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

CASE NO: 2015/32685

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

21/05/20 .....
SIGNATURE

In the matter between:

SEAN PETER HAUNT **PLAINTIFF**

and

PARAMOUNT PROPERTY **DEFENDANT**

Transmitted by email to the parties' legal representatives. The judgment is deemed to have been delivered on 21 May 2020.

JUDGMENT

MOLAHLEHI, J:

Introduction

[1] This matter is about whether the plaintiff has made out a case justifying a rectification of an agreement concerning the release of certain goods which had been attached by the Sheriff and were in a warehouse belonging to the defendant.

[2] Following the conclusion of the agreement and based on the allegation that the defendant has failed to comply with the terms of the agreement, the plaintiff has instituted these action proceedings claiming, amongst others, damages.

[3] As per the agreement between the parties it was ordered that the merits be separated from quantum. The issue of quantum was postponed *sine die* and the matter proceeded on merits only. The issue of prescription was also not pursued in the present hearing. At the end of the hearing the plaintiff indicated that he was no longer pursuing the claim based on misrepresentation and fraud.

[4] The plaintiff is a businessman who shared a warehouse rented from the defendant with his deceased father. The plaintiff and the deceased father, shared the payment of the rental to the premises. After his father's death his step-mother was appointed the executrix of the estate. The executrix failed to pay for the rental for the warehouse and accordingly, the defendant issued a rent summons as penance for its hypothec, summarily attaching the goods belonging to the plaintiff which were in the warehouse.

[5] Soon after the attachment the plaintiff approached the defendant and laid an ownership claim to some of the items which were in the warehouse. Upon the advice of his attorney, he instituted interpleader proceedings which were set down for hearing at the Kagiso Regional Magistrate's Court.

[6] On the day of the hearing, the parties concluded an agreement the essence of which was that the plaintiff would pay for the release of the goods which appeared on the inventory created by the Sherriff. The agreement which was drafted by the defendant, with the only one amendment being that of the date when the goods would be collected was signed on 20 March 2015. The agreement is couched in the form of a purchase and sale when in fact it is not. This the parties are in agreement that it was a common error that required rectification.

[7] In the amendment the parties are in agreement that their intention was to make provision that the plaintiff would pay for the procurement of the release of the items in the warehouse. In terms of the agreement the plaintiff undertook to pay the defendant the sum total of R360 000 and after that he would be entitled to remove the items within twenty one days from the premises.

[8] It is common cause that the agreement is silent as to the presence or otherwise of the items, as they appear in the Sherriff's inventory, at the time of signing the agreement. It is also not in dispute that the items were missing on the day the plaintiff went to collect as per the agreement.

The issues

[9] As mentioned earlier the key issue in this matter is whether the plaintiff is entitled to the rectification of the agreement such that it corrects what is averred to be a common error between the parties. It is contended that the error should be corrected such that the agreement reflects the true intention of the parties.

[10] The plaintiff's pleaded case is that the "material express, alternatively, implied, alternatively tacit terms of the agreement" were the following:

> "5.9 All the goods as attached by the Sheriff and reflected in the inventory, as drawn by the Sheriff of Krugersdorp's Magistrate Court . . . was still physically within the premises."

[11] The other implied or tacit term of the agreement according to the plaintiff is that:

> "5.10 The Defendant would ensure that the goods as attached by the sheriff and reflected in the first inventory would remain physically inside the premises between the date of conclusion of the agreement and the date the Plaintiff physically took delivery thereof by removing it."

[12] In the alternative to the above the plaintiff pleaded that the agreement does not correctly record the its provisions in that:

12.1 Paragraph (d) of the agreement provided for the payment of the items by the plaintiff, when in fact the intention of the parties was that "the Plaintiff would make payment to secure the release from attachment of the alleged goods."

12.2 Paragraph (e) provided that "the goods purchased by the Plaintiff," instead of saying, "the goods the Plaintiff procured the release of."

12.3 Paragraph (f) provided that "purchase proposal" instead of "agreement."

[13] The defendant conceded in its plea that the incorrect recording in clauses (d), (e) and (f) above was due to the common error of the parties. The rectification of the said clauses were thus accepted by the defendant. It was contended on behalf of the defendant that these clauses are a mere formality and introductory to the substance of the agreement.

