

SOUTH AFRICA / JUDGMENT

Davies v Jones (2022/00184) [2023] ZAGPJHC 940 (23 August 2023)

[2023] ZAGPJHC 940**COURT**

South Gauteng High Court, Johannesburg

BEFORE

S Yacoob

CASE / FILE NUMBER

2022/00184

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Source record**IN****THE HIGH COURT OF SOUTH AFRICA****(GAUTENG****DIVISION, JOHANNESBURG)****Case****No.: 2022/00184****(1) Reportable:****No****(2) Of****Interest to Other Judges: No****(3) Not****Revised****Date:**

23 August 2023

In the matter between:

ROBERT

DAVIES

Applicant/Defendant

and

JESSICA

REES JONES

Respondent/Plaintiff

JUDGMENT

YACOOB J

1. On 27 March 2020, the applicant signed an acknowledgment of debt in which he confirmed that he owed an amount of \$40,000 to the respondent. He undertook to pay this sum in 6 equal monthly installments beginning from April 2020. In June 2020 the applicant paid an amount of R50,000 but has not paid anything more to the respondent.
2. The respondent issued summons on 15 December 2021, for payment of the sum of \$40,000. The applicant filed a notice of intention to defend but did not file a plea and the respondent issued a notice of Bar. The applicant was called upon to deliver his plea on or before 1 March 2022.
3. The applicant's plea was served on 2 March 2022. The reasons for this are subject to some dispute. On 3 March 2022 the respondent filed a request for default judgment and obtained default judgment from the registrar on 15 March 2022, for the amount claimed less the dollar equivalent of R50 000.
4. The applicant then instituted this application for rescission. According to the applicant, who appears in person, he was ready to deliver his plea on 1 March 2022, but, because he was concerned about the attorneys' offices closing due to the pandemic, he telephoned the offices at about 16h20 on the afternoon of 1 March 2022 to check whether he could still deliver the papers. He was told by the person who answered the telephone, who he identifies as Arthi, that the offices were closing early on that day,

and that he should deliver the next morning. This he did. The applicant contends that the judgment was granted by the registrar in error and that he is entitled to rescission.

5. The applicant does not set out any defence to the claim. In fact, the applicant acknowledges the debt. He contends that he simply needs more time in order to make good. According to him he and the respondent were victims of cybercrime and he is trying to recover the money that was lost.
6. This matter was previously on the roll in February this year. At that hearing, the matter was postponed in order to permit the applicant to file a supplementary affidavit to remedy the deficiencies in his application. He was advised to obtain legal assistance before filing the supplementary affidavit. In the supplementary affidavit, the applicant states that he has obtained legal advice, and that that affidavit is the result. Nevertheless there are still deficiencies in the application.

7. At the hearing before me, the applicant both asked for more time to find a legal team, as well as that rescission be granted. When asked whether he wished for a postponement or a rescission he answered that he wished for a rescission. However he continued making submissions regarding needing more time to get himself to his objectives. When asked what the objective was it was identified variously as getting a legal team together, and as getting the money to pay the respondent.
8. To the extent that the applicant sought a postponement of the rescission application, which is unclear, there was no basis for a postponement. The applicant was already granted a postponement and leave to supplement his papers, and also stated on oath that he had obtained legal advice. No case was made out for another postponement.
9. There are some inconsistencies in the applicant's version as stated in his affidavits. First, he refers to "the prevailing strict 'lockdown' circumstances in place caused by the pandemic". It must be noted that in March 2022 South Africa was under level 1 lockdown, which could not have been described as "strict". This is demonstrated in the applicant's own version, as he stated that he had had an extremely busy day "with a theatre opening" for a show of which he was the director.
10. Second, the applicant states that he was at Postnet at Rand Steam, a ten minute drive away from the attorneys' office, when he made the phone call. In support of this he annexes a cash receipt, which shows the time as 10h17 that morning. This obviously does not show that the applicant was at Rand Steam at 16h21. It also begs the question why, when he had obtained the photocopies of his documents at 10h17 that morning, he did not simply deliver them immediately thereafter.
11. According to the respondent's attorney, Arthi only works until 14h30 every day, and the offices did not close early on the day in question. There is a confirmatory affidavit from Arthi in this regard.
12. Even if I assume in the applicant's favour that his default was not wilful, and that he served his plea in good faith after having been told he could wait until the following day, the applicant still has to show that he has a bona fide defence to the claim.
13. This is the case whether he relies on rule 31(2)(b) and on the common law. The reason for this is obviously that there is no point rescinding a judgment when there is no reason to believe that the respondent is not still entitled to it on the merits.
14. The applicant does not set out a defence to the claim. His plea acknowledges the debt. He states that he was unable to continue paying because the respondent hired someone to intimidate him into paying. This is clearly not a defence.
15. The applicant also sets out a counterclaim in the plea, a delictual claim based on the intimidation by the person he alleges the respondent sent to harass him.

16. Once the applicant does not have a defence to the claim, it would be difficult to find that there is good cause, or that it is in the interests of justice, to grant a rescission order. In certain circumstances, a counterclaim would serve this purpose.
17. However in circumstances where the main claim is based on a liquid document, and where there is no real dispute, and the counterclaim is a delictual claim for which damages, and the amount of damages are in no way a liquidated amount, I cannot see that that is the case.
18. The respondent contends that this application is simply a delaying tactic. The applicant admits that all he wants is more time. The application may be seen then as an attempt to request more time, rather than a delaying tactic in the ordinary sense, but that makes no real difference in the context of this case.
19. This court is not empowered to give the applicant more time. More time is something that the respondent is entitled to give him and which the respondent may be convinced to give. She may well be more likely to get her money back if the applicant's contentions that he is in a favourable position, or almost successful, are true. However, the respondent was entitled to the order she obtained and in the absence of a defence to the claim the court cannot grant a rescission.
20. For these reasons, the application is dismissed with costs.

S. YACOOB

JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

APPLICANT:

In person.

FOR THE RESPONDENT: R Putzier, instructed by Wright Rose Innes Inc

DATE OF HEARING: 22 August 2023

DATE OF JUDGMENT: 23 August 2023

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