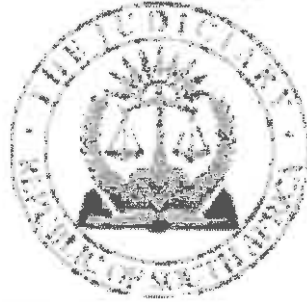



REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 09853/2015

(1)	REPORTABLE: YES / <u>NO</u>
(2)	OF INTEREST TO OTHER JUDGES: YES / <u>NO</u>
(3)	REVISED.
<u>24/02/2017</u> DATE	
 SIGNATURE	

In the matter between:

A MELAMED FINANCE (PTY) LTD (in liquidation)

Respondent/Plaintiff

and

HIRSCHOWITZ, SANDRA PHYLLIS

Applicant/Defendant

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

MAKUME, J:

[1] On the 19th September 2016 I dismissed the Applicant's application for leave to amend her plea in certain respects. The Applicant now seeks leave to appeal against that order of dismissal.

[2] In issue at that stage was whether or not the intended amendment constituted a withdrawal of an admission.

[3] In my judgment I found that indeed the amendment if allowed will result in withdrawal of a statement of fact which had become common cause as it had been admitted in the plea. I concluded that the application to amend was *mala fide* and will prejudice the Respondent's case. I still stand by that conclusion.

[4] The test to be applied in deciding on an application for leave to appeal is set out in section 17(1)(a)-(c). A court must be satisfied and hold the opinion that there are reasonable prospects of success of the appeal itself before granting leave.

[5] In this application nothing new has been placed before me to persuade me that there are reasonable prospects of success should I refer this application to amend to the full bench of this division.

[6] In this matter summons with detailed particulars of claim was issued during March 2015. The plea was delivered during September 2015 some five months later. The notice to amend paragraphs 3.1 and 3.2 of the plea was given on the 30th May 2016 almost a year and two months after the action was instituted. It is in my view inconceivable that it took a whole year for the applicant to realise that she had not given her attorney and counsel correct instructions on the plea.

[7] The Applicant has failed to persuade me that there are reasonable prospects of success of the appeal. Accordingly the application must fail.

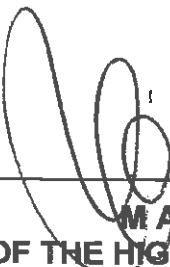
ORDER

[8]

8.1 The application for leave to appeal is refused.

8.2 The Applicant is ordered to pay the costs of the application.

DATED at JOHANNESBURG on this the 3rd day of FEBRUARY 2017.



M A MAKUME
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

DATE OF HEARING	2 nd FEBRUARY 2017
DATE OF JUDGMENT	FEBRUARY 2017
FOR APPLICANT	ADV PRETORIUS
INSTRUCTED BY	STAN FANAROFF & ASSOCIATES 107 Oxford Road Rosebank, Johannesburg Tel: (011) 880 2091 Ref: H40.7/Ms S Henning/Yvonne
FOR RESPONDENT	ADV WILSON
INSTRUCTED BY	BROOKS & BRAADTVEDT INC 203 Jan Smuts Avenue Parktown North Johannesburg Tel: (011) 788 7707 Ref: Mr A Brooks/1967