

SOUTH AFRICA / JUDGMENT

Bravura Solutions (Pty) Ltd v A1 Capital (Pty) Ltd

(12632/2020) [2021] ZAGPJHC 121 (13 May 2021)

[2021] ZAGPJHC 121

COURT

South Gauteng High Court, Johannesburg

BEFORE

Majavu

CASE / FILE NUMBER

12632/2020

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

CASE

NO: 12632/2020

NOT REPORTABLE

NOT

OF INTEREST TO OTHER JUDGES

REVISED

Date:

13 May 2021

In

the matter between:

BRAVURA
SOLUTIONS (PTY) LTD
PLAINTIFF/APPLICANT
and
A1
CAPITAL (PTY) LTD
DEFENDANT/RESPONDENT

Coram:

Majavu AJ

Heard:

11 May 2021

Delivered: 13

May 2021 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the CaseLines digital system of the GLD and by release to SAFLII. The date and time for hand-down is deemed to be 14h00 on 13 May 2021.

Summary:

Application for summary judgement. Parties concluded an acknowledgement of debt, respondent seeks to nullify it on the basis of non-fulfilment of a suspensive condition and non-initialling of a clause conferring jurisdiction to this court, attacks jurisdiction of the court and yet it files a counterclaim in same proceedings, held court has jurisdiction and AOD enforceable, no legally cognisable defence or triable issue raised by respondent, judgement granted in favour of the applicant, with costs on attorney own client as provided for in the agreement, plus interest.

ORDER

(a)

The respondent is ordered to make payment to the applicant in the amount of R 10 000 000,00 (ten million rand).

(b)

Interest thereon at the rate of 11.5% per annum from 31 March 2020 to date of payment.

(c)

The respondent is ordered to pay costs on an attorney and own client scale, including the costs consequent upon the employment of counsel.

Majavu

AJ

Introduction

Let

me start off by expressing my gratitude to counsels for the detailed heads of argument and “speaking notes/ presentation”, which I found very helpful and masterfully crafted.

[1]

This is an opposed application for summary judgement.

[2]

The plaintiff instituted action against the defendant by way of a simple summons, which was in turn opposed by the defendant on 29 June 2020.

[3]

On 10 July 2020 the plaintiff duly served its declaration to which the defendant responded

with a plea and counterclaim on 18 August 2020.

[4]

The application for summary judgement was resisted by the respondent and the basis

of the defence was set out in its affidavit.

Brief

factual matrix

[5]

For the sake of convenience and ease of reference, the parties will be referred to

as the applicant and respondent respectively.

[6]

The applicant claims payment from the respondent in the amount of R 10 000 000,00

(ten million rand) in terms of an

acknowledgement of debt ("AOD") concluded by A1 Capital

in favour of the applicant

on 20 December 2019 ("the first

AOD") and another one on 14 January 2020 ("the second

AOD").

[7]

For all intents and purposes, the first and second AOD are identical, save for the

deletion of the words "jurisdiction of the

Magistrates' Court in terms of section 45 of act 32 of 1944 as

amended" and replaced with the following words "the

non-exclusive jurisdiction of the Gauteng Local Division" at

the end of clause 7. Of significance and a point at which parties

later part ways, is the fact that the defendant did not counter

initial next to the

amendment which was inserted in manuscript by the

plaintiff. This non-initialling, according to the respondent,

the denudes the second AOD of its legal efficacy.

[8]

For the sake of completeness, I hasten to add that the second AOD was subsequently

counter initialled by the defendant's

representative at clause 7, albeit this was done on 14 January

2020.

[9]

It is common cause that the substance of either version of the AOD was an unambiguous

acknowledgement by the respondent of its

indebtedness to the applicant in the amount of R 15 000 000,00

(fifteen million

rand), inclusive of all interest and costs, reckoned

from 20 December 2019. This was further coupled with terms of payment

recorded

as follows:

[9.1]

R 2 000 000, 00 (two million rand) on or before 31 January 2020;

[9.2]

R 3 000 000, 00 (three million rand) on or before 29 February 2020;

[9.3]

R 2 500 000, (two million five hundred and thousand rand) on or before 31 March 2020;

[9.4]

R 2 500 000,00 (two million and five hundred thousand rand) on or before 30 April 2020;

[9.5]

R 2 500 000,00 (two million and five hundred thousand rand) on or before 31 May 2020; and

[9.6]

R 2 500 000,00 (two thousand and five hundred thousand rand) on or before 30 June 2020.

