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

Case No. 2022/8346

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

01 March 2023

In the matter between:

TEE PROPERTIES (PTY) LTD	Applicant
and	
AFRO-KOMBS COLLEGE (NPO)	First Respondent
NDABEZINHLE NKOMO	Second Respondent
MELULEKI JOHN MPOFU	Third respondent

JUDGMENT

HOPKINS AJ

1. On 28 February 2022, Tee Properties (Pty) Ltd ("the plaintiff") issued summons against the defendants for payment of R1,822 929.43 with interest of 7% per annum. It also sought their ejectment from premises that they were leasing from the owner of the property, Design City Properties (Pty) Ltd ("Design City").

2. According to the plaintiff's particulars of claim:

    2.1. On or about 17 December 2014, the first defendant entered into a written lease agreement with a company called Premium Properties (Pty) Ltd ("Premium Properties").

    2.2. On 31 May 2019, Premium Properties sold the premises to Design City and the transfer of ownership was registered on 4 October 2019.

    2.3. Premium Properties also ceded the lease agreement to Design City.

    2.4. On or about 1 November 2019, Design City appointed the plaintiff to collect rentals on its behalf.

    2.5. The first defendant fell into arrears with its rental payments during the course of 2021 and, when the summons was issued, the arrears were R1,822 929.43.

    2.6. The second and third defendants are liable for all amounts due to the plaintiff by the first defendant in terms of a suretyship agreement that they signed on 19 November 2014.

3. The defendants delivered a plea on 22 June 2022. In their plea-over on the merits, which is best described as a bare denial, they offered very little by way of a defence to the plaintiff's pleaded allegations that they had breached the lease agreement and owed it money. However, the defendants did raise a special plea in which they alleged that the plaintiff lacks the necessary standing to institute the action. Specifically, they alleged that the plaintiff has no *locus standi* because it acts for Design City but Design City is not the true owner of the premises. The basis for the claim that Design City is not the true owner is an alleged discrepancy in the description of the premises in the contract of sale and the lease agreement.

4. This is an application for summary judgment. The essence of the summary judgment procedure, which remains despite a new regime coming into operation on 1 July 2019, is that it provides a plaintiff with an expeditious route to getting a judgment without being put to the trouble of a trial in circumstances where the defendant does not have a *bona fide* defence to the action, see *Raumix Aggregates (Pty) Ltd vs. Richter Sand CC and Similar Matters* 2020 (1) SA 623 (GJ).

5. *Ms Bekker*, who represents the plaintiff, urged me to grant summary judgment on the basis that the defendants do not have a *bona fide* defence. The special plea, she argued, also did not raise a sustainable attack on the plaintiff's standing because it was clear from the context provided by a myriad of documents that the property sold by Premium Properties to Design City is the same property that the first defendant

had leased from Design City. There is much to be said for this argument.

6. However, during the course of the hearing, it struck me that the plaintiff may not have *locus standi* for a different reason, one not pleaded by the defendants in their special plea: ie. that the plaintiff is neither the owner of the leased premises nor a party to the lease agreement. The plaintiff is described in paragraph 1 of the particulars of claim as "the property management company of the premises" and in paragraph 9 it is alleged that this property management company is contracted to Design City to "collect rentals" on its behalf. Attached to the particulars of claim is a copy of the so-called Property Management Agreement between the plaintiff and Design City. In that contract, Design City is defined as "the owner" and the plaintiff as "the agent". In terms of the agreement, the owner agreed to pay its agent a fee for managing the premises which included effecting repairs and maintenance and also collecting rent. I was concerned about the plaintiff's *locus standi* because, as a general rule, an agent has no *locus standi* to sue or be sued on the principal obligation between the principal and a third party, see *Sentrakoop Handelaars Bpk vs. Lourens* 1991 (3) SA 540 (W), *Myburgh vs. Walters NO* 2001 (2) SA 127 (C) and *Springfield Omnibus Service Durban CC vs. Peter Maskell Auction CC* [2006] 4 All SA 483 (N). Moreover, a plaintiff may not sue in his or her own name on behalf of another person, see *Gravett NO vs. Van der Merwe* 1996 (1) SA 531 (D).

