IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ***NO***
(2) OF INTEREST TO OTHER JUDGES: ***NO***
(3) REVISED: ***Yes***

Date: _____Signature: _____

CASE NO: A3146/2017

In the matter between:

JOYCE THABILE MORGAN

(I.D. NO. […]) Appellant

- and -

BLUE BEACON INVESTMENTS 206 (PTY) LTD Respondent

JUDGMENT

MATSEMELA AJ:

[1]. This is an appeal by the Appellant against the judgment from the Germiston Magistrate's Court following an opposed application for summary judgement. The Respondent claimed against the Appellant for an amount of R128161.23. On the 23 August 2017 the magistrate granted the summary judgement in favour of the Respondent.

[2]. The plaintiffs' claim emanates from a lease agreement which the parties have entered into. On the 5th December 2014 the parties have entered into a lease agreement which is partly verbal and partly written. In terms of the said lease agreement the Appellant rented Unit […]6 of the […] Complex, Primrose Hill. The initial period of lease was 12 months commencing on the 1st December 2014 and terminating on the 31 November 2015.

[3]. Prior to the conclusion of the contract the parties agreed that the Appellant would occupy Unit […]2 in the abovementioned complex. They agreed that the Appellant would occupy this unit pending the finalisation of the contract. However, the Appellant moved into unit […]1 in the same complex on the same terms and condition of Unit […]6.

[4]. The Appellant refused or failed to provide the Respondent with a signed copy of the lease agreement.

[5]. The express, alternatively implied terms of the lease agreement were as follows;

(a) The monthly rental in the amount of R5100.00 would be payable in advance on the first working day of each month, free of any deductions or set-off whatsoever and would be subject to an annual increase of 7%

(b) The Appellant will be liable for all amounts due to the Local Municipality in respect of water, electricity, sewerage, refuse and fire charges for the property directly to the Local Municipality

(c) The Appellant will further be liable for the monthly fee payable to the security company and alarm charges, should same be installed at the leased premises

[6] It was agreed that the abovementioned charges including the rental shall be paid by the Appellant on the first day of each month and a 10 % management fee will be charged for any late payments.

Arguments

[7] It was argued on behalf of the appellant that the claim of the plaintiff was based on an unliquidated document. The lease agreement is not a liquid document. This was as it was further argued that the claim does not conform to rule 14(1) (b). I do not agree with this argument.

[8] Rule 14 (1) (b) of The Magistrates' Court provides

"4. (1) Where the defendant has delivered notice of intention to defend, the plaintiff may apply to court for summary judgment on each of such claims in the summons as is only-

(a) on a liquid document

(b) for a liquidated amount in money

(c) for delivery of specified moveable property; or

(d) for ejectment

together with any claim for interest and costs.

In First National Bank of SA LTD v Myburg and Another 2002 (4) SA 176, Moosa J at 183 held that

“A liquidated amount in money is an amount which is either agreed upon or which is capable of speedy and prompt ascertainment.”

[9] The court a quo correctly found that the claim of the Respondent is based on liquidated amount in money and not a liquid document.

[10] It was argued further that the Respondent failed to plead in terms of oral agreement in his particular of claim and oral evidence was necessary. I do not agree with this contention.

Rule 14 (5) of the Magistrates’ Court Act reads:

“No evidence shall be adduced by plaintiff at the hearing of the application nor shall any person giving oral evidence at such hearing be cross-examined by the plaintiff, but such person may after examination by the defendant be examined by the Court.”

[11] This is a view held by Leon and Milne JJ in Venter v Kruger 1971 (3) SA 848 (N) at 851 C.:

“There are a number of decisions with respect both to a similar Supreme Court Rule and to the previous Rule of the Magistrates’ Court which makes it clear that in an application for summary judgment a plaintiff should not give evidence as to the facts supporting his case in his affidavit.”

[12] In this regard see inter alia, Wright v McGuinness1956 (3) SA 184 (C) at 187; Kosack & Co (Pty) Ltd. v Keller and Another1962 (1) SA 441 (W) at 443-4; South Africa Trade Union Assurance Society Ltd. v Demott Properties (Pty) Ltd. & Others (3) SA 601 (W) at 602.

[13] The argument by the Appellant on this issue had to be dismissed.

[14] Counsel for Appellant further argued that the deponent in the affidavit in the plaintiff's claim cannot serve positively into the facts verifying the cause of action because she does not disclose her involvement in concluding the oral part of the agreement. Counsel referred this court to **MAHARAJ V BARCLAYS NATIONAL BANK LIMITED 1976(10) SA** and quoted

"mere assertion by a deponent that he can swear positively to the facts (an assertion that merely reproduces the working of the rule) is not regarded as being sufficient, unless there are good grounds for believing that the deponents fully appreciated the meaning of these words".

[15] I am afraid that counsel is missing the point there. There was no evidence put before the learned magistrate that the deponent did not appreciate the full meaning of these words. All that is required in terms of the magistrate rules 14(2) (a) is for any deponent who swear positively to the facts to make an affidavit in support of the application. Having said that therefore this argument had to be dismissed

[16] It was argued on behalf of the appellant that she did not enter into contract with the Respondent. The fact that the lease agreement was not signed, means that there was no contract. I am unable to agree to agree with counsel of the appellant on this argument. It is trite that the lease agreement does not have to be signed in order to be binding. If one of the parties did perform in terms of the unsigned contract that should be suffice for the contract to be binding.

[17] Furthermore, the **Rental Housing Act of 1999** dictates that a lease agreement need not be reduced into writing unless it is requested by a tenant, in which case a landlord must comply. If the lease is in fact written, but unsigned by the tenant, then section 50 of the **Consumer Protection Act of 2008** deems it binding.

[18] In his plea the Appellant argues that there is an agreement which is partly written and partly oral and therefore oral evidence is necessary. In saying that there was no agreement, he is contradicting himself.

[19] This court finds that there is an agreement between the parties which is binding. The fact that the appellant paid the deposit and some rental monies indicates that she performed in terms of the agreement.

[20] In the case of **SHACKELTON CREDIT MANAGEMENT PTY LTD V MICROZONE TRADING 88 CC AND ANOTHER 2010 (SA) 112 (KZP**) it was held per Wallies J

“it will be bold for the defendant to limit his or her affidavit resisting summary judgment to technical matters when they believe they have a good defence on the merits. They run the serious risk of having summary judgment granted if the technical defence is rejected, as they would not have dealt with the merits of the plaintiffs claim.”

[21] The court a quo correctly rejected the technical issues of the Appellant. His defence on the merits was bold, vague and sketchy to such an extent that it does not establish a bona fide defence which is not good in law.

COSTS

[22] Counsel for the Respondent argued that the court should grant cost order against the Appellant on a punitive scale. He argued that the way the appellant handled this appeal was unprofessional. They were served with amended index today, in court. This is a matter which was never to be brought for appeal. I agree.

[23] In the circumstances the appeal against the granting of summary judgement stands to be dismissed and the following order is made;

Order

I therefore make the following order:

1. The Appeal is dismissed with costs on a scale as between an attorney and own client.

J M MATSEMELA
Acting Judge of the High Court of South Africa
Gauteng Local Division, Johannesburg

I agree,

It is so ordered

M TWALA
Judge of the High Court of South Africa
Gauteng Local Division, Johannesburg

HEARD ON:	16 October 2018
JUDGMENT DATE:	7 February 2019
FOR THE APPELLANT:	Adv WS Britz
INSTRUCTED BY:	Sim and Botsi 011 880 4075
FOR THE RESPONDENT:	Adv
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