

SOUTH AFRICA / JUDGMENT

Hill v Registrar (38792/2011) [2014] ZAGPPHC 29 (18 February 2014)

[2014] ZAGPPHC 29**COURT**

North Gauteng High Court, Pretoria

BEFORE

Malindi

CASE / FILE NUMBER

38792/2011

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Source record**IN****THE NORTH GAUTENG HIGH COURT, PRETORIA****(REPUBLIC****OF SOUTH AFRICA)****CASE****NO: 38792/2011****DATE:**

18/2/2014

NOT

REPORTABLE

NOT

OF INTEREST TO OTHER JUDGES

In the matter

between:

HILL, THOMAS

.....Applicant

and

REGISTRAR.....Respondent

IN RE:

B TRIEBIGER

(PTY)

LTD.....Plaintiff

v

Hill THOMAS

.....Defendant

JUDGMENT

MALINDI AJ

INTRODUCTION

[1.] The Applicant (Defendant in the Summary Judgment Application) filed a review application in terms of Rule 53 of the Uniform Rules of Court under Case No. 38792/11.

[2.] The application is opposed only by the 2nd Respondent. The 1st Respondent confirmed his Order in the summary judgment application and the statement in paragraph 5.1 of the Founding Affidavit that:

The grounds of review are that:

2.1. The Registrar failed to apply his mind to the matter by failing to consider other forms of security.

2.2. The Registrar pronounced that only two forms of security were acceptable, that is, payment of the sum claimed into the Plaintiff's

attorney's trust account or by way of furnishing of a bank guarantee.

2.3. The Registrar failed to lay any basis to satisfy the "legal requirements" of establishing a practice that only those two forms of security were acceptable.

[3.] Rule 32(3)(a) provides:

"(3) Upon the hearing of an application for summary judgment, the defendant may-

(a) give security to the plaintiff to the satisfaction of the registrar for any judgment including costs which may be given. "

[4.] The Registrar's exercise of his discretion in this regard has been conceded by the Applicant.

[5.] In *Cinemark (Pty) Ltd v Alfetta Tune-Up Centre* 1979(4) SA 802 (W) at 803H – 804A it was said that the Registrar's task is to determine the form and quality of the security and that "once he has decided that a particular form is satisfactory (or not), it is the end of the matter."

[6.] The Applicant contends that if the discretion is not exercised judicially the decision is subject to review. This proposition is correct.

[7.] In this case the Registrar heard argument on behalf of the Applicant and the 2nd Respondent. He considered the form of security provided by the Applicant and the 2nd Respondent's submissions as to its inadequacies as required by Rule 32(3)(a), especially that as the assets of the trust were unknown there would be no satisfaction that any judgment including costs which may be given against the Applicant would be met.

[8.] The Registrar's decision as to the form and quality of the security required to avert summary judgment cannot be easily assailed by review of his discretion. His decision to reject the form of security provided by the Applicant can therefore not be reviewed.

[9.] Regarding his pronouncement that "practically, two forms of security would suffice, being payment of the claimed amount into the trust account of an attorney or by way of furnishing of a bank guarantee," the following need to be noted:

9.1. the word "practically" means "to all intents and purposes"; "for all practical purposes but not completely"; "almost". "In practice" means "in reality"- to refer to what is more or most likely to happen or what is "currently proficient."

(www.oxforddictionaries.com)

9.2. the Registrar could not have meant the only two forms of security but the most practically accepted or the more or most likely form of security to be satisfactory.

[10.] I am of the view therefore that this ground of review is baseless. In any event the Applicant does not contend that another form of security that he tendered was rejected merely because it is not one of the two that the Registrar considers acceptable.

[11.] In the circumstances, I make the following order:

11.1. The application is dismissed.

11.2. The Applicant is to pay the costs on a party-and-party scale.

SIGNED AT PRETORIA ON THIS DAY OF FEBRUARY 2014.

Malindi, AJ

Acting Judge of the High Court of South Africa

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