[10]

In terms of clause 2 of the AOD, interest was not payable on the Capital debt unless the respondent breached its payment terms. In that event, interest would be levied at a rate of 11.5 per annum from date of breach.

[11]

The AOD further contains a further condition that the applicant would withdraw the liquidation application issued in the High Court of South Africa, KwaZulu-Natal Division, Durban under case number 8538/2019 upon the conclusion of the AOD. As a consequence of the applicant's signature to either version of the AOD, the applicant consented to the withdrawal of the liquidation application.

[12]

It is common cause that the second AOD was indeed counter signed on 14 January 2020 by the respondent, resulting in the actual withdrawal of the liquidation application being filed on 15 January 2020.

[13]

As contemplated in terms of the AOD, two payments were subsequently made in the amount of R 2 000 000,00 (two million rand) and R 3 000 000,00 (three million rand) on 31 January and 29 February 2020 respectively. No further payments were made between March and June 2020 as provided for in the AOD, for reasons which have neither been advanced, nor are relevant for purposes of this application, thus leaving the unpaid balance in the amount of R 10 000 000,00 (ten million

rand), excluding interest and costs, which would be triggered in the event of a breach by the respondent. I will attend to that aspect as part of the order I intend to make.

[14]

The applicant duly sent a notice of breach on 13 May 2020 and afforded the respondent 7 (seven) days to rectify the breach, failing which the applicant would claim the acceleration of the balance only when the Capital debt.

Needless to say, the respondent did not take up the invitation and the breach remained un-rectified.

[15]

It seems to me that barring the technical points raised by the respondent, to which I will return later, the salient facts are common cause. Of particular importance, is the observation which I made and invited the respondent's counsel to persuade me otherwise, and he was constrained to make the concession. The quintessential point being whether or not the underlying indebtedness to the applicant is disputed or not. Correctly in my view, the respondent's counsel was driven to accept the existence of the indebtedness, regardless of any consequent legal arguments he sought to advance.

I am fortified in my view, having invited the respondent's counsel to have regard to the wording of the resolution signed by three directors of the respondent, in which they plainly admit the indebtedness by the respondent to the applicant and specifically authorising Mr Kannigan to conclude the necessary AOD, which was subsequently done.

[16]

The respondent's counsel, could not gainsay the observation which I made. In fact, I pertinently pointed that out and indicated that the unambiguous ipse dixit emanating from the respondent's own resolution, if anything, reinforces the view that there can be no genuine, bona fide, sustainable defence or any triable issue in relation to or against the applicants claim.

[17]

The defences were fashioned out as two, however in essence they are inextricably intertwined.

I will accordingly deal with them as such.

[18]

Firstly, the contention that the AOD lapsed one day^[1] before A1 Capital (respondent) communicated its acceptance of the

amended acknowledgement of debt by the invocation of a so-called “suspensive condition” inserted in the AOD by anyone Capital’s attorney; and

[19]

Secondly, that the court lacks jurisdiction. This is purportedly due to the fact that the amendment at paragraph 7 of the AOD, which was inserted by manuscript and to the effect of replacing magistrates’ court with this court for proposes of jurisdiction, had not yet been counter initialled by the respondent’s representatives at the time (on 20 December 2019). This, according to the respondents, divests the High Court of its jurisdiction to the extent that the AOD which was annexed to the declaration ought to be read to refer to the jurisdiction of the magistrates’ court.

[20]

It appears that the jurisdiction point is anchored on the first version of the AOD, to the extent that the proposed insertion with reference to the high court’s jurisdiction remained un-initialled by the respondent.

[21]

In the event that I find that indeed this court lacks jurisdiction, it would not be necessary to deal with the merits with specific reference to the validity of the AOD. However, if I were to find that this court has jurisdiction, then I would be obliged to determine the issue of the validity of the AOD and by necessary implication deal with and make a determination regarding the defence mounted for proposes of resisting the application for summary judgement. Jurisdiction

point

[22]

It is noteworthy that in its plea, the respondent instituted a counter claim against the applicant in the amount of R5 000 000,00 (five million rand). This is in relation to the two payments referred to in 9.1 and 9.2

above. In my considered view, this very fact is counterintuitive to the challenge by the respondent of this court’s jurisdiction. How can it be, that this court lacks jurisdiction to entertain the main claim of the applicant on the one hand and yet be clothed with the same jurisdiction to entertain counterclaim at the instance of the same respondent, who vociferously challenged this court’s jurisdiction apropos the claim at the instance of the applicant? This clearly demonstrates that the respondent cannot, in all seriousness,

persist with
such an assertion. This is speaking differently through
both sides of the same mouth.

