
SOUTH AFRICA / JUDGMENT

Spitz v Firststrand Bank Limited and Others (69692-2014; 32230-2001; 87714-2014) [2017] ZAGPPHC 254 (1 June 2017) [2017] ZAGPPHC 254

COURT

North Gauteng High Court, Pretoria

BEFORE

Murphy

CASE / FILE NUMBER

69692/2014

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: 69692/2014

Case No:87714/2014

Case No: 32230/2001

1/6/2017

Not reportable

In the matters between:

BARRY KUPER SPITZ Applicant

and

FIRSTSTRAND BANK LIMITED First Respondent

LAURITZ LANSER DIPPENAAR Second Respondent

FIRSTSTRAND LIMITED Third Respondent

LEAVE TO APPEAL JUDGMENT

MURPHY J

1. The applicant has applied for leave to appeal against my judgment dated 15 September 2016 and the various orders made therein variously dismissing his application for rescission of judgment, provisionally sequestering him, striking out an action and declaring him to be a vexatious litigant with the normal associated consequences.
2. The application for leave to appeal is drafted in a similar style to that employed by the applicant in the several applications which he has brought against the respondent. Many of the allegations are scurrilous and without foundation. They repeat much of what has been dealt with in the main judgment and little benefit will be obtained by traversing them.
3. The grounds raised allege variously that he was denied a fair hearing, the respondents committed acts of fraud, the court erred in interpreting the relevant contract and the provisions of legislation, erred on the facts and treated him unfairly.
4. Mr Maritz SC dealt fully in argument with the issues of bias raised in the notice, and in particular certain remarks made by him regarding the applicant during the proceedings before me to which the applicant took offence. The argument is on record and need not be repeated: suffice it to say that it is not reasonable to infer from my failure to castigate Mr Maritz for his remarks that I was biased towards the applicant. The remarks, in any event, were not beyond the pale. As another court has said:

“He who enters the lists must be prepared to take verbal knocks. A contest in the courts is not to be equated to the proceedings of a young ladies debating society.”

5. Regarding the application for leave to appeal against the provisional sequestration order, I am precluded by the provisions of section 150(5) of the Insolvency Act from granting such leave.
6. With regard to the order declaring the applicant a vexatious litigant, and the consequent orders, the applicant challenges no

material finding made by me or indicates any error of fact or law in my analysis of the evidence or in the application of the law

applicable to vexatious litigants.

7. In relation to the rescission application, the applicant rested his entire case on the hypothesis that certain announcements by the financial regulators indicate the possibility that certain documents exist. Yet he confirmed in argument that he could not identify or produce any such document, or describe with any specificity the nature or content of any document which might prove that the disputed revenue targets had been achieved. The application for rescission is manifestly unfounded and there is no reasonable prospect that another court will find otherwise.

8. The applicant further alleged that Mr Swart SC, counsel for the respondents, misled the court by relying on an incorrect interpretation of the principles enunciated in *Childerley Estate Stores v Standard Bank of SA Ltd* 1924 OPD 163. Mr Swart did not mislead me. The principles taken from *Childerley* enunciated in paragraph 39 of the judgment and applied in paragraph 40 are correct. The applicant failed to produce any new documents.

Thus the nature of the fault requirement in relation to the non-production thereof is of no consequence.

9. In the result, the application for leave to appeal is dismissed with costs, including the costs of employing two counsel.

JR MURPHY

JUDGE OF THE HIGH COURT

GAUTENG, PRETORIA

Date Heard: 1 March 2017

Date of judgment: June 2017

For the Applicant: Adv JA du Plessis

Instructed By: Mr BK Spitz

For the Respondent: Adv N Maritz SC; Adv B Swart SC and Adv L Kilmartin

Instructed By: Norton Rose Attorneys

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