[14] The defendant opposed the inclusion by implication into the agreement paragraphs 5.9 and 5.10 in the particulars of claim of the plaintiff. In other words, the defendant opposed implying into the contract or treating as implicit into the contract that the items were still in the warehouse at the time the agreement was concluded.

[15] In the alternative the plaintiff sought rectification of the agreement on the ground that it did not correctly record the agreement between the parties. The plaintiff in this respect pleaded as follows:

> "8.1 it (the agreement) does not provide that it was a term of the agreement that all the goods as attached by the sheriff and reflected in the inventory, as drawn by the Sheriff of the Krugersdorp Magistrate's Court being a complete inventory of the attached goods . . .was still physically within the premises."

[16] The alleged failure according to the plaintiff was due to a common error of the parties and further that when they signed the agreement they were under a *bona fide* mistaken belief that it recorded the true agreement between the parties. It is for this reason that he now seeks rectification of the agreement.

[17] The focus during the oral arguments (there were no written heads) by both parties was mainly on the rectification of the agreement.

The plaintiff's case

[18] The plaintiff, Mr Haupt testified briefly that: He visited the warehouse 30 October 2015. He went there again on 31 October 2015 only to find the building locked. He was advised by the security officer, he found there, that the building was locked by the defendant. He contacted the defendant's attorneys who informed him that they locked the building.

[19] Following the above he was advised by his attorney to file an interpleader in order to assert his ownership of the items in the building. He filed the interpleader summons and on the day of the hearing the parties engaged in settlement negotiations, resulting in the agreement which is the subject of the present proceedings.

[20] The settlement discussions were conducted at the Kagiso Magistrate's Court between the plaintiff's attorney, Mr Symes and Mr Mennen, the candidate attorney with the attorneys of record of the defendant, at the time.

[21] As indicated earlier it was agreed that the plaintiff would pay R360 000 for the release of the items from the warehouse. After payment as agreed, the plaintiff arranged for the collection of the items. On entering the warehouse after it was unlocked by Mr Kruger, the manager of the defendant, he discovered the goods were missing. After that a meeting was arranged for the following day which was attended by the attorneys of both parties.

[22] The plaintiff also testified that at some point when he was going past the warehouse he saw people moving items out of the building. This was raised with the defendant's attorneys who responded in a letter, the contents of which are dealt with later in this judgement.

[23] The plaintiff's second witness was Mr Symes, the attorney of record for the plaintiff. The essence of his testimony was that during the course of the negotiating settlement he enquired from Ms Steyn, the attorney for the defendant, whether the items were still in the warehouse. The answer was in the affirmative. He then phoned the executrix who indicated that she approved of the settlement.

[24] He further testified that the offer made by the plaintiff was with the understanding that the items were still in the warehouse.

The defendant's case

[25] The first witness for the defendant was Ms Steyn. She confirmed having gone to the Kagiso Magistrate's Court 19 March 2015 after she was informed by her candidate attorney, Mr Mennen that the plaintiff proposed a settlement of the dispute. She attended at the Magistrate's Court to assist in settling the draft agreement drafted by Mr Mennen.

[26] On arrival at the Magistrate Court she engaged in the settlement negotiations with Mr Symes in the presence of Mr Mennen. She denied having informed Mr Symes at the time of the negotiations that the items appearing on the Sheriff's inventory were still in the warehouse. She insisted that she could not have said that because she had never been to the warehouse. She only went to the warehouse after the conclusion of the agreement when the issue of the

missing items was raised. She further testified that she and Mr Mennen did not know what happened to the missing items.

[27] The second witness for the defendant was Mr Kruger, the project manager for the holding company of the defendant, Growth Point (Pty) Ltd. He testified that he visited the warehouse after the summons was issued concerning the failure to pay the rent by the executrix. He attended at the warehouse on the 2 December 2015 and took some photos of the items in the warehouse.

[28] He testified during cross examination that after the Sheriff drew the inventory the keys to the building must have been given to one of the facility managers and that there is always a security guard at the building. He confirmed that he saw the forklift and other machinery when he was in the building.

Implied and tacit terms of the agreement

[29] As alluded to earlier the plaintiff in paragraphs 5.9 and 5.10 of the particulars of claim, seeks to introduce an implied or tacit term into the agreement. The relief he seeks is to have the court imply a provision onto the written agreement that the items appearing in the Sheriff's inventory were still within the warehouse at the time of concluding the agreement. And furthermore, that the items would remain in the building until he took delivery thereof.

