

SOUTH AFRICA / JUDGMENT

# Bekker v Janse Van Rensburg (61332/2012) [2014] ZAGPPHC 709 (23 September 2014) [2014] ZAGPPHC 709

## COURT

North Gauteng High Court, Pretoria

## BEFORE

Kollapen

## CASE / FILE NUMBER

61332/2012

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IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: 61332/2012

DATE: 23 SEPTEMBER 2014

IN THE MATTER BETWEEN

JOHANNES CHRISTOFFEL BEKKER.....PLAINTIFF

AND

ANTONIE CHRISTIAN JANSE VAN

RENSBURG.....DEFENDANT

## JUDGMENT

KOLLAPEN J:

1. The plaintiff instituted action against the defendant for payment of the balance of the purchase price in respect of the plaintiff's

50% member's interest in a Close Corporation known as Groenkloof Cosmetics CC with registration number 2002/043684/23.

2. The amount claimed was the sum of R230 000-00, it being alleged that it constituted the balance of the purchase price of R385 000-00, less payments made in the total sum of R155 000-00.
3. The matter was defended and the defendant instituted a counter-claim in which he sought an order reducing the value of the loan account of the plaintiff in Groenkloof Cosmetics CC, it being alleged that the value of the loan account was used as the basis to establish the purchase price.
4. In the plaintiffs particulars of claim it is alleged that the purchase price of R385 000-00 was payable as follows:
  - 4.1 R75 000-00 on or about 15 August 2012;
  - 4.2 R80 000-00 on or about 15 August 2012;
  - 4.3 The balance of R230 000 payable in three equal monthly instalments of R76 666-00 on 30 September 2012, 31 October 2012 and 30 November 2012 respectively;
  - 4.4 Further it was an express, alternatively tacit, further alternatively an implied term of the agreement that the full outstanding balance would become due and payable immediately should the defendant default on any of the payments
5. It is common cause that at the time of the issue of summons on the 23rd of October 2012, the payment of R 76 666-00 scheduled to be paid on the 30th of September 2012, was not paid. The plaintiff accordingly placed reliance on the acceleration clause in 4.4 above to claim the full outstanding balance on the basis of the defendant's default in making payment of the sum of R76 666-00 on the 30th of September 2012.
6. The plaintiff testified in his own case and after his cross-examination, the defendant withdrew his counter-claim and closed his case without tendering any evidence.
7. From the evidence led, which was not seriously challenged in cross-examination, I am satisfied that the plaintiff succeeded in proving the following:
  - 7.1 That the purchase consideration was the sum of R 385 000-00;
  - 7.2 The terms of payment as set out in paragraph 4.1, 4.2, and 4.3 above; and
  - 7.3 That the defendant failed to pay the sum of R 76 666-00 which was due on the 30th of September 2012, and that no further payments were received from the defendant.
8. The plaintiff did not lead any evidence with regard to the terms of the agreement relevant to the acceleration clause which it alleged in its particulars of claim was part of the agreement entered into. The alleged agreement contended for by the plaintiff was placed in dispute by the defendant on the pleadings.

## THE ISSUE IN DISPUTE

9. The only issue in dispute and for determination accordingly was whether the plaintiff had proved that the full outstanding purchase

price had become due and payable at the time of the issue of summons in October 2012. Both parties filed written heads of argument in respect of the issue and the stance of the defendant was that given that no evidence was led by the plaintiff with regard to the agreement incorporating an acceleration clause, the only amount that the plaintiff proved was due at the time of the issue of summons was the sum of R 76 666-00. Its stance was that on the evidence led by the plaintiff the other amounts in respect of the purchase price only became due at the end of October 2012 and November 2012 and given that summons was issued on the 23rd of October 2012, the claim in respect of those amounts was premature.

10. The plaintiffs argument is that the Court is competent to grant judgment in respect of all the outstanding amounts, including those that only became due and payable subsequent to the issue of summons.
11. Reliance was placed on a number of decisions including *PULLEN v PULLEN* 1928 WLD 133, *RITCH v BHYAT* 1913 TPD 589, *HENNING v HENNING* 1943 TPD 177 and *VAN COPPENHAGEN v VAN COPPENHAGEN* 1947 (1) All SA 266 (T). The cases, in the main, deal with the generally extensive powers of the Court to consider and grant amendments to pleadings

under circumstances where a claim may have been invalid at the date of issue of summons but subsequently becomes valid.

12. In casu it is clear that absent any evidence with regard to the existence of an acceleration clause, the only amount due and payable at the time of the issue of summons, was the sum of R 76 666-00 . Further payments of R 76 666-00 were only scheduled to be made on the 31st of October 2012 and the 30th of November 2012, respectively. They accordingly only became due after the issue of summons. Under such circumstances and absent an application to amend, the plaintiff's cause of action in respect of the balance of the purchase price is based on the

existence of the acceleration clause, which the plaintiff failed to prove.

13. In argument, the plaintiff sought to rely on the dicta in *KERKSAY INVESTMENTS (PTY) LTD v RANDBURG TOWN COUNCIL* 1997 (1) SA 511 (T) where the Court indicated that '...unless there has been a full investigation of a matter falling outside of the pleadings and there is no reasonable ground for thinking that further examination of the facts might lead to a different conclusion, the parties are held to the issues pleaded. In the absence of certainty that such a dispute has been properly investigated and ventilated, injustice might easily follow if this rule is not strictly adhered to.'

14. In my view it could not be said with certainty that the issue of liability on the basis of the effluxion of time, even though not pleaded, was fully investigated. The defendant correctly points out that to the extent that that was not the case it was required to meet, it had no obligation to deal in evidence with that aspect of the case. If it failed to do so, the simple answer was that it was not required to do so.
15. In *FISCHER AND ANOTHER v RAMAHLELE AND ANOTHER* 2014 (4) SA 614 SCA at paragraph 14, the Court concluded that 'It is not for the court to raise new issues not traversed in the pleadings or affidavits. .

The plaintiff elected to advance his case on the existence of the acceleration clause and in the circumstances and absent an amendment, the submission that liability be founded on the effluxion of time and not on the acceleration clause is not sustainable.

16. In the result, the plaintiff will be entitled to judgment in the sum of R 76 666-00 and costs, which shall include the costs of counsel, both to be taxed on the appropriate Magistrate's court tariff.

#### ORDER

17. I make the following order:

i. The defendant is ordered to pay the plaintiff the sum of R 76 666-00, together with interest thereon at the rate of 15.5% per annum from the 1st of October 2012 up to the 31st of July 2014, and at the rate of 9% per annum from the 01st of August 2014 until the date of final payment;

ii. The defendant is ordered to pay the plaintiff's costs of the action, including the costs of counsel, both to be taxed on the appropriate Magistrate's Court tariff.

61332/2012

HEARD ON: 15 AUGUST 2014

FOR THE PLAINTIFF: ADV H J SNYMAN

INSTRUCTED BY: CHRISTO BEKKER INCORPORATED (ref: C BEKKER/ms/H00638)

FOR THE DEFENDANT: ADV J J BOTHA

INSTRUCTED BY: N A J VAN RENSBURG (ref: R2H-21-13)

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Prepared on 12 October 2026 · Esheria