

OFFICE OF THE CHIEF JUSTICE



HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 8544/15

(1)	<u>REPORTABLE: YES / NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES: YES/NO</u>
(3)	<u>REVISED.</u>
	<u>8/03/2016</u>
	DATE
	<u>[Signature]</u>
	SIGNATURE

8/3/2016

In the matter between:

**HOLGOUN LIFESTYLE AND LEISURE
(PTY) LTD t/a D'ORE**

Applicant

and

LIBERTY GROUP LIMITED

Respondent

JUDGMENT

KHUMALO J

1. The Applicants are seeking an order rescinding a money judgment granted against them in favour of the Respondents on 6 May 2015 on account of the Respondents' written consent to such rescission. The Application was unopposed.
2. According to Anastasia Maimonis, the deponent to the Applicants' supporting affidavit, who is the head of the business development of the Applicants companies, she became aware sometime in May 2015 that a writ of execution had been issued against the Applicants' property as a result of a default judgment. In order to avoid the execution of the Writ by the sheriff, the 1st Respondent was contacted to negotiate a settlement of the parties' dispute and that was concluded on 28 May 2015. In terms thereof the Applicants, made several payments between the period 8 and 10 June 2015 totalling R 817 113.86, that settled the debt. Applicant then obtained a consent to the rescission in August 2015.
3. During the application I was implored by Counsel to have due regard to the negative effect the judgment will likely have on the Applicants business and reputation, as attested to by Maimonis, and consider the application favourably notwithstanding that Counsel agreed with me that as the judgment was correctly granted in terms of the law it cannot be rescinded on account of a consent by the Respondent. There is no *bona fide* defence, the wilful default was not explained and the parties have neither the intention to proceed to defend nor prosecute the claim.

4. In all intense and purposes the Applicant is not entitled to the order sought. This is expounded in numerous authorities, legal articles and writings that a properly granted default judgment cannot be rescinded; see *Saphula v Nedcor* 1999 (2) SA 76 (W) at 79A-B; *Swart v Absa Bank Ltd* 2009 (5) SA 219 ©; *Lazarus v Nedcor Bank Ltd*; *Lazarus v Absa Bank* 1999 2) SA 782 (W). Judgment is properly granted in the instant matter in the sense that:

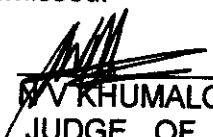
- 4.1 the amount was owing, due and payable
- 4.2 due demand made;
- 4.3 there was default (absence of a reasonable explanation).

5. So absent the intention or desire on the part of the Applicant for relief to raise the defence concerned in the event of judgment being rescinded, the whole purpose for the rescission of judgment would therefore be defeated, that is 'to restore a chance to air a real dispute' giving a party an opportunity to defend the matter; see Erasmus Superior Court Practice, 2nd Edition by Van Loggerenberg. Vol 2. This is also to advance the inherent right of every person provided by the Constitution in s 34, that is the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court, or where appropriate, another independent and impartial tribunal or forum.

- [6] The Applicant has therefore failed to make a proper case for the relief it is seeking, with no good cause shown. It yet still has to be found that

discharging a debt that was owing at the time of granting the judgment and the judgment debtors consent is good cause shown.

[7] Accordingly the Application is dismissed.


M V KHUMALO J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA