

SOUTH AFRICA / JUDGMENT

Altfund (Pty) Ltd v Daniel (61740/2015) [2017] ZAGPPHC 569 (22 August 2017) [2017] ZAGPPHC 569

COURT

North Gauteng High Court, Pretoria

BEFORE

TSS Malatji

CASE / FILE NUMBER

61740/2015

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NO: 61740/2015

Not

reportable

Not

of interest to other judges

Revised.

22/8/2017

In

the matter between:

ALTFUND

(PTY)

LTD Plaintiff/Respondent

And

FREDERICK

COENRAAND

DANIEL Defendant/Applicant

JUDGMENT

MALATJI, AJ

1. In this matter I have encountered dereliction of compliance by the applicant with the Rules of Court, failure to file affidavits and other documents on time and a general disregard for the Rules of Court as well as the directives contained in the Practice Manual of our Division. Striking the matter from the roll would benefit the applicant and prejudice the respondent. The court proceeded

nonetheless.

2. The applicant comes before Court in an application for rescission of a judgment which was granted on 12 November 2015 which judgment on his version came to his knowledge on 9 December 2015. The judgment granted by the Court as well as the resultant writ of execution that was issued relates to a loan and monies advanced to the applicant's company in respect of which he is a surety. The law on rescission of judgment is trite and I need not site any cases in this respect. My learned friends' heads of arguments were quite helpful in reminding this Court of the requirements for rescission of judgment.
3. However, in this matter the court is faced with three other condonation applications it needs to consider prior to entertaining

the requirements of an application for rescission of judgement and whether the applicant has met those requirements.

4. Firstly, there is a condonation application in relation to the failure to file the rescission application from 9 December 2015 until 14 June 2016 when it was ultimately issued. Secondly, there is the issue of the failure to file a replying affidavit in the very rescission application. The opposing affidavit which was filed timeously on n 3 March 2016 remained idle for some time.
5. The replying affidavit was due on 17 March 2016. It was only filed 3 days before the hearing of the matter on 2 December 2016 with a tersely worded condonation application. The grounds for condonation are set out in the very replying affidavit from page 16 thereof onwards. The applicant did not even make the effort of paginating the papers so that they are in line with the remainder of the papers that were before Court. I allowed the late filing of the papers at the time when the files had already been delivered to my chambers in order to allow the matter to be heard.
6. There was then of course a further condonation application relating to the failure by counsel to observe the prescripts of the Gauteng North Division Practice Manual in the filing of the heads as well as a practice note on time.

7. Be that as it may, in relation to the condonation applications I was inclined to consider the merits of each of these applications and to make a ruling on them. However, given the nature of the matter and its long history, I resolved to grant condonation in respect of the late filing of the heads as well as the filing of the replying affidavit.

8. As regards condonation pertaining to the late filing of the rescission application, this is a matter which I believe should be

adequately dealt with.

9. Whether under Rule 31(2) (b) of the Uniform Rules of Court or under Common Law, there are two quite essential requirements for an applicant to make out a case for rescission of a judgment. The applicant is no less than 6 months late in filing the application. As per his own version at paragraph 25 of the founding affidavit of the rescission application, he became aware that default judgment had been entered against him on 9 December 2015 when a writ of execution was served on him.

10. The explanation provided by the applicant from paragraph 30 of his founding affidavit through to paragraph 41 inspires no confidence to the court by somebody who had a default judgment taken against them and needed the attorneys to act urgently on the matter.

11. The applicant suggests that his application is 15 days out of time as he had received a final draft from his attorney on the afternoon of 29 January 2016 (paragraph 41 of the founding affidavit). My papers indicate that the Registrar of this Honourable Division only issued the rescission application on 14 June 2016.

12. Quite aside from the unconvincing explanation of the default, I have been placed in possession of two affidavits deposed to by the respondent's candidate attorney setting out the manner in which the two matters that are the subject matter of this rescission

application have been handled on behalf of the applicant. I need not go through the long list describing failures on the part of the applicant to comply with the Rules of Court except to point out that in relation to this matter, there was a question of the failure to file a replying affidavit which I have already dealt with above. In relation to a bona fide defence, the applicant contends that the basis for its bona fide defence is another action under case 61740/15.

13. Similar conduct has been displayed in the matter under case number 61740/15 where default judgment was granted on 21 April 2016 for failure by the applicant to file a discovery affidavit. A rescission application has been filed in that matter and again the applicant has failed to file his replying affidavit.

14. In light of the applicant's conduct in this matter and in the matter in which he contends his primary defence lies on that this Court must have regard to, I am convinced that the applicant is in wilful default and therefore that this Court should not come to his assistance.

15. Looking at the bona fide defence, for what it is worth, the applicant was sued by the respondent for monies lent and advanced to a principal debtor in respect of whom applicant had signed as surety. In defence to this matter which is what the applicant seeks to advance as a bona fide defence are pending proceedings. Those proceedings currently do not exist in the sense that default

judgment

has been granted against the applicant in those proceedings by way of a dismissal of the action instituted by the applicant's principal debtor for being derelict in the filing of papers.

I therefore do not see any prospects of success in relation to the raised defence quite aside from the fact that the cause of action and defences in that matter are completely unrelated to the judgment which has been obtained by the respondent in this matter.

Order

16. In the premise, I order that the application for rescission of judgment be dismissed with costs.

TSS MALATJI

ACTING JUDGE OF THE

HIGH COURT OF SOUTH AFRICA

GAUTENG PROVINCIAL DIVISION, PRETORIA

Date of Judgment: 22 August 2017

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Prepared on 24 October 2026 · Esheria