19/03/2019 Internet Bank Transfer R1 000 000.00 Deborah demanded money to purchase a vehicle Vol 2: Page 163 20/03/2019 La Vida R30 000.00 Deborah demanded Kajal pay larger sums of money into La Vida Bank account, from her trust monies Vol 2: Page 163 20/03/2019 La Vida R20 000.00 Deborah demanded Kajal pay larger sums of money into La Vida Bank account, from her trust monies Vol 2: Page 163 22/03/2019 Internet Bank Transfer R200 000.00 Deborah blackmailed Kajal into transferring money to her bank accounts and threatened to ruin her life if she didn't comply Vol 2: Page 163 25/03/2019 La Vida R6 000.00 Deborah demanded constant payments of R6 000.00 into two separate La Vida bank accounts, (she had two bank accounts for the Spa she owned – La Vida) Vol 2: Page 165 26/04/2019 La Vida R6 000.00 Deborah demanded constant payments of R6 000.00 into two separate La Vida bank accounts, (she had two bank accounts for the Spa she owned – La Vida) Vol 2: Page 168 24/05/2019 La Vida R10 000.00 Deborah demanded payment of R50 000.00 be made by way of R10 000.00 payments into La Vida's two separate bank accounts Vol 2: Page 176 24/05/2019 La Vida R10 000.00 Deborah demanded payment of R50 000.00 be made by way of R10 000.00 payments into La Vida's two separate bank accounts Vol 2: Page 176 24/05/2019 La Vida R10 000.00 Deborah demanded payment of R50 000.00 be made by way of R10 000.00 payments into La Vida's two separate bank accounts Vol 2: Page 176 24/05/2019 La Vida R10 000.00 Deborah demanded payment of R50 000.00 be made by way of R10 000.00 payments into La Vida's two separate bank accounts Vol 2: Page 176 24/05/2019 La Vida R10 000.00 Deborah demanded payment of R50 000.00 be made by way of R10 000.00 payments into La Vida's two separate bank accounts Vol 2: Page 176 06/06/2019 Cash withdrawal R100 000.00 Deborah blackmailed Kajal into paying her large sums of money. She promised Kajal that she would stop demanding payments, but continued to do so and continued to extort Kajal Vol 2: Page 179 26/06/2018 La Vida R6 000.00 Deborah demanded constant payments of R6 000.00 into two separate La Vida bank accounts, (she had two bank accounts for

