



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

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

SIGNATURE

DATE: 14 August 2023

Case No. 003126 / 2022

In the matter between:

LINE METALS (PTY) LTD

Applicant

and

WEI SHI

First Respondent

CHINGQING QINGXING INDUSTRY SA (PTY) LTD

Second Respondent

THE SHERIFF OF THE HIGH COURT, BOKSBURG

Third Respondent

JUDGMENT

WILSON J:

1 The applicant, Line Metals, let premises to the second respondent, Chingqing. Chingqing fell behind with its obligations under the lease. Line Metals issued summons in the Boksburg Magistrates' Court for the arrear rent. The

summons included an automatic rent interdict of the type envisaged in section 31 of the Magistrates' Courts Act 32 of 1944. The effect of such an interdict, once included in a summons, is that "any person having knowledge" of it is interdicted from removing such "furniture and effects" from the rented property as are subject to the landlord's tacit hypothec over a tenant's goods.

2 Meanwhile, the first respondent, Mr. Shi, sought and obtained an order from this court directing Chingqing to transfer some of the goods presently at the rented premises to Mr. Shi, in execution of an acknowledgement of debt made out by Chingqing in Mr. Shi's favour. Line Metals was not joined to those proceedings, and obviously takes the view that the order authorising the transfer of Chingqing's goods affects its interests.

3 Line Metals now seeks to rescind that order, and to oppose Mr. Shi's claim. It has already been given leave to intervene in the proceedings that led to the order being granted.

4 When the matter was called before me, Mr. Bellin, who appeared for Mr. Shi, advanced Mr. Shi's opposition to the rescission application by reference to 43-page heads of argument containing a rather complex diagram. The point of the diagram was apparently to persuade me that Line Metals had no prospects of success in opposing the relief Mr. Shi seeks in the main case.

5 As interesting as Mr. Bellin's diagrammatic submissions were, they seemed to me to be beside the point. The order granting Line Metals leave to intervene in the main case could not have been granted if Line Metals had not shown a direct and substantial interest in the relief Mr. Shi obtained. It follows that Mr. Shi's order was erroneously sought and granted in Line Metals' absence,

because Line Metals was a necessary party to the proceedings and ought to have been joined to them before any order was made. That is reason enough to rescind it. It does not matter that neither the Judge who granted the order nor Mr. Shi apparently knew of Line Metals' interest at the time the order was issued. All that matters is that the interest objectively existed at that time.

6 Even if Line Metals' prospects of success in the main case were directly relevant (they are not), I find it hard to see how, armed with a statutory rent interdict, Line Metals does not have at least some prospect of persuading a court that its rights in the goods to which the order applies trump those of Mr. Shi. However, that is not a question that I need to decide.

7 The rescission application should obviously succeed. On the question of costs, Mr. Cowley, who appeared for Line Metals, all but conceded that the application ought to have been resolved under Rule 42 (the applicability of which I raised *ex mero motu*) rather than by engaging in the far more complex and costly common law inquiry, which embraces Line Metals' prospects of success and its *bona fides*.

8 On the other hand, Mr. Shi ought to have recognised, as soon as Line Metals became a party to the main action, that the rescission application could not reasonably be opposed, whatever he thought of Line Metals' prospects in the main case.

9 Given the misapprehensions under which both parties appear to have laboured in this case, I think it would be best if the costs in the rescission application are costs in the main application.

10 For all these reasons –

10.1 The judgment granted in the action proceedings sued out of this court under case no. 32045/2021 is rescinded.

10.2 The costs of this application will be the costs in the main action.



S D J WILSON
Judge of the High Court

This judgment was prepared by Judge Wilson. It is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 14 August 2023.

HEARD ON: 7 August 2023

DECIDED ON: 14 August 2023

For the Applicant: HH Cowley
Instructed by Brasg and Associates

For the First Respondent: P Bellin
Instructed by Huang Attorneys Inc