



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NUMBER: 1935/2020

(1)	REPORTABLE:
(2)	OF INTEREST TO OTHER JUDGES:
(3)	REVISED.
	03 November 2021

E. Molahlehi

In the matter between:

MATTHEW JOHN BALLENDEN

Applicant/Defendant

and

NATURE'S CHOICE (PTY) LTD

Respondent/Plaintiff

Transmitted by email to the parties' legal representatives. The judgment is deemed to have been delivered on 03 November 2021

JUDGMENT

Molahlehi J

[1] The applicant (the defendant in the main application), Mr Ballenden seeks leave to appeal the judgment made by this court dated 17 September 2021. The judgment which is in favour of the respondent, Nature's Choice (Pty) Ltd (the applicant in the main application), was consequent summary judgment application in which Mr

Ballenden was ordered to pay the Nature's Choice (Pty) Ltd (Nature's Choice) the sum of R800 000.00.

[2] The dispute between the parties arose from a loan agreement. The agreement, amongst others, made provision for the loan amount to be paid into the bank account chosen by Mr Ballenden. Nature's Choice contended in the main application that it had complied with the terms of the agreement by paying the loan amount into the bank account provided by Mr Ballenden. The cause of action was based on *conditio ob turpen causam*.

[3] Mr Ballenden opposed the summary judgment and contended that he has a *bona fide* defence to the claim in particular because the loan amount was never paid to him.

[4] The court found that the agreement was unlawful for lack of compliance with the provisions of the National Credit Act 34 of 2005.

[5] The main issue in the summary judgment application was whether the loan amount was received by Mr Ballenden or some other entity. The court, having, amongst others, considered the provisions of paragraph 10.2 of the plea, found that Mr Ballenden did receive the amount in question. For this reason and others that appear in the judgment, the court found that Mr Ballenden was enriched and thus obliged to pay the amount in question.

[6] The test to apply when considering whether leave to appeal should be granted is in section 17(1) (a) of the Superior Courts Act 10 of 2013. Section 17(1) provides that leave to appeal may be granted in the circumstances where there are reasonable prospects of success on appeal or there is a compelling reason to grant leave to appeal.

[7] It is trite that the threshold of reasonable prospects of success is much high than it previously was. This was confirmed in *Acting National Director of Public Prosecution and Others v Democratic Alliance v Acting Director of Public Prosecution and Others*,¹ where the Full Bench in quoting with approval what was said in *Mont Chevaux Trust (IT2012/28) v Tina Goosen and Others*,² said:

"It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion, see *Van Heerden v Cronwright & Others* 1985 (2) SA 342 (T) at 343H. The use of the word "would" in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against."

[8] In applying the above principle to the facts in this matter, I took into account the grounds of appeal, the judgement of this court and the submissions made by the


¹ 2016 ZAGPPHC 489.

² 2014 JDR 2325 (LCC).

parties. I am not persuaded that Mr Ballenden has made a case for leave to appeal. Accordingly, his application for leave to appeal stands to fail.

Order

[9] In the circumstances, the applicant's leave to appeal is dismissed with costs.

A handwritten signature in black ink, appearing to read 'E. Molahlehi', is written over a horizontal line.

E MOLAHLEHI J

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

Representatives:

For the applicant: Adv. R Goslett

Instructed by: Dewey Hertzberg Levy Inc.

For the respondent: Adv D Van Niekerk

Instructed by: Cliffe Dekker Hofmeyer Inc

Hearing date: 6 October 2021

Delivered: 03 November 2021