the Spa she owned – La Vida) Vol 2: Page 182 27/07/2019 La Vida R6 000.00 Vol 2: Page 188 31/08/2019 La Vida R6 000.00 Vol 2: Page 194 30/09/2019 La Vida R6 000.00 Deborah demanded constant payments of R6 000.00 into two separate La Vida bank accounts, (she had two bank accounts for the Spa she owned – La Vida) Vol 2: Page 199 03/10/2019 La Vida R15 000.00 Deborah demanded payment of R50 000000 be made by way of smaller payments into La Vida's two separate bank accounts Vol 2: Page 200 03/10/2019 La Vida R20 000.00 Deborah demanded payment of R50 000.00 be made by way of small payments into La Vida's two separate bank accounts Vol 2: Page 200 03/10/2019 La Vida R15 000.00 Deborah demanded payment of R50 000.00 be made by way of smaller payments into La Vida's two separate bank accounts Vol 2: Page 200 03/10/2019 Interbank Bank Transfer R100 000.00 Deborah blackmailed Kajal into paying her large sums of money. She promised Kajal that she would stop demanding payments, but continued to do so and continued to extort Kajal. Vol 2: Page 200 30/10/2019 La Vida R6 000.00 Deborah demanded constant payments of R6 000.00 into two separate La Vida bank accounts (she had two bank accounts for the Spa she owned – La Vida) Vol 3: Page 205 30/11/2019 La Vida R6 600.00 Deborah demanded constant payments of R6 000.00 into two separate La Vida bank accounts, (she had two bank accounts for the Spa she owned – La Vida) Vol 3: Page 211 06/12/2019 Eldorado Jewellers R106 900.00 Deborah blackmailed Kajal into paying her large sums of money. She promised Kajal that she would stop demanding payments, but continued to do so and continued to extort Kajal Vol 3: page 212 07/12/2019 La Vida R15 000.00 Deborah demanded payment of R45 000000 be made way of smaller payments into La Vida's two separate bank accounts Vol 3: Page 213 17/12/2019 La Vida R20 000.00 Deborah demanded payment of R45 000.00 be made by way of smaller payments into La Vida's two separate bank accounts Vol 3: Page 215 22/12/2019 22/12/2019 La Vida La Vida R8 000.00 R 2 000.00 Deborah demanded payment of R45 000.00 be made by way of smaller payments of La Vida's two separate bank accounts Deborah demanded payment of R45 000.00 be made by way of smaller payments into La Vida's two separate bank accounts Vol 3: Page 216 Volume 3 Page 216 27/12/2019 La Vida R4 000.00 Vol 3: Page 217 31/12/2019 La Vida R6 600.00 Deborah knew that Kajal collected this amount as her monthly interest from Investment, Deborah demanded that this amount be paid to the Spa that Deborah owned – called La Vida Vol 3: Page 217 01/01/2020 La Vida R11 000.00 Vol 3: Page 217 10/01/2020 La Vida R10 000.00 Deborah demanded Kajal pay various sums of money into La Vida Bank accounts, and threatened to ruin her if she did not comply Vol 3: Page 218 10/01/2020 La Vida R5 000.00 Deborah demanded Kajal pay various sums of money into La Vida bank accounts, and threatened to ruin her if she did not comply Vol 3: Page 218 10/01/2020 La Vida R5 000.00 Deborah demanded Kajal pay various sums of money into La Vida Bank accounts, and threatened to ruin her if she did not comply Vol 3: Page 219 10/01/2020 Cash withdrawal R25 000.00 Deborah demanded a cash payment of R30 000.00 Vol 3: Page 219 10/01/2020 Cash withdrawal R5 000.00 Deborah demanded a cash payment of R30 000.00 Vol 3: Page 219 20/06/2020 La Vida R1 500.00 Deborah continued to blackmail Kajal into making payments into her La Vida bank accounts. Vol 3 Page 228 04/07/2020 La Vida R1 000.00 Deborah continued to blackmail Kajal into making payments into her La Vida bank accounts TOTAL AMOUNT DEALT WITH IN EVIDENCE R4,992,778,61

- [21] There were repeated demands for payment by the defendant. On 6 December 2019, on the instruction of the defendant, the first plaintiff bought jewellery for the defendant from Eldorado Jewellers for R106 900.00. The defendant did not want the jewellery. The first plaintiff pawned it and received R15 000.00, which she paid to the defendant via her La Vida account on 7 December 2019. On the same date, she made a further payment of R20 000.00 to the defendant. The transactions mentioned above amount to R4 992 778.61. Whenever the first plaintiff had money, it was met with a demand for payment from the defendant. In the last stages, the first plaintiff borrowed money from her brother in order to silence the defendant, which she paid over to the defendant. Under pressure from the defendant, the first plaintiff was also forced into a situation where she had to lie to her father that she needed money in order to make payments for the beauty salon. The last two payments were for R1 500.00 and R1 000.00 and this, according to the first plaintiff, was the point when she had exhausted all her funds, including her investments.
- [22] The first plaintiff then confessed everything to her brother and then approached her current attorneys of record in order to take action against the defendant. The first plaintiff was terrified after she instructed her attorneys, as she continued to receive approaches from the defendant. A protection order was obtained by the first plaintiff which was allegedly violated by the defendant.
- [23] The first plaintiff testified that she had shared the most intimate details of her relationship with her boyfriend and other relationships that she was involved in with the defendant. The first plaintiff trusted the defendant, she went as far as sending the defendant her explicit photographs that she would have sent to her boyfriend. The first plaintiff was afraid that the exposure of the information by the defendant was going to disgrace her conservative family, who were respected by society. The defendant had information and details of relationships that the first plaintiff had during the times when she had broken up with her boyfriend, which she threatened to expose. After a number of payments aimed at ensuring that the defendant did not divulge the hidden harmful details, the defendant divulged the information to the first plaintiff's boyfriend and this led to their breakup. The disclosure of the harmful details happened at the time when they were engaged to be married.
- [24] During her testimony, the first plaintiff was able to explain and point out that the photographs showing the defendant wearing pieces of jewellery and a pendant with a Krugerrand coin. The pendant belonged to the first plaintiff and it previously belonged to her late grandmother. The evidence of the keychain belonging to the first plaintiff, being worn by the defendant, was also led, so too was the evidence of earrings, gold watch (which was given to the first plaintiff by her father's former partner) and a Ford Mustang that she was forced to buy or contribute towards.