7. On account of this, I asked counsel to furnish me with short supplementary heads of argument on this point. I thought it fair that I make this request because I had raised this issue *mero motu* and neither *Ms Bekker* nor *Mr Dube*, who represented the defendants, were adequately prepared on it at the hearing. I am indebted to both counsel for supplementing their heads of argument as I had requested.

8. *Mr Dube*, in his supplementary heads, drew my attention to a number of cases from which I accept that the question of standing essentially involves an enquiry into the sufficiency of a person's interest in the litigation, in other words: does the plaintiff have a sufficient interest for the court to accept it as a litigating party? Its sufficiency of interest depends crucially on the facts of each case and whilst there are no hard and fast rules about what must be pleaded, it is clear to me that a party instituting proceedings must make the necessary allegations in its particulars of claim, and be able to prove them in the trial, ie. that it has a sufficient interest. In this case, the plaintiff has neither alleged that it is the owner nor the landlord. It merely alleges that, in terms of a management agreement, it is empowered to collect rent on behalf of the owner. And then, attached to its particulars of claim, is the Property Management Agreement which suggests, on its own terms, that the plaintiff was appointed by the owner as its agent to collect the rent from its tenant. The question is whether these pleaded allegations are enough for *this* court to accept that the plaintiff in *this* case has a sufficient interest in the subject matter of the litigation for it to approach the court, in its own name, for payment from the defendants

(of money owing to Design City) and ejectment from the premises (owned by Design City).

9. There are a number of cases in our law, to which I have referred above, where it has been held that an agent does not have the standing to sue on behalf of its principal. Even agents that are empowered to conclude contracts on behalf of their principals do not necessarily acquire the requisite standing to become a party to the litigation if those contracts are breached.

10. In the plaintiff's supplementary heads of argument, *Ms Bekker* made the point that, although the plaintiff is an agent, the management agreement between Design City and the plaintiff obligates the plaintiff to collect rent on its behalf. Whilst conceding that this does not automatically mean that the plaintiff, as agent, is entitled to sue in its own name, as opposed to suing in its principal's name, she sought to persuade me that even where a right to sue is not conferred upon an agent in express terms (such as the instant case) the terms of the agent's authority must be examined in order to ascertain whether it nevertheless has a right to sue in its own name (a right which can be implied from the agency agreement or from other facts and circumstances).

11. *Mr Dube,* in the defendants' supplementary heads of argument, referring to *Peter Maskell* (supra), submitted that even if an agent has the power to assist the principal to collect rent, the agent must do so in the name of its principal and not in its own name. The agent does

not have the necessary standing to sue for performance under the contract because the agent is not a party to the obligation-creating agreement. I agree.

12. In this case, the lease agreement is the primary obligation-creating agreement. If that obligation-creating agreement is breached by the tenant, it is the landlord who has standing to enforce performance. The mere fact that the landlord has appointed an agent to assist it with rent collection does not confer upon that agent the necessary standing to sue the defaulting tenant in its own name. Of course, the agent can assist its principal by suing the defaulting tenant, but it must issue the summons in the name of its principal and not in its own name.

13. I am accordingly of the view that the defendants have a *bona fide* defence. Whilst I accept *Ms Bekker's* argument that this clean and neat attack on the plaintiff's standing was not pleaded in the defendants' special plea (although the special plea attacked the plaintiff's standing, it did not do so on the basis the agent should have sued in the name of its principal, but rather on the basis that the principal was not the true owner of the property), I am nevertheless satisfied that the court has the power to investigate issues of standing *mero motu.*

14. The application for summary judgment is dismissed with costs.

HOPKINS AJ

Heard on	13 February 2023
Judgment delivered	01 March 2023

Appearances

For the applicants:	Adv. Chrisna Bekker
Instructed by:	MG Law Attorneys. Johannesburg
For the respondent:	Mr Lesley Dube
Instructed by:	Dube Lesley Attorneys Johannesburg