

SOUTH AFRICA / JUDGMENT

Limnothech Exports (Pty) Ltd v Blue Lion Security Group CC (1432/2022)

[2023] ZAMPMBHC 20 (27 March 2023)

[2023] ZAMPMBHC 20

COURT

Mbombela High Court, Mpumalanga

BEFORE

Gumede

CASE / FILE NUMBER

1432/2022

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(MPUMALANGA DIVISION, MBOMBELA)

CASE NO: 1432/2022

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: NO
- (3) REVISED: YES

DATE: 27/03/2023

SIGNATURE:

In the matter between:

LIMNOTHECH EXPORTS (PTY) LTD

APPLICANT

and

BLUE LION SECURITY GROUP CC

RESPONDENT

J U D G M E N T

GUMEDE AJ

1. This matter began as an application for eviction, which has since become moot as the Respondent vacated the premises prior to the hearing of the matter. The application proceeds only in respect of costs.
2. On or about 30 July 2019, the Applicant and the Respondent concluded an agreement in terms of which, the Respondent leased premises from the Applicant.
3. The Applicant contends that it cancelled the lease agreement because the Respondent committed a breach of contract, by failing to make payment of rental which was due and owing to the Applicant.
4. The Respondent contends that in terms of clause 23.1 of the lease agreement, the Applicant is required to give the Respondent, a 7-day written notice to remedy the breach before the Applicant may be entitled to cancel the lease. The Respondent further contends that Applicant failed to give the requisite written notice and submits that the purported cancellation is invalid. It also submits that the Applicant was not entitled to launch the eviction proceedings prior to expiry of the lease on 31 July 2022.
5. The Respondent contends that the eviction application was launched prematurely when it was still in lawful occupation and submits that the Applicant is not entitled to costs. In fact, the Respondent argues that it is the Applicant who should pay punitive costs for launching a premature eviction application.
6. The eviction application was launched on 23 March 2022, which is approximately four months before the expiry of the lease on 31 July 2022.
7. Applicant contends that it sent a letter of demand to the Respondent and submits that the said letter of demand was the notice contemplated in clause 23.1 of the lease agreement. The letter of demand is undated and annexed to the founding affidavit as annexure "AHF11".
8. The relevant part of the letter of demand reads:

"We refer to the above and confirm that our attorney issued summons against your company for rentals due up until the end of September"

2021. The matter has been defended by your company's attorneys and will eventually be dealt with in the proper forum.

However, subsequent to the issue of that summons, you have now failed to make payment of any further rentals for the months of October 2021 to January 2022 and are now therefore indebted to ourselves in the amount of R955 493.00.

This arrear rental plus damages to the property shall also be dealt with in a different forum.

We now refer you to our letter dated 2021/10/05 where we invoked the provisions of paragraph 23.1.2 of your lease agreement and changed your lease to a lease that is terminable upon written notice from the lessor to the lessee.

As a result of your further nonpayment, I am now giving you one calendar months' notice, which shall become effective on 1 February 2022 and shall require you to vacate the premises on or before 28 February 2022."

9. Clause 23.1 of the lease agreement reads as follows:

"[23.1] Should the rental or any other amount payable by the lessee in terms of this lease not be paid on due date or should the lessee commit or suffer or permit the commission of a breach of any of the other terms of this lease, whether or not such other breach goes to the root of this lease, and fail to make such payment or remedy such other breach within 7 (seven) days after receipt of a notice in writing calling upon it to do so, or should the lessee or any guarantor of the lessee be placed in liquidation, whether provisional or final and whether voluntary or

compulsory, or under judicial management, whether provisional or final, or should the lessee or any guarantor of the lessee effect a general compromise with its creditors or any other arrangement with its creditors necessitated by or attributable to the lessee or any guarantor of the lessee suffer a default judgment to be entered against it and fail within seven days after such judgment comes to its knowledge to satisfy or take steps to rescind or appeal the same, or should the lessee die during the currency hereto, the lessor shall be entitled but not obligated to notwithstanding any previous waiver or anything to the contrary herein, either

23.1.1 forthwith and without notice to cancel this lease and to resume possession of the lease premises ..., or

23.1.2 to vary this lease by making it thereafter terminable on one month's written notice given by the lessor."

10. According to clause 23.1 of the lease agreement cited above, the Applicant can only invoke clause 23.1.2 in the event of lessee or its guarantor being liquidated, placed under judicial management, compromised with the creditors or in the event of a default judgment against either the lessee or guarantor. The Applicant did not plead any of the grounds for invoking clause 23.1.2 which would have entitled it to vary the lease by making it terminable on one month's written notice, as alleged in the letter of demand cited above.

11. Similarly, the letter of 5 October 2021 which is referred to in the letter of demand cited above, reads in the relevant parts as follows:

"I therefore refer you to paragraph 23.1.2 of your lease agreement. Due to the fact that you are not R689 117.61 in arrears with your rental, you have committed a substantial and material breach of your lease agreement.

Paragraph 23.1.2 states that upon breach by yourself the landlord is entitled to "vary this lease by making it thereafter terminable on one month's written notice given by the lessor.

Therefore, due to your repeated breaches of our contract, I as the representative of the lessor am invoking the contents of clause

23.1.2 and am making the lease between us a lease that is terminable on one months' written notice from the lessor."

12. On 11 January 2022, the Respondent wrote an email to the Applicant advising it that it (Respondent) will not vacate the premises. The Respondent also disputed the amount owed. During the hearing of this matter, the Respondent referred this court to the contradictory invoices which were annexed to the founding affidavit as annexures "AHF5" to "AHF9" and pointed out the discrepancies in the amounts claimed.
13. I agree with the Respondent that clause 23.1 of the lease agreement entitles it to seven-day written notice to remedy any breach before the Applicant could be entitled to cancel the lease. The Applicant failed to comply with the provisions of this clause.
14. The Applicant purported to invoke clause 23.1.2 of the lease agreement but failed to plead any grounds which entitled it to invoke this clause and to terminate the lease on one months' notice without giving the Respondent an opportunity to remedy the breach.
15. The Applicant also argued that even if it may be found that its cancellation of the lease was invalid, it was still entitled to launch the eviction proceedings and by implication, to costs of this application because the Respondent failed to vacate the premises at the expiry of the lease on 31 July 2022. This submission does not assist the Applicant. Although the Respondent admits that at the expiry of the lease, it delayed vacating the premises by about ten days, the eviction application had already been launched on or about 23 March 2022, approximately four months prior to the expiry of the lease on 31 July 2022.
16. The Applicant's application for eviction was premature and stands to be dismissed.
17. In the result I make the following order:
 1. The Applicant's application is dismissed.
 2. Each party must pay its own costs.

ZE GUMEDE

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION, MBOMBELA

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email. The date and time for hand-down is deemed to be 27 March 2023 at 10:00.

APPEARANCES

For the Applicant: Mr Lindhout Instructed by: D Paleologu Attorneys c/o Jeff Jackson, Mbombela
For the Respondent: Mr J Groenewald Instructed by: David H Botha, Du Plessis & Kruger Inc c/o
Gerrie Groenewald Inc, Mbombela Date of hearing: 27 October 2022 Date of judgment: 27 March
2023

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Prepared on 12 October 2026 · Esheria