- [25] The first plaintiff also pointed out that there were repeated threats made by the defendant to the effect that the first plaintiff was going to be harmed, that she was going to die in an accident and that her explicit photographs were going to be exposed.
- [26] The first plaintiff's father, the second plaintiff, also testified. He testified that he was based in Greytown where he was running a cash and carry, which he described as very successful. He confirmed that his wife, the first plaintiff's mother, passed away in 2015 and that at the time of her death, they were separated. He also confirmed that his relationship with the first plaintiff was strained. The second plaintiff testified that he received a phone call from the defendant who advised him that the first plaintiff was indebted to the defendant in the sum of R540 000.00 and that he

had to settle the debt. The defendant also threatened that she was going to take action if payment was not made. He did not want his daughter to be blacklisted and thus ended up making payments totalling R540 000.00 at various stages. When he testified, the second plaintiff referred to the bank statements and pointed out the transactions that he made in favour of the defendant.

- [27] Mr Clive Willows, a clinical psychologist, testified on the three reports that he compiled, which were delivered in terms of the provisions of Uniform rule 36(9)(b). Mr Willows testified that he consulted with the first plaintiff on her relationship with the defendant. He noted that the description offered by the first plaintiff demonstrates that she was under duress in the relationship because the defendant posed a threat to her safety, and had information that she had threatened to make public which would have negatively affected her personal, professional and public image. The information had the potential to cause her to be alienated by her family, and tarnish her reputation and integrity within the community. It was the opinion of Mr Willows that the first plaintiff perceived the threat made by the defendant to be real, that there was a likelihood that the defendant would act on her verbal threats, and that such actions would result in physical and/or psychological damage to the first plaintiff. Furthermore, Mr Willows found that the defendant's threat of disclosure enabled the defendant to pressurise the first plaintiff into making payments for services which may or may not have been provided. It was evident to the first plaintiff that she received no benefit from the defendant's services, apart from some initial reassurances. The first plaintiff was trapped in a traumatic relationship in which she was forced to pay for services that she did not want or face physical harm or reputational damage. It was the finding of Mr Willows that the first plaintiff could not escape this entrapment without the risk of exposing herself to the defendant's threats. Mr Willows noted that when the first plaintiff initially responded to the defendant's advert, she was emotionally vulnerable, her childhood history was such that she had a close and dependent relationship with her late mother. When her mother died suddenly and unexpectedly on 23 July 2015, the first plaintiff did not have an opportunity to bid farewell and to view her body. It was her wish to find closure for her grief by communicating through the defendant with her late mother.