[23]

What stands out about this matter is that, at the time when the
application for summary judgement
was launched, attached to the
supporting affidavit, is the second version of the AOD, which was
properly counter initialled by
the respondent and having been so
confirmed by Ms Saner, the respondent's legal representative,
in an email to which such
the amended version was attached, on 14
January 2020. This is undisputed. In fact, Ms Saner goes so far as
asking the applicant's
legal representatives to proceed, as
initially agreed and contemplated, with the filing of the withdrawal
of the provisional liquidation
proceedings in Kwa Zulu Natal
Division, Durban, which was subsequently done, the very next day, on
15 January 2020.

[24]

Allied to this, the respondent seeks to suggest that because the
suspensive condition contained
in clause 5 with reference to the
provisional liquidation proceedings being withdrawn by the 13 January
2020, was not fulfilled,
in that, such a withdrawal was only filed on
15 January 2020 (2 days later) and in fact 1 day after it had
signed the amended (2nd) AOD, then the AOD falls away.
Again, nothing is stated by way of actual denial of the respondent's
indebtedness to the applicant.

[25]

In order to determine this matter correctly, one needs to establish
whether or not the parties
intended (the true suspensive condition)
if one has regard to the overall facts and context. A closer reading
of clause 6 and 7
seems to militate against the contention advanced
by the respondent. The effect of the AOD (on either version) remains
undisturbed
by the technical point which the respondent seeks to
take, namely the non-fulfilment of the suspensive condition.
Ordinarily, at
the heart of any AOD is an unambiguous
acknowledgement of indebtedness.
On the facts before me, there is nothing proffered by the respondent,
to suggest that such indebtedness is either in doubt or
in any form
or shape disputed. I am fortified in my view by the unambiguous
wording of the resolution of the board of directors

of the respondent, in which the three directors unanimously agreed to authorise the conclusion of such an acknowledgement of debt. It does so in clear and concise terms[2]. In fact, one such director, Mr Kannigan, is the signatory to the AOD. It also seems logical and it makes commercial sense for the provisional liquidation proceedings to be withdrawn, only after the conclusion of an AOD on terms and conditions which both parties agreed with. Otherwise, there would simply be no incentive for the applicant in casu to withdraw its separate proceedings in the KZN division. This is precisely why such withdrawal only happened post receipt of the duly amended and counter signed version, as sent to the applicant's attorneys by Ms Saner, on behalf of the respondent. Most tellingly, on 14 January 2020, a day after the supposed that expiry date of the fulfilment of "a suspensive condition" Ms Saner expressly instructs the applicant's representative to proceed and file the withdrawal of the liquidation proceedings[3] as contemplated in the self-same AOD. No point was taken regarding the expiry of that AOD on account of non-fulfilment of any suspensive condition.

[26]

I agree with the submission by the applicant's counsel that, indeed, as at 14 January 2020, the parties are ad idem and had the clear intention that such AOD should have commercial operation. If that was not the case, firstly one would have expected the respondent not to bother to initial in the amended version of the AOD a day later than 13 January 2020, secondly, it would also not make any sense for the respondent's representatives to remind the applicants representatives to proceed with the withdrawal of the provisional liquidation proceedings, unless, the respondent intended to follow through with what was contemplated in the second version of the AOD. This is in fact what transpired. There was nothing which suggested the contrary intention by the respondent, post 15 January 2020 until 31 January 2020 when it made its first payment in the amount of R 2 000 000,00 (two million) as clearly ordained in the AOD. There was a further payment made on 29 February 2020 in the amount of R 3 000 000,00

(three million). These developments clearly reinforced the view that the respondent could never have regarded the so-called non-fulfilment of the suspensive condition as any bar from its compliance with the terms of the AOD. I am therefore at a loss to appreciate the contention that the withdrawal of the provisional liquidation proceedings two days later, should sound the death knell to a commercial arrangement, which was clearly within the contemplation of the parties. It is clear, that such withdrawal could not have happened on 13 January 2020, due to the delay solely occasioned by the respondent.

[27]

The subsequent conduct of the respondent cannot be said, as its counsel contended, to be of no moment, if one has regard, not only to the text, but the context, purpose and the overriding facts. If anything, such subsequent conduct militates against any possible argument suggesting that the respondent did not intend any commercial consequences to flow from its signature of the amended AOD on 14 January 2020. In interpreting commercial memorials by competent contracting parties, one has to interpret and prefer interpretation which would lead to a reasonable and commercial sense, without necessarily inventing new conditions and terms for the parties. In this matter, if one were to prefer an interpretation contended by the respondent, it remains my considered view, that such would lead to a commercial absurdity. In fact, such an interpretation would be repugnant to, or inconsistent with the respondent's own subsequent conduct, at the very least until the end of February 2020. The "Damascus Road" experience which it encounters when the payment due at the end of March 2020 was not forthcoming, can hardly come to its belated assistance. This, I am disinclined to do. I am accordingly persuaded that the "suspensive condition" relied on by the respondent is not "a true suspensive condition" and thus cannot mortify the validity of the AOD.

Rectification

[28]

Simply put, rectification of the written agreement is a remedy available in instances where the agreement, through a common mistake, objectively discernible, does not reflect the true intention of the

contracting parties or where it erroneously does not record the agreement between the parties. It goes without saying that the predominant requirement for rectification is, a common continuing intention of the parties, which is not reflected in the agreement. (see *B v B* [2014] ZASCA 14 at para 20). In the case before me, it is clear that the parties intended to continue with the terms of the AOD, notwithstanding the expiry of the date of 13 January 2020, as the respondent itself only complied with its end of the bargain a day later, on 14 January 2020 and through its legal representatives, proceeded to instruct the applicant to file the intended and contemplated notice of withdrawal of the liquidation proceedings on 15 January 2020. This was done by the applicant. In further pursuance of the material terms of the AOD, with specific reference to the payment plan, the respondent proceeded to effect two payments on the dates specified in the same agreement (AOD), which were both made after 13 January 2020. It is therefore mind-boggling that the respondent seeks to escape from the legal efficacy of that AOD on the basis of non-fulfilment of a suspensive condition, with reference to the date of 13 January 2020, when through its own conduct, it clearly performed in accordance there with. This is a textbook case of an instance where rectification aimed at reflecting the true intention of the parties is appropriate. It is further trite that the onus is on the party claiming rectification to show, on a balance of probabilities, that it should be granted.

[29]

To the extent that the applicant applies, in these proceedings, for a rectification to change the words “suspensive condition” to “term” and the date, “13 January 2020” to “15 January 2020”, the court is indeed competent to consider such an application and to determine it. Having considered the entire undisputed factual matrix, as well as any real prejudice that could be potentially suffered by the respondent (and I found none), mindful of the fact that the true indebtedness to the applicant is not in dispute, I have no hesitation in permitting the rectification sought by the applicant. By its own subsequent conduct, the respondent has, in any event acquiesced and acted as if the

rectification had in fact been given effect to. I accordingly find that the applicant has successfully crossed the hurdle and discharged the onus resting on it.

[30]

In the affidavit resisting summary judgement, the respondent contends that “the claim for rectification cannot be dealt with in summary judgement proceedings” and in the result, argues that the AOD does not support the money claimed by the applicant. That is simply incorrect.

[31]

In the matter of PCL

Consulting (Pty) Ltd T/S Phillips Consulting SA v Tresso Trading 119 (Pty Ltd[4]

Cloete JA

considered this question, whether summary judgement applications were competent to consider a rectification of an agreement. At paras [4] he had to the following to say “ I therefore, with respect agree with the judgement of Coetzee J in Malcomess Scania (Pty) Ltd v Vermaak and another, to the extent that it holds that the plaintiff who alleges that the written contract should be rectified is confined to what the plaintiff alleges is a true agreement between the parties, and cannot (in the absence of an express indication to the contrary) rely in the alternative upon the terms of the written agreement as they stand, but I am constrained to disagree with that judgement to the extent that it suggests that summary judgement is incompetent, even where both parties are ad idem as to the respect in which they are written contract does not reflect the agreement between them. [5]

in summary judgement proceedings the plaintiff is required, in terms of rule 32 (2), to verify the cause of action-not to verify that it will be able to prove the cause of action. The cause of action in the present matter is that the defendant had the 4th

floor office in

Fedsure towers from the plaintiff, in consequence of which it became obliged to pay the amounts totalling,

Which it failed to

do. The plaintiff was therefore not obliged to cross the evidential hurdle of proving that, despite the provisions of the written lease

which are referred to the 6th floor office, it was

4th
floor office which was
in truth led to the defendant. Had the defendant placed in issue what
the terms of the agreement were, the
plaintiff would have been
obliged to prove its version of the agreement at the trial and
summary judgement would have had to have
been refused. But the
defendant did not do this..”