[30] In general, implied and tacit terms are those provisions which the parties had in mind at the time of concluding the agreement but did not express them in the agreement. The author Kerr,[1] describes the words "implied" and "tacit" in the following terms:

> "Provisions which the parties had in mind but did not express have been described as "implied" (with or without the qualifying words, "by the parties," or "on the facts."), as "tacit", and as *accidentalia*. Provisions added to the contract by the law in the absence of agreement. (express or unexpressed) of the parties have been described as "implied" (with or without the qualifying words "by the law."), as "residual implied", as "tacit", as *naturalia*, and as "residual."

[1] Kerr **The Principles of the Law of Contract,** 6th ed at pg 338

[31] In *South African Association of Personal Injury Lawyers v Heath and others,*[2] the Constitutional per Chaskalson P in dealing with the concept of "implied" and "tacit" terms of a contract said:

> "In the law of contract a distinction is drawn between tacit and implied terms. The former refers to terms that the parties intended but failed to express in the language of the contract and the latter to terms implied by law. The making of such a distinction in this judgment might be understood as endorsing the doctrine of original intent, which this Court has never done. I prefer, therefore, to refer to unexpressed terms as being "implied" or "implicit."[3]

[32] The inquiry into whether a provision is implied or tacit to the agreement entails the court having to inquire into the intention of the parties in regard to the matter. The party alleging the implied term would have to show that the parties had the matter in mind but failed to express it in the contract.[4] The party asserting an implied provision in a contract has the duty to show the existence of such provision on the balance of probabilities.

[33] It is trite that the test to apply in discovering the intention of the parties is that of a hypothetical bystander who inquisitively would ask the parties at the conclusion of the contract: "What will happen in such a case," and the answer will be "of course, so and so, will happen."[5]

[34] The application of the test for determining an implied provision of the contract is illustrated in *Simon v DCU Holdings (Pty) Ltd and others,*[6] where the parties had in the agreement expressly provided for the delivery of post-dated cheques. The agreement made no provision as to the consequence if any of the cheques was not honoured. The respondent failed to honour its obligation. The applicant then averred that it should be implied that such a failure

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[2] 2001 (1) SA 883 (CC)
[3] At para [19]
[4] *Administrator (Transvaal) v The Industrial and Commercial Timber & Supply Ltd* 1932 AD 25 at 33 and 36; see also *Grand Mines (Pty) Ltd v Giddey NO* 1999 (1) SA 960 (SCA) at 968.
[5] *Standard Bank of SA Ltd v Durban Security Glazing (Pty) Ltd and others* 2000 (1) SA 146 (D) at 164A-B
[6] 2000 (3) SA 202 (T).

amounted to the outstanding balance becoming immediately due and payable. In dealing with this issue the court held that:

> "If an officious bystander had asked the parties at the time of the negotiation of the settlement agreement: "what will happen if the first respondent, for whatever reason, does not provide the series of cheques endorsed that if any one is dishonoured the full balance will become outstanding, and does not otherwise pay any instalment on due date?', the parties would, in my view, have replied that "of course" payment of all outstanding instalments would then escalate in precisely the same way as they would have if the cheques had been provided and the relevant cheque been dishonoured."

[35] In the present matter the question that the officious bystander would have asked would have been in the context, firstly of the items in question having been attached by the Sheriff. And secondly, where there was common understanding between the parties that the defendant wanted to have the attached goods removed from the premises and the plaintiff on the other hand wishing to have the attached goods released to him. This is not a situation of purchase and sale as was misconceived by the initial draft agreement.

[36] I do not agree with Counsel for the defendant that clause (d), (e), and (f) (as rectified) are a mere formality dealing with the introductory aspect of the agreement.

[37] In my view, the agreement is to be read in its totality, together with the surrounding circumstances. In this respect clause (d) should in particular be read with the provisions of clause 4 of the agreement. The wishes of the parties are fully set out in clause (d) read with clause 4 of the agreement. This means once payment in terms of clause 2 and 3 of the agreement was effected by the plaintiff, the following was in terms of clause (d) expected to happen:

(a) The plaintiff was to withdraw the interpleader summons;

(b) The items would be removed from the premises; and,

(c) The goods would be released from attachment and be given to the plaintiff.

[38] It is important to note that the last part of clause (d) provides that the Sheriff was made aware of the arrangement between the parties.