[28] Mr Willows again assessed the first plaintiff on 6 August 2021, when he administered the MMPI2 personality test and scored the first plaintiff. The results of the personality test reinforced the opinions arising from the clinical interviews which are expressed in his report of 26 April 2021, and these results were not contradicted. It is the finding of Mr Willows that the personality feature of ‘dependency’ would contribute to an understanding why the first plaintiff was vulnerable to efforts to dominate or manipulate her. It was found that the first plaintiff’s vulnerability was

accentuated by her tendency to be sensitive to the opinions that others may have of her resulting in either an attempt to be compliant

or the harbouring of a hostile and resentful attitude. Mr Willows explained that the first plaintiff was caught between the fear to remain in a relationship with the defendant versus the fear of the consequences as a result of disclosure of what she had shared with the defendant. Mr Willows testified that because of trauma bonding, the first plaintiff became vulnerable and open to abuse by the defendant.

[29] Mr Michael John Irving, a forensic document examiner, testified that the acknowledgement of debt in favour of the defendant, which was allegedly signed by the first plaintiff, was not signed by her. Mr Irving testified about the steps taken in order to deal with the purported signature of the first plaintiff on the acknowledgement of debt. He was satisfied that he had a range of documents which he could use to compare the signature of the first plaintiff. The respondent did not file any expert reports in order to deal with the findings of Mr Irving.

The law

[30] Rule 39(1) of the Uniform Rules of Court reads:

‘(1) If, when a trial is called, the plaintiff appears and the defendant does not appear, the plaintiff may prove his claim so far as the burden of proof lies upon him and judgment shall be given accordingly, in so far as he has discharged such burden: Provided that where the claim is for a debt or liquidated demand no evidence shall be necessary unless the court otherwise orders.’

[31] It is trite that:

‘A defendant who appears when the hearing of a trial action starts, but thereafter withdraws and absents himself from the remainder of the proceedings, is regarded as being in default.’[3]

[32] In *National Police Service Union and Others v Minister of Safety and Security and Others*,[4] the court set out factors that need to be taken into account in an application for a postponement:

‘The postponement of a matter set down for hearing on a particular date cannot be claimed as of right. An applicant for a postponement seeks an indulgence from the Court. Such postponement will not be granted unless this Court is satisfied that it is in the interests of justice to do so. In this respect the applicant must show that there is good cause for the postponement. In order to satisfy the Court that good cause does exist, it will be necessary to furnish a full and satisfactory

explanation of the circumstances that give rise to the application. Whether a postponement will be granted is therefore in the discretion of the Court and cannot be secured by mere agreement between the parties. In exercising that discretion, this Court will take into account a number of factors, including (but not limited to): whether the application has been timeously made, whether the explanation given by the applicant for postponement is full and satisfactory, whether there is prejudice to any of the parties and whether the application is opposed.’[5] (Footnotes omitted.)

[33] The court has a discretion on whether to grant a postponement:

‘The legal principles applicable to an application for the grant of a postponement by the court are as follows:

- (a) The court has a discretion as to whether an application for a postponement should be granted or refused. Thus, the court has a discretion to refuse a postponement even when wasted costs are tendered or even when the parties have agreed to postpone the matter.’[6]

[34] The essential allegations for a claim based on fraud are the following:

‘(a) A representation by the representor to the representee. The representation usually concerns a fact but may relate to the expression of an opinion said to be held but which is in fact not held.

Nondisclosure can amount to a representation.

- (b) Fraud (i.e. that the representor knew the representation to be false).

It is not sufficient to allege that the representation was “false”, because this word implies no more than that the representation was untrue. The mental element must be alleged.

The representor must intend that the representee will act on the representation.

- (c) Causation (i.e. the representation must have induced the representee to act in response to it).

- (d) If damages are claimed, it must be alleged that the representee suffered damages because of the fraud.

- (e) If reliance is placed on fraudulent nondisclosure, facts giving rise to the duty to disclose must be set out. It is also necessary to show that the breach of the duty to disclose was deliberate and intended to deceive.’[7] (References omitted.)

[35] In *Ruto Flour Mills (Pty) Ltd v Adelson*,[8] the court held the following:

‘Generally speaking fraud is proved when it is shown that a false representation has been made, (i) knowingly or, (ii) without belief in its truth or, (iii) recklessly careless whether it be true or false. If there is an honest belief in the truth of the false statement then fraud is not established. Negligence or unreasonableness in itself, however gross, does not constitute an absence of honest belief in questions of fraud; *R v Myers*, 1948

(1) SA 375 (AD) at pp. 382–384. In the ordinary case of fraud, apart from such factors as materiality and inducement, a plaintiff has to prove, (a) a false representation or misrepresentation and, (b) the state of mind of the defendant in respect of such representation. In the present case, however, the alleged false representation or misrepresentation itself relates to the state of mind of the defendant at the relevant time or times when the representation was made. A false representation about one's own state of mind can only be made with knowledge of such falsity and it can hardly be said that the false representation was made in an honest belief in its truth. There is, in my view, no room for an investigation whether such a false representation was made, (a) without belief in its truth or, (b) recklessly careless whether it be true or false.'

[36] Extortion is 'committed when a person unlawfully and intentionally obtains some advantage, which may be ... patrimonial [in] nature, from another by subjecting the latter to pressure which induces her to hand over the advantage'.^[9] The threat or pressure may 'be express or implied by words or deeds'.^[10] 'The threat or intimidation must have been exercised unlawfully'.^[11]

[37] The author, Jonathan Burchell in *Principles of Criminal Law*,^[12] suggests that it must be unlawful to use the pressure for the purpose for which it is used and this depends on the nature and circumstances

of the threat and he gives an example in instances of blackmail. The mere revelation of information that may be embarrassing to another is not selfevidently unlawful. It only becomes unlawful if the objective of the threat is to exact some advantage which is not due to the extortioner.^[13]

Analysis

[38] Given the fact that the first plaintiff cannot explain in great detail the reasons for her conduct during the subsistence of her relationship with the defendant, she relied on the evidence of Mr Clive Willows, a clinical psychologist. The evidence by Mr Willows is not contradicted by any other expert evidence. This expert was able to explain the reasons that led to the first plaintiff's behaviour, which in turn led her to make numerous payments to the defendant. Mr Willows also explained, *inter alia*, the concept of trauma bonding and the first plaintiff's vulnerability after she lost her mother and in her pursuit of finding closure. Mr Willows, in explaining the concept, made reference to other forms of known abusive relationships.

[39] According to the papers made available, the defendant sought to rely on an acknowledgement of debt dated 30 April 2018 which documents, *inter alia*, that the first plaintiff is indebted to the defendant in the sum of R2 500 000.00 and refers to a laser liposuction machine and household goods. In order to deal with the acknowledgement of debt, the first plaintiff led the evidence of Mr Irving, the forensic document examiner. He concluded that the signature affixed on the acknowledgement of debt was not that of the

first plaintiff and that the signature was written by the writer of the handwritten portion of the acknowledgement of debt. The defendant did not file any expert report in order to deal with the findings of Mr Irving.

- [40] The second plaintiff testified about how he was led to believe that the first plaintiff owed the defendant an amount of R540 000.00. During his testimony, the first plaintiff was able to prove the transactions that he made in favour of the defendant and explained how he later learnt that the transactions were not legitimate. The second plaintiff was misled by the defendant into making the payments, when it was misrepresented to him by the defendant that the first plaintiff was indebted to the defendant in respect of the beauty salon.
- [41] The allegations made by the plaintiffs are supported by the evidence presented. Had the defendant carried on with her defence, she would have had a more difficult case to argue.
- [42] For the most part, the first plaintiff kept a minimum balance in her bank account. There is a pattern in the manner in which withdrawals were made from the first plaintiff's investments. Bigger amounts would be deposited into the first plaintiff's bank account from the investment account, and would immediately be withdrawn and/or transferred to the defendant and/or persons with links to the defendant.
- [43] With regard to the first plaintiff, there are two distinct contracts that she had entered into with the defendant. The first was for the services of a psychic and the second was for the defendant to keep quiet.
- [44] There was no evidence led which suggested that the payments made before 20 October 2017 were improper and that they were induced by means of fraudulent misrepresentations and/or extortion.
- [45] Part of the requirements for fraudulent misrepresentation is that the misrepresentation must be material.[14]
- [46] There are divergent views on what test to use to determine if the misrepresentation was material. In *Lourens en 'n ander v Genis*[15] it was held that the plaintiff had acted at his own risk in believing the defendant, and that an objective test was to be applied. *Otto en 'n Ander v Heymans*[16] and *Orville Investments (Pty) Ltd v Sandfontein Motors*[17] disagreed with *Lourens* and held that a subjective test is to be applied.
- [47] The first plaintiff and the defendant share the same religious beliefs. The first plaintiff sought closure and wanted to establish some contact with her late mother. The defendant matched the profile of someone who could help in this regard. Mr Willows dealt with the first plaintiff's state of mind before coming into contact with the defendant. There is nothing wrong, in my view, with the first contract. There is no evidence of anything untoward before 20 October 2017, and the first plaintiff clearly pointed out when she testified that there was nothing wrong with her relationship with the defendant

before that date.

- [48] The second contract is, however, a very different matter, and points towards extortion.[18]
- [49] Extortion, aimed at obtaining an advantage in the form of payment ,offends the rights of the first plaintiff. The author, J R L Milton[19] uses the example of an extortionist threatening to assault his victim unless a due debt is paid. The requirements of wrongfulness and intention should be looked at. If the act is regarded as unlawful (as judged by the boni mores of society), and the wrongdoer is shown to have made the threat or exerted pressure with the knowledge of wrongfulness, the offence is committed. If no advantage is obtained, the wrongdoer will only be guilty of attempted extortion.
- [50] The second contract was, accordingly, entered into for an illegal purpose and it is thus illegal. The first plaintiff is entitled to restitution.
- [51] The misrepresentations made to the second plaintiff by the defendant induced him to make payments totalling R540 000.00. If it was not for the misrepresentations, it is unlikely that the defendant would have received any payments from the second plaintiff. These payments came directly after the first plaintiff had ran out of money. It is clear that the defendant preyed on the plaintiffs because she knew that they had the financial resources.
- [52] The facts of this matter reveal the possible commission of a crime. It is accordingly prudent for this judgment to be referred to the National Director of Public Prosecutions to consider whether to institute criminal proceedings against the defendant.

Interest and costs

- [53] In the particulars of claim, each of the plaintiffs seek interest on the claimed amounts ‘...from date of judgment to date of full and final payment’. The plaintiffs did not seek any amendments in this regard and no argument was advanced on their behalf to the effect that interest should be applied differently.
- [54] There is no reason to depart from the general rule that a successful party should be awarded costs. In the circumstances of this case, the order for costs should also include all those costs which have been reserved.
- [55] The issues arising in these consolidated matters are complex and the nature of the evidence presented by the experts added to the burden of responsibility undertaken by counsel.[20] It appears to have been a wise and reasonable precaution to employ more than one counsel.

Order

- [56] The probabilities favour the evidence of the plaintiffs and the experts. In the circumstances, the first and second plaintiffs’ claims against the defendant should succeed. I accordingly grant judgment in the following terms:
- (a) The defendant is ordered to pay the first plaintiff the sum of R4 992 778.61.
 - (b) The defendant is ordered to pay the second plaintiff the sum of R540 000.00.

- (c) The defendant is ordered to pay interest on the above amounts at the applicable legal rate of interest calculated from the date of judgment to date of final payment.

Sibisi AJ

Appearances:

Counsel for the first and second plaintiffs: Mr Pammenter SC and Ms Franke Attorney for the first and second plaintiffs: Grant and Swanepoel Attorneys Suite 1, The Mews Redlands Estate 1 George MacFarlane Lane Pietermaritzburg Tel:033 342 0375 Fax: 086 501 0102 Email: reial@gsalaw.co.za Ref: R Mahabeer/S Pillay/ 05A002220 Counsel for the defendant: In person Dates of hearing: 6, 7 and 8 November 2023 Date of judgment: 8 February 2024

[1] National Police Service Union and others v Minister of Safety and Security and others

[2000] ZACC 15; 2000 (4) SA 1110 (CC); 2001 (8) BCLR 775 (CC) para 4.

[2] Uniform rule 39(1) provides as follows: ‘39 Trial (1) If, when a trial is called, the plaintiff appears and the defendant does not appear, the plaintiff may prove his claim so far

as the burden of proof lies upon him and judgment shall be given accordingly, in so far as he has discharged such burden: Provided

that where the claim is for a debt or liquidated demand no evidence shall be necessary unless the court otherwise orders.’

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as the burden of proof lies upon him and judgment shall be given accordingly, in so far as he has discharged such burden: Provided

that where the claim is for a debt or liquidated demand no evidence shall be necessary unless the court otherwise orders.’

[3] D E Van Loggerenberg Erasmus: Superior Court Practice (RS 21, 2023) at D1527. See also Katritsis v De Macedo 1966

(1) SA 613 (A) and Hayes v Baldachin and others 1980 (2) SA 589 (R).

[4] National Police Service Union and others v Minister of Safety and Security and others

[2000] ZACC 15; 2000 (4) SA 1110 (CC); 2001 (8) BCLR 775 (CC) para 4.

[5] See also Lekolwane and another v Minister of Justice and Constitutional Development

[2006] ZACC 19; 2007 (3) BCLR 280 (CC) para 17.

- [6] D E van Loggerenberg Erasmus: Superior Court Practice (RS 21, 2023) at D1553.
- [7] L T C Harms Amler's Precedents of Pleadings 9 ed (2018) at 204.
- [8] Ruto Flour Mills (Pty) Ltd v Adelson 1959
- (4) SA 120 (T) at 122G–123A.
- [9] S V Hoor Snyman's Criminal Law 7 ed (2020) at 369.
- [10] Ibid at 370.
- [11] Ibid at 371.
- [12] J Burchell Principles of Criminal Law 5 ed (2016) at 738739.
- [13] See R v Mahomed 1929 AD 58 at 67; and S v Mntoninths 1970 (2) SA 443 (E).
- [14] See Novick and Another v Comair Holdings Ltd and others 1979
- (2) SA 116 (W) at 149G and Quartermark Investments (Pty) Ltd v Mkhwanazi and another
- [2013] ZASCA 150; 2014 (3) SA 96 (SCA) para 14.
- [15] Lourens en 'n ander v Genis 1962
- (1) SA 431 (T) at 433EH.
- [16] Otto en 'n ander v Heymans 1971
- (4) SA 148 (T).
- [17] Orville Investments (Pty) Ltd v Sandfontein Motors 2000
- (2) SA 886 (T).
- [18] See the definition for extortion earlier in the judgment. See also J R L Milton South African Criminal Law and Procedure (Volume II) Commonlaw Crimes 3 ed (1996) at 681: 'Extortion consists in obtaining from another some advantage by unlawfully and intentionally subjecting him to pressure which induces him to submit to the taking.'
- [18] See the definition for extortion earlier in the judgment. See also J R L Milton South African Criminal Law and Procedure (Volume II) Commonlaw Crimes 3 ed (1996) at 681:
- 'Extortion consists in obtaining from another some advantage by unlawfully and intentionally subjecting him to pressure which induces him to submit to the taking.'
- [19] Ibid at 689.
- [20] Henry v AA Mutual Insurance Association Ltd 1979
- (1) SA 105 (C).

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