[32]

It is clear from the above that the Supreme Court of Appeal accepted
that the courts dealing
with summary judgement applications are
indeed permitted to consider and pronounce on the rectification
agreement on which the
creditor’s claim depends. This is on all
fours with what transpired in this case. The applicant placed
undisputed facts before
this court which fall to be considered and
dealt with, when interpreting the AOD. In this case, the respondent
did not even bother
to engage or otherwise remonstrate with the
submissions of the applicant. It could not do so, as, on its own
version, it clearly
acquiesced and acted in accordance with what is
contemplated in the AOD. This is why in my view, the issue regarding
the non-fulfilment
of the suspensive condition, as well as the non-
initial of clause, which deals with this court’s jurisdiction,
are an afterthought, and of no legal moment.

Rule

32

[33]

As I indicated in the opening paragraph, what is before me is an
application for summary judgement.

The applicable rule is the amended
rule 32[5], due to the fact that
this claim is based on a liquid document (AOD)

[34]

For purposes of this matter, “rule 32 (2) specifically
provides that a notice of application for summary judgement, must be
accompanied by an affidavit made by
the applicant or any other person

who can swear positively to the facts verifying the
cause of action and the amount, claimed and stating that in his
opinion there is no bona fide defence to the action.....”.

If the claim is founded on a liquid document (AOD), a copy of the
document shall be annexed to such affidavit in the notice of
application for summary judgement....” In this case, the
AOD is indeed

attached to the supporting affidavit which accompanies

the application for summary judgement. Mr Munnik, who is a director of the applicant and the very individual who concluded the AOD on its behalf, has duly verified the cause of action on which the claim is based and has positively sworn to the facts pertaining to the matter. He has further set out why in his view, the applicant does not believe that the respondent has raised a genuine and bona fide defence which gives rise to any triable issue. Barring the contention by the respondent with reference to “the non-fulfilment of the suspensive condition” on which I have already indicated that I am not persuaded, there is absolutely no indication by the respondent as to what its true defence, on the merits would be, if any at all, which could have entitled them to proceed to trial at some future date. It is quite clear that the respondent has no defence; otherwise, it would have raised it to enable me to make an assessment regarding its genuineness, and not so much to make a final determination on its prospects of success.

[35]

The novelty with regard to the amended rule, is the requirement that an application for summary judgement can only be proceeded with after the defendant has filed a plea. This is sound, as it enables the plaintiff to carefully assess the nature of the defence raised before it considers to pay to bring an application for summary judgement. In this case, mindful of the cause of action and the fact that the claim is based on a liquid document, it seems self-evident that no genuine defence has been raised.

[36]

The onus resting upon an applicant for summary judgement was aptly stated as follows by Bins-Ward

J in Tumileng

Trading CC v National Security and Fire (Pty) Ltd[6]:

“ for the

reasons given later with regard to the cases before me, I consider that the amended rule 32 (2) (b) makes sense only if the word

‘genuinely’ is read in before the word ‘raise’

so that the pertinent phrase reads ‘explain

briefly where the

defence as pleaded does not genuinely raise any issue for trial. In

other words, the plaintiff is not required

to explain that the plea

is acceptable. It is required to explain why it is contended that the

pleaded defence is a shame.”

[37]

Put differently, the honourable court is required to consider whether the defence raised by the respondent in its plea and affidavit resisting summary judgement, is a genuine defence or raises any triable issue or whether it is contrived, with the intention to delay the inevitable and undisputed debt. This, presupposes a balancing act against the contentions by the applicant, weighed against those by the respondent. It is clear from both the plea and affidavit resisting summary judgement, that the respondent is relying on an overly formalistic technicality, which has nothing to do with its undisputed acknowledgement of liability towards the applicant. The non-initial of the clause which deals with the jurisdiction of this court, as well as the non-fulfilment of “a suspensive condition” are, in the context of this case, de minimus. I agree with the applicant’s counsel on that score. On more than one occasion, I pointedly asked the respondent’s counsel whether or not, in truth, form and/or substance, it could be contended by the respondent that it is not indebted to the applicant as memorialised in the AOD or at all. That question was avoided and eventually, the respondent’s counsel indicated that “I cannot take the point further than that” (sic). Belated as it was, I believe that concession was well made.

