

SOUTH AFRICA / JUDGMENT

Ascension Properties Limited v Sebola (2015/05678) [2016] ZAGPJHC 190 (8 July 2016)

[2016] ZAGPJHC 190

COURT

South Gauteng High Court, Johannesburg

BEFORE

C G Lamont

CASE / FILE NUMBER

2015/05678

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA,

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2015/05678

DATE: 8 JULY 2016

In the matter between:

ASCENSION PROPERTIES LIMITED.....Applicant

And

SEBOLA MASHILO SHADRAK.....Respondent

J U D G M E N T

LAMONT, J:

- [1] The applicant seeks the ejectment of the first respondent from certain leased premises and seeks payment of monies due by first and second respondents to it.
- [2] During the hearing the applicant abandoned the claim for payment of monies.

- [3] It is common cause that the applicant is the registered owner of certain leased premises occupied by the first respondent. The first respondent was obliged to pay rental to the applicant for the leased premises which included certain parking. All amounts were payable by the first respondent to the applicant in terms of the lease agreement monthly in advance on or before the 1st business day of each calendar month without deduction, or set-off failing which the first respondent was to pay interest upon the

outstanding amounts at a rate equal to 2% above the prime rate.

- [4] The applicant's evidence was that the first respondent had persistently failed to pay the monthly rentals due to it. The respondents initially alleged in a bare denial that monies were not due. Subsequently in paragraph 28.1 it is apparent that there were arrear rentals, that an amount was paid late (on 26th January 2015 (R12 000.00)) and that the respondents alleged that this amount was not taken into account in the calculation of the claimed amount.
- [5] On this basis there were arrear rentals at least equal to the R12 000.00. In addition there were monies due in respect of legal costs.
- [6] At the hearing the first respondent who represented himself relied on only one issue. This was the provision of clause 33 of the lease which provides:

"33. DISPUTE RESOLUTION

33.1 Should any dispute or disagreement arise between the parties relating to:

33.1.1 any matter in respect of which provision is made in terms of this agreement for such dispute to be determined by a referee;

33.1.2 the breach or interpretation or cancellation of this agreement; or

33.1.3 any matter or circumstance arising out of or in connection with this agreement or its termination or cancellation, such dispute or disagreement shall be resolved by a referee in accordance with this clause, it being the intention of the parties that any dispute or disagreement shall be resolved as amicably, quickly and in the most cost-effective manner possible in the circumstances."

- [7] The clause does not provide for a removal of the jurisdiction of any court to hear the matter it merely provides their disputes which can be quickly and cost-effectively resolved be referred to a referee. It also does not remove jurisdiction from the court where there is no dispute or disagreement.
- [8] There is no dispute that the first respondent is in arrears. The applicant sent the first respondent a letter of demand which was served in July 2014. The applicant later sent the first respondent a second demand. Notwithstanding the demands and the demand made in the application itself the first respondent remained in default. There was no dispute by the first respondent of the default or the entitlement of the applicant pursuant to the written notice to cancel the contract. This being so there was nothing to refer to a referee. The

applicant was entitled to approach the court for the ejectment order. See also *Standard Credit Corporation v Bester and Others* 1987 (1) SA 812 (W).

- [9] In the premises it was common cause that the lease agreement was concluded, that it was properly cancelled due to the first respondent being in arrears and hence that the first respondent should be ejected.
- [10] In the circumstances I grant an order in terms of paragraphs 1, 2 and 5 of the notice of motion.

C G LAMONT

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

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