

REPUBLIC OF SOUTH AFRICA



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

CASE NO:07730/2014

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

29/10/2017

In the matter between:

CHRYSTAL BALL PROPERTIES 95 (PTY) LTD  
POUROULLIS, CHRISTOS

First Applicant/1<sup>st</sup> Respondent

Second Applicant/2<sup>nd</sup> Respondent

v

ABSA BANK LIMITED

Respondent/Applicant

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JUDGMENT

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SENYATSI AJ:

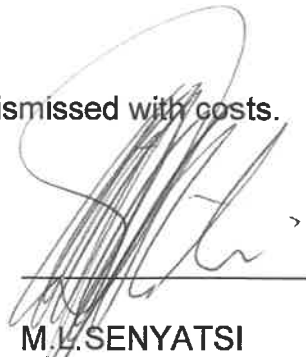
1. This is an application for leave to appeal the summary judgment I handed down on 05 September 2017.
2. The judgment is appealed against for the reasons raised in the notice for application for leave to appeal. The reasons will not be repeated in this judgment.
3. At the hearing of this application, Mr. Lautre on behalf of the applicant conceded that no defence had been raised in opposing papers either on the issues with certificate of balance or the points in *limine*. He also conceded that in terms of the rules of this court, absent the agreement by the parties to postpone the matter, the court was bound to grant the summary judgment.
4. The parties had, prior to the summary judgment argument, concluded settlement agreement in terms of which the applicants had undertaken to pay R5500,00 per month from February 2017 when the summary judgment was before court.
5. The applicants defaulted payments in April, May, June and made part payments of R3761,35 and R1738.15.
6. The application for postponement at the hearing of the summary judgment was not in order to be given an opportunity to file an affidavit to show that the applicants had a defence to the claim. The Applicants simply sought application to postpone and tendered costs without stating the reason for postponement. I repeat that they did not file an affidavit to disclose the defence to the main action.
7. The application for postponement was opposed successfully and summary judgment was granted.

8. Section 17(1)(a)(i) of the Superior Court Act 2013 provided as follows:
  - a. *“Leave to appeal may only be given where the judge or judges concerned are of the opinion that-*
    - i. *(a)(i) the appeal would have a reasonable prospect of success;”*
9. It is trite that the onus is on the applicants to show that the appeal would have a reasonable prospect of success. The bar for discharging such onus has been raised high.
10. Leave to appeal is not given but must be established.
11. In the judgment complained of the appellants never told this court that they sought postponement to lead evidence and papers that they have a defence. They were out of time in that up until the night before the summary judgment hearing, no opposing affidavit had been filed. Their counsel was briefed simply to apply for postponement.
12. The application to postponement was a simple delaying tactics as the summary judgment was before court for the second time in 2017.
13. Taking these factors into account, I am of the view that the applicants have failed to discharge the onus that another court would come to a different conclusion.
14. The application for leave to appeal can therefore not succeed but must fail.

ORDER

The following order is made:

- (a) The application for leave to appeal is dismissed with costs.

A handwritten signature in black ink, appearing to be 'M.L. Senyatsi', is written over a horizontal line. The signature is stylized with a large loop at the top and a small flourish at the end.

M.L.SENYATSI

ACTING JUDGE OF THE HIGH COURT

For the Appellants: ADV. T. LAUTRE

Instructed by: HIRCHOWITZ FLIONIS ATTORNEYS

For the Respondents: ADV. S SWANEPOEL

Instructed by: SMIT SEWGOOLMAN INC

Date of Hearing: 29 October 2019

Date of Judgment: 29 October 2019