[38]

The practical effect of permitting the respondent in this case to proceed to trial, would simply be to delay the inevitable. It is either the respondent has raised a genuine defence at this stage of the proceedings, or it has not. None can be manufactured along the way to trial. If one were to borrow with approval, from the dictum of Bins-Ward J, I would say it is apparent that the defence mounted by the respondent is a sham intended to delay the inevitable in that, money is owed and is indeed due and payable the applicant, admittedly, on its own resolution signed by three of its directors, including Mr Kannigan and who consequently signed the two versions of the AOD.

[39]

In any event, the indebtedness as recorded in the AOD (both versions) was not subject to any event been fulfilled, nor was it obligation to make the payment of the debt subject to any event. The debt itself had already been incurred long before the AOD was concluded. It is

plain that the AOD was required for purposes of protecting the applicant's rights, with reference to the intended withdrawal of the liquidation proceedings in KZN.

[40]

There is nothing untoward with that arrangement in the commercial scheme of things. It is therefore unsurprising that the withdrawal of the liquidation proceedings had to be preceded by the duly signed AOD, to enable the applicant to proceed with an application for summary judgement, in the event of a default by the respondent. On the other side of the coin, once the AOD had been signed by both parties and the applicant, for whatever reason, fails or refuses to withdraw the liquidation proceedings, similarly, the respondent would be entitled to a withdrawal on the strength of the duly signed AOD. These are the commercial consequences, which are indeed businessman-like, which both parties contemplated.

[41]

For purposes of this application, I need not concern myself with determining the substantive merit of the defence, nor with determining its prospect of success. All I need to do, as I have done in this case, is an assessment of whether or not the pleaded defence is legally cognisable and genuinely advanced. In this case none has been advanced, let alone genuinely, barring the legal technicalities which I have not been persuaded by. It therefore stands to reason, that the applicant is entitled to the relief it seeks.

[42]

I fail to see what utility would be derived if an unmeritorious case such as this one, were to be permitted to proceed to trial. If anything, it remains my considered view that that would be an abuse of court processes.

The courts, in the adjudication of disputes, generally frown upon overly formalistic and technical quibbles, which have nothing to do with the true merits of the case. This is a classic case where an end must be put to what could easily be a protracted litigation, wherein the respondent, clearly has no defence, whatsoever. Should this not be the case, the unintended consequence would be that an applicant, worthy of a judgement in its favour, could potentially be strung along by an errant respondent, having to further

finance protracted and frivolous litigation.

Needless to say, this also puts an undue strain on the already overstretched judicial resources. This cannot be countenanced.

Respondent's
counterclaim

[43]

The respondent has not made out a case for its counterclaim. This finding is consistent with

my earlier finding, as I had found the AOD to the extant and unassailed by any challenge by the respondent.

Order

[44]

In the result I make the following order.

[44.1]

The respondent is to make payment to the applicant in the amount of R 10 000 000,00 (ten million rand)

[44.2]

Interest thereon at the rate of 11.5% per annum from 13 March 2020 to date of payment.

[44.3]

the respondent is ordered to pay costs on an attorney and own client scale, including the costs consequent upon the employment of counsel.

Z M P MAJAVU

Acting Judge of the

High Court

Gauteng

Local Division, Johannesburg

HEARD

ON: 11 May 2021

JUDGMENT

DATE:

13 May 2021

FOR THE PLAINTIFF:

Adv CHJ Badenhorst SC

INSTRUCTED BY:

Ulrich Roux & Associates

FOR THE

Adv Potgieter SC

DEFENDANT:

INSTRUCTED BY:

Senekal Simmonds Inc. Attorneys

[1] 13 January 2020, as the amended version was counter initialled only on 14 January 2020 and sent to the applicant's attorney by the respondent's attorney on the same day. This resulted in the withdrawal of the provisional liquidation proceedings in case it and being withdrawn on 15 January 2020.

[2]

[3] Ms requested Mr Badenhorst in her covering email to "kindly 7 file your client's notice of withdrawal of the liquidation

application in terms of clause 5".

[4] 2009

(4) SA 68 (SCA)

[5] Rule 32 of the Uniform Rules of Court, rule 32 (1) (a) "where the defendant has delivered notice of intention to defend, the plaintiff may apply to court for summary judgement on each of such claims in the summons as is only- (a) a liquid document

[6] 2020 JDR 0747 (WCC)

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