[39] It is thus my view, in light of the above analysis that the plaintiff has on the balance of probabilities clearly shown that he is entitled to have the averments made in paragraphs 5.9 and 5.10 of the particulars of claim implied as part of the provisions of the agreement between the parties although that was not expressly stated in the agreement.

[40] In my view, even if the above conclusion was to be wrong, the plaintiff would still be successful under the alternative relief of rectification of the agreement.

Rectification

[41] The remedy of rectification, which some authorities regard as an exception to the parol evidence rule,[7] allows for extrinsic evidence to be adduced in the determination of the intention of the parties in a written agreement. The principle allows the court to infer into the agreement the intention of the parties from the evidence of the negotiations.[8] In other words, it allows for the supplement of an incomplete agreement with the relevant and material term or terms that might be missing.[9]

[42] It is through rectification that the court presents to the parties a term or terms which they might have failed to include in recording their agreement. It addresses the essential term which the parties may, by mistake have failed to include in the agreement.

[43] The process of rectification is invoked where the parties share a common intention which they intended to express but failed to do so due to a mistake. Thus, a mistake is an essential element of rectification.[10]

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[7] See *Philmatt (Pty) Ltd v Mosselbank Developments CC* 1996 (2) SA 15 (A) 20 3C–F.
[8] *Estate Du Toit v Coronation Syndicate Ltd & others* 1929 AD 219.
[9] *General Accident Insurance Company SA Ltd v Dancor Holdings (Pty) Ltd* 1981 (4) SA 968 (A) at 978.
[10] *Brits v Van Heerden* 2001 (3) SA 257 (C) at 282C where it was held: "…. the mistake does not have to relate to the writing itself, but might relate to the consequences thereof. The mistake may be that of only one party; the mistake may be induced by misrepresentation or fraud. But there must be a mistake. In my view, the crux of the matter is that the mistake, be it a misunderstanding of fact or law

[44] The common intention which the parties failed to reduce to writing can be inferred from the surrounding circumstances. The unexpressed intention can thus amount to a tacit consensus.

[45] In *Meyer v Merchants Trust Ltd,*[11] it was held that:

> "It is therefore open to a court to consider the question whether, in the absence of proof of an antecedent agreement, it is competent to order the rectification of a written contract in those cases in which it is proved that both parties had a common intention which they intended to express in the written contract but which through a mistake they failed to express.
>
> It is difficult to understand why this question should not be answered in the affirmative. Proof of an antecedent agreement may be the best proof of the common intention which the parties intended to express in their written contract, and in many cases would be the only proof available, but there is no reason in principle why that common intention should not be proved in some other manner, provided such proof is clear and convincing."[12]

[46] According to Kerr[13] a party seeking rectification has to make the following averment in its pleadings: (1) that a contract was entered into by the parties; (2) that the written record does not reflect the true intention of the parties; and (3) what the true intention was.[14] Kerr further states that what the court does in rectifying an agreement, "is to allow to be put in writing what both parties intended to put in writing."

[47] In *Soil Fumigation Services Lowveld CC v Chemfit Technical Products,*[15] the Supreme Court of Appeal held that:

> "It is a settled principle that a party who seeks rectification must show facts entitling him to that relief "in the clearest and most satisfactory manner".'

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or be it an incorrect drafting of the document, must have the effect of the written memorial not correctly reflecting the parties' true agreement."

[11] 1942 AD 244.

[12] At 253.

[13] Fn 1 above at pg 152

[14] See also *Strydom v Coach Motors (Edms) Bpk* 1975 (4) SA 838 (T) at 840H.

[15] [2004] 2 All SA 366 (SCA).

Conflicting versions

[48] The parties in this matter presented two mutually destructive versions as to what was said during the negotiations leading to the settlement agreement. It is trite that the credibility of the witnesses is decisive to a determination of the dispute where there are conflicting versions. The burden of proof is also an important element in the resolution of the dispute. In order to succeed the plaintiff must discharge the burden of proof by showing that his or her version is true and that of the other party is false.[16]

[49] The approach to be adopted by the court when faced with two mutually destructive versions was set out in *National Employers' General Insurance Co Ltd v Jagers,*[17] as follows:

> "It seems to me, with respect, that in any civil case, as in any criminal case, the *onus* can ordinarily only be discharged by adducing credible evidence to support the case of the party on whom the *onus* rests. In a civil case the *onus* is obviously not as heavy as it is in a criminal case, but nevertheless where the *onus* rests on the plaintiff as in the present case, and where there are two mutually destructive stories, he can only succeed if he satisfies the Court on a preponderance of probabilities that his version is true and accurate and therefore acceptable, and that the other version advanced by the defendant is therefore false or mistaken and falls to be rejected. In deciding whether that evidence is true or not the Court will weigh up and test the plaintiff's allegations against the general probabilities. The estimate of the credibility of a witness will therefore be inextricably bound up with a consideration of the probabilities of the case and, if the balance of probabilities favours the plaintiff, then the Court will accept his version as being probably true. If, however, the probabilities are evenly balanced in the sense that they do not favour the plaintiff's case any more than they do the defendant's, the plaintiff can only succeed if the Court nevertheless believes him and is satisfied that his evidence is true and that the defendant's version is false.

[16] *Stellenbosch Farmer's Winery Group Ltd and another v Martell Et Cie and others* 2003 (1) SA 11 (SCA); see also *Selamolele v Makhado* 1988 (2) SA 372 (V); *Mabona and Another v Minister of Law and Order and others* 1988 (2) SA 654 (SE); and *Kamakulukusha v Commander, Venda National Force* 1989 (2) SA 813 (V); CHW Schmidt & H Rademeyer *The Law of Evidence* 3-5.
[17] 1984 (4) SA 437 (E).

> This view seems to me to be in general accordance with the views expressed by Coetzee J in *Koster Ko-öperatiewe Landboumaatskappy Bpk v Suid-Afrikaanse Spoorweë en Hawens* (*supra*) and *African Eagle Assurance Co Ltd v Cainer* (*supra*). I would merely stress, however, that when in such circumstances one talks about a plaintiff having discharged the *onus* which rested upon him on a balance of probabilities one really means that the Court is satisfied on a balance of probabilities that he was telling the truth and that his version was therefore acceptable. It does not seem to me to be desirable for a Court first to consider the question of the credibility of the witnesses as the trial Judge did in the present case, and then, having concluded that enquiry, to consider the probabilities of the case, as though the two aspects constitute separate fields of enquiry. In fact, as I have pointed out, it is only where a consideration of the probabilities fails to indicate where the truth probably lies, that recourse is had to an estimate of relative credibility apart from the probabilities."[18]

Evaluation

[50] For the reasons set out below, I find that the probabilities favours the plaintiff's version. On the facts as they stand before this court it looks highly probable that the Mr Symes would have asked the question of whether the items they were talking about were still in the warehouse.

[51] In my view, Mr Symes was consistent in his version that he asked the question whether the items were still in the building at the time they were negotiating the settlement of the dispute. According to him the answer he received from Ms Steyn was in the affirmative.

[52] It is common cause that the defendant wanted the goods in its premises removed, whilst the plaintiff on the other hand wanted the goods released to him from the attachment by the Sheriff. It should be noted that the question of whether the items were still in the warehouse at the time, was posed in the context where the plaintiff had alleged that he had seen people moving items in and out of the warehouse at some point when he went past the warehouse.

[18] At 440D-441A.

In this respect his attorney addressed a letter to the defendant's attorneys which reads as follows:

> **"RE: PARAMOUNT PROPERTIES LIMITED // PETER ROBIN HOUPT PROPERTIES (NINE) CC.**
>
> 1. We refer to the above and more specifically a telephone conversation between the writer and your Mr Mennen on 2nd March 2015.
> 2. We place on record the following:
>   2.1 Our client travelled past the above premises in Krugersdorp on Saturday 28th February 2015 whereby he noticed people on the premises as well as opened doors to the premises and goods being moved in and out of the premises.
>   2.2 We contacted the Sheriff of Krugersdorp on 2nd March 2015 to inquire whether they were aware of any activity on the premises to which they responded no.
>   2.3 The writer contacted the offices to inquire about the same issue, to which we received the same reply.
> 3. We were advice that instructions would be obtained from your client to inform us of what exactly took place on 28th February 2015 at the premises. We have yet to receive a reply.
> 4. Kindly advise as a matter of urgency
> 5. We await your further correspondence herein.
>
> Yours faithfully."

[53] The defendant's attorneys responded to the above letter on 06 March 2015 and stated the following:

> **"RE: PARAMOUNT PROPERTIES LIMITED // PETER ROBIN HOUPT PROPERTIES (NINE) CC.**
>
> We refer to the above matter as well as your letter dated 05 March 2015.
> 1. Our client denies your clients (sic) averment regarding removal contained in your letter.
> 2. Our client has no knowledge of any removal that took place that day.

