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REPUBLIC OF SOUTH AFRICA



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

CASE NO: 8894/2019

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

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▼ Date ML TWALA

Deleted: ¶

In the matter between:

**UNNIC AUTO PARTS RANDBURG (PTY) LTD
T/A MIDAS STRIJDOMPARK**

APPLICANT

AND

CORNELIE SCHEEPERS

RESPONDENT

(ID NO: [...])

JUDGMENT

TWALA J

- [1] In this opposed summary judgment application, the applicant seeks an order against the respondent for payment of the sum of R209 212.02 plus interest at the rate of 10.5% per annum and the costs of suit.
- [2] It is common cause that on the 1st of January 2012 the parties concluded a lease agreement which was to expire on the 1st of January 2017. The agreed rental amount was the sum of R6 500 per month. At the expiration of the period of the lease, the respondent continued to occupy the premises without the concluding another lease agreement. On the 29th of September 2017 the respondent signed an acknowledgement of debt in favour of the applicant. On the 1st of December 2017 the respondent signed another acknowledgment of debt in favour of the applicant.
- [3] It is contended by counsel for the respondent that it is incorrect for the applicant to base its cause of action on a tacit lease agreement since there was a written agreement. Clause 4 of the lease agreement provided for the procedure to be followed when the respondent desired to continue with the lease and this was not followed by the parties. The applicant, so it was argued, was not entitled to charge a surcharge in the sum of R300 as it alleged in its particulars of claim since there is no such provision in the agreement. The applicant was not entitled to increase the rental amount by

10% as alleged since there was non-compliance with clause 4 of the lease agreement which provided for an addendum to be signed by the parties should the lessee decide to continue with the lease.

- [4] Counsel for the applicant contended that although the parties did not comply with clause 4 of the lease agreement, the respondent continued to occupy the premises. The acknowledgment of debt signed by the respondent references the rental amount of R6 500. The amount of R65 000 paid by the respondent was in relation to the acknowledgment of debt and the applicant's claim is for arrear rentals and not based on the acknowledgment of debt. Further, it was submitted by counsel for the applicant that it does not insist on the rental increase of 10% and that the relevant amount is the sum of R5 200 which should be deducted for the amount claimed.
- [5] It is trite that for a defendant to successfully resist an application for summary judgment, it must satisfy the Court that it has a bona fide defence and must disclose fully the nature of the grounds of the defence and the material facts relied upon for such defence.
- [6] In the case of *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture 2009 (5) SA 1 (SCA)*, the Court stated the following:

“The rationale for summary judgment proceedings is impeccable. The procedure is not intended to deprive a defendant with a triable issue or a sustainable defence of her/his day in court. After almost a century of successful application in our courts, summary judgment proceedings can hardly continue to be described as extraordinary. Our courts, both of first instance and at appellate level, have during that time rightly been trusted to ensure that a defendant with a triable

issue is not shut out. In the Maharaj case at 425 G-426E, Corbett JA, was keen to ensure first, an examination of whether there has been sufficient disclosure by the defendant of the nature and grounds of his defence and the facts upon which it is founded. The second consideration is that the defence so disclosed must be both bona fide and good in law. A court which is satisfied that this threshold has been crossed is then bound to refuse summary judgment. Corbett JA also warned against requiring of the defendant the precision apposite to pleadings. However, the learned judge was equally astute to ensure that recalcitrant debtors pay what is due to a creditor.”

- [7] I agree with counsel for the applicant that there is no dispute that the respondent continued to occupy the premises after the expiration of the lease agreement. It is immaterial that the parties did not comply with a clause in the lease agreement that provided for the procedure to be followed should the lessee decide to continue with the lease. Although I accept that the applicant was not entitled to increase the rental amount since there was no addendum signed by the parties, the respondent is obliged to pay the rental amount for the premises since there is no reason why it should occupy them without paying.
- [8] It is my considered view therefore that the respondent has failed to establish that there is a triable issue between the parties. The respondent has therefore not succeeded in showing this Court that it has a bona fide defence to the claim of the applicant and therefore the application for summary judgment succeeds.
- [9] In the circumstances, I make the following order:

1. The respondent is liable to pay the applicant the sum of R204 012.02;
2. Interest on the said sum R204 012.02 at the rate of 10% per annum *a tempore morae* to date of payment;
3. Costs of suit.

TWALA M L

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION

Date of hearing: 8th August 2019

Date of Judgment: 14th August 2019

For the Applicant: Adv J G Dobie

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For the Respondents: Adv. JW Kloek

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