3. The removal of the perishable items, as per the agreement, were removed prior to the date mentioned.

We trust that you find the above in order.

Yours faithfully."

[54] Ms Steyn denied having answered the question regarding the presence of the items in the building at the time of the negotiations. She insisted that because of her experience in eviction cases she could never have given any assurances about the presence of the items in the building at the time.

[55] It is common cause that Mr Mennen, who was responsible for the initial draft agreement, was present throughout the negotiations. The defendant did not call him to testify and thus it was argued on behalf of the plaintiff that an adverse inference should be drawn in that regard. The principle that failure to produce a witness who is available and able to testify and give relevant evidence may lead to an adverse inference being drawn is set out in Tshishonga v Minister of Justice and Constitutional Development and Another,[19] in the following terms:

> *"The failure of a party to call a witness is excusable in certain circumstances, such as when the opposition fails to make out a prima facie case. But an adverse inference must be drawn if a party fails to … produce evidence of a witness who is available and able to elucidate the facts, as this failure leads naturally to the inference that he fears that such evidence will expose facts unfavourable to him or even damage his case.*[20] "

[56] In my view, Mr Mennen was a key witness who could have assisted the court in understanding what was discussed during the negotiations and more importantly, not only whether the question alleged by the plaintiff above was asked but also what the answer to the question was. His evidence was relevant and material to the issue in dispute. The only inference to draw in the circumstances is that the defendant did not call him as a witness because he probably would have given an adverse version to its case.

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[19] 2007 (4) SA 135 (LC).
[20] At para 112. See also *De Beer v Road Accident Fund* (A5026/2017) [2019] ZAGPJHC 124 (28 March 2019).

[57] The other person who the defendant did not produce as a witness is the facility manager. He is, on the version of Mr Kruger, the person who would have assisted the court regarding the changing of the keys of the building and when that was done. This being the case it would appear that he is the person who may have shed light into when possibly the items in question could have been removed out of the building and who took possession thereof.

[58] The testimony of Ms Steyn did not assist the case of the defendant. In as far as the items in question were concerned her knowledge was limited to what she saw on the Sheriff's inventory. She did not dispute the correctness of the inventory. The only time she went to the building was after it was discovered that the items were missing. Her contention that the plaintiff should have requested inspection of the building before signing the agreement is unsustainable. It is clear that throughout the negotiation process and the signing of the agreement, the main objective of the parties concerned the release of the items as listed in the Sheriff's inventory. Thus the only reasonable inference to draw is that at the time of the negotiations and the signing of the agreement, the common understanding between the parties was that the items which appeared on the inventory were still in the warehouse. It is also clear that at the time of the negotiations the common intention was to clear the items on the inventory out of the building and to release them to the plaintiff. As indicated earlier in this judgement the plaintiff had paid the sum of R360 000, 00 for the release of the items.

[59] Mr Kruger was also not a reliable witness. He, contrary to what appears on the photos taken by him, testified that there were no empty bottles when he visited the warehouse in December 2015. The testimony of the plaintiff which was presented after the reopening of his case was not challenged. He, in this regard, pointed to the empty bottles which appear on the photos taken by Mr Kruger.

[60] In light of the above I find that the plaintiff has made out a case to rectify the written agreement between the parties and to conclude that their common intention was that the items which appeared on the inventory were in the warehouse at the time of the signing of the agreement and that the defendant would release the same to the plaintiff in terms of clause 4 of the agreement.

Order

[61] In the premises the following order is made:

1. The written agreement concluded by the parties on 19 March 2015 is rectified to read as follows:

   "4 The Creditor shall ensure that all the goods set out in Annexure "A" (SP2) to this agreement shall be available for collection by Debtor."

2 The issue of quantum is postponed *sine die*.

3 The defendant is to pay the costs of the plaintiff

E MOLAHLEHI
Judge of the High Court,
Gauteng Local Division,
Johannesburg]

APPEARANCES

For the Plaintiff: Adv K J Venter
Instructed by: Symes Inc Attorneys

For the Defendant: Adv K Van Vuuren SC
Instructed by: SSLR Inc.

Date of hearing: 11 February 2020
Date of Judgment: 21 May 2020.