IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case no.26492/13

DATE: 20 MARCH 2016

IN THE MATTER BETWEEN:

S P F	**First Plaintiff**
G PROPERTIES LTD	**Second Plaintiff**
and	
L B CCT/A L B	**First Defendant**
S R	**Second Defendant**

JUDGMENT

LEGODI J;

HEARD ON: 16 March 2016

JUDGMENT HANDED DOWN ON: 20 April 2016

[1] "The general effect of misrepresentation and fraud on a contract can be shortly stated: A party who has been induced to enter into a contract by misrepresentation of an existing fact is entitled to rescind the contract provided the misrepresentation was material, was intended to induce him to enter into the contract and did so induce him."[1]

[2] This case is about fraudulent misrepresentation arising from negotiations which resulted into a lease agreement concluded between S P F (the first plaintiff), G P P Limited (the second plaintiff) and L B cc (first defendant) of which S R (the second defendant) was the sole member.

[3] The lease agreement aforesaid was for a period of three years effect from 1 September 2002 in respect of a premises described as Shop no. . , situated at K Shopping Mall, Montana Park, Pretoria North. The estimated area of the shop aforesaid was 236m^2 situated directly opposite to another shop which was called I R with estimated area space of 3196m^2

[4] Using the words of the only witness for the plaintiffs, Mrs K: "I-R was an important tenant. It was important because of its size, big space occupied in the centre. It was an anchor tenant element in the centre". Furthermore, K stated that I R occupied the space within the mall since 1995 upon the establishment of the mall. It was an entertainment kind of a business occupying two levels of the centre, the upper level being good for viewing the lower level where activities of ice scatting and other activities were taking place. Opposite to where I-R was situated, it was the first defendant and other three restaurants, importantly located in such a way that patrons, children and adults coming to the I-R can conveniently move into the restaurant (first defendant) for a bite, drink or meal. However, I R closed down business at the end of December 2012.

[5] The lease agreement between the plaintiffs and the defendants became the subject of fierce dispute as a result of the closure of I R, the issue being characterised by counsel on behalf of the defendants as being:

"Did the plaintiffs as represented by Mrs K make fraudulent misrepresentation to the second defendant? In particular:

(a) Whether the closure of the I-R was a *material fact, in other words, was the closing of the I-R germane to the contract?*

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[1] See *Law of Contract in South Africa* by Christie 4 edition Chapter 7 page 313.

[2] See *Country-Clarke Bassingthwaighte* 1991 (1) SA 684 (NM) pg 689.

(b) Whether Mrs K deliberately withheld the fact of the closure of the I-R?

(c) *Whether there was duty to disclose that I R was not extending its lease with the Plaintiffs resting on the legal convictions or bona mores of the community and policy consideration based on full and frank disclosure?"*

[6] The questions above were based on the following pleaded defence and repeated in the counterclaim by the defendants:

"4.2 During the negotiations which gave rise to the conclusion of the Agreement and prior to the signing of the Agreement by the first Defendant's representative, the plaintiff's representatives, alternatively employee, in the further alternative duly authorised agent made the following intentional, alternative negligent misrepresentations (hereafter referred to as "the Misrepresentations') to the Defendant:

4.2.1 That the leased premises would be located across from the i r at the K Shopping Centre and that the premises was a prime spot;

4.2.2 That the presence of the i r would substantially contribute to the number of patrons to the First Defendant's business;

4.2.3 That as a result of the location of the premises across from the i r that the location is the best location in the whole shopping centre;

4.2.4 That the First Defendant's patrons would have a *view of the i r thereby allowing parents and/or persons accompanying individuals who are frequenting the i r to have a view of the i r and those individuals;*

4.2.5 That the i r is frequented by a large number of people and that as a result the First Defendant's shop would be frequented by a *large number of customers which would increase the turnover;*

4.2.6 That the shopping centre receives over a *million customers per month;*

4.2. 7 That there are no other factors (such as renovations or the opening of new malls in the area of any other factor) which would affect the number of patrons to the shopping centre or the First Defendant's shop;

4.2.8 That the shopping centres number of visitors has remained constant notwithstanding the fact that other shopping centres had opened in the area;

4.2.9 That the First Defendant could expect a turnover of at the very least R2500,00 per square meter (in other words the total area of the shop being 236 sqm multiplied by R2500 would equal a minimum monthly turnover of R590 000,00), but that a higher turnover was to be expected;

4.2.10 That there would only be minor renovation work done at the shopping centre but that it would be done in such a way that the First Defendant's business would not be negatively influenced thereby;

4.2.11 That the renovation would that was to be done would be done after hours and would therefore not affect the First Defendant's business or the number of patrons frequenting the shopping centre or the First Defendant's business.

4.3 When the Misrepresentations were made the Plaintiffs' representatives, alternatively employee, in the further alternative duly authorised agent was aware of the fact that the Misrepresentations were untrue in so far as:

4.3.1…

4.3.2 The closing of the ice rink would substantially affect the number of patrons to the First Defendant's business and also the value of the location of the premises;

4.3.3…

4.4 In the alternative to subparagraph 4.3 above, the Plaintiffs' representatives, alternatively employee, in the further alternative duly authorised agent was aware of the fact that the ice rink would be closing, alternatively should have been aware of the fact, as well as the fact that the Misrepresentations were untrue and/or inaccurate and had a legal duty to disclose those facts to the Defendants.

4.5

4.6 6 When the Plaintiffs' representatives, alternatively employee, in the further alternative duly authorised agent made the Misrepresentations, alternatively breached their legal duty to disclose the true facts, the Plaintiffs' intended the Defendants to act thereon and to enter into the Lease Agreement and the subsequent suretyship.

4.7 7 The First Defendant was induced by the Misrepresentations, alternatively the Plaintiffs' failure to disclose the full and/or relevant and/or correct and/or information,

as is alleged supra, and had the First Defendant been aware of the full and/or relevant and/or correct and/or true information, it would not have entered into the Agreement at all".

[7] Brief background to the dispute is necessary: The negotiations between the plaintiffs and defendants started about April-May 2012. On one occasion, the negotiations took place in the presence of a certain W N who was an acquaintance of the second defendant and who accompanied her as a possible investor in the business of the first defendant. N happened to be an attorney by profession.

[8] On 6 June 2012 the second defendant on behalf of the first defendant signed an offer to conclude the lease agreement with the plaintiffs. At that time, the second defendant was operating her business at M Park which was marketed as the L B P aimed to become a unique and modern bakery situated in the upmarket suburbs of Gauteng. Its trademark was said to be for freshly baked pastries, cupcakes and birthday cakes. It was intended to be ultimately described as a cake boutique and bakery where customers can expect a twist and trendy cupcakes with exceptional Italian coffee or beverages in a retail environment. L B was said to be a unique wholesale and retail confectionary brand.

[9] On 25 July 2012, I R formally informed the plaintiffs that it would not be renewing its lease agreement which was expiring during October 2012. This was after its proposal for the renewal of the lease agreement was rejected by the plaintiffs. On the same date, the first defendant represented by the second defendant, singed the lease agreement with the plaintiffs. On 28 August 2012, the lease agreement was concluded when it was signed on behalf of the plaintiffs.

[10] On 7 September 2012 the second defendant heard over the news and confirmed by N that I R was closing down. The second defendant immediately contacted K who then confirmed the closure of I R. When the second defendant enquired as to what was going to happen to the lease agreement, she was assured that the closure of I R would not have significant impact on the business of the first defendant and that in any case I R was moving out at the end of December 2012. That made the defendants to elect not to cancel the agreement. They proceeded to operate, considered themselves bound by the terms and conditions of the lease and continued to pay the rental amount.

[11] On 5 April 2013 the defendants caused a letter to be sent to the plaintiffs and recorded as follows:

"Dear Sir/Madam

1.) It is our instructions that a meeting took place in July 2012, whereby information was disclosed by yourself to our client which led our client to enter into a lease agreement with yourselves. The following relevant points were discussed:

i.) A layout of our client's shop as well as her products was presented. You were made aware that there would be a slight increase in the prices as displayed on the menu, however that the prices will be in line with all the other coffee shops. You consequently consented to the aforementioned;

ii.) It was disclosed in negotiations by our client that one of the key factors and rational for our client to consider entering into the agreement was the fact that her proposed rental space would be across from the i r, which makes her rental space prime.

ii.) It is our instructions that our client requested you to disclose the number of potential customers that enters the mall. You have conveyed that on average over a million people enters the shopping mall per month.

iii.) You were directly requested to disclose the impact that the new and surrounding malls in the region the K will have on the number of potential customers, B K conveyed to our client that no significant impact is expected,

iv.) It is further our instructions that B K was bold to convey that our client could expect a turnover of at least R2 500 per square meters.

v.) The information disclosed by yourself was used by our client to calculate the turnover expected which was relayed to yourself and relevant financial institutions.

vi.) Due to the aforesaid negotiations and presentations made by yourself our client entered into the agreement. It is our instructions that you have failed to disclose crucial information to our client, which would have had the effect that our client would not have entered into this agreement alternatively on the current terms and conditions inter alia:

a) Indiscreet renovations that is disrupting the customers and has a direct influence in the amount of people visiting the mall;

b) The termination of the agreement with the I r which followed shortly after the commencement of the agreement;

c) *According to your statistics, you had negative growth in customers entering the mall which was never disclosed to our client.*

The aforesaid presentations and representations were made in the presence of an attorney who also acted as an investor on behalf of our client who will be more than willing to testify to this account.

The aforesaid is disclosed without limiting our client's rights to expand on further reason if the need arise.

It is further our instructions that your center management enters our client's premises without consent with the main aim to disrupt business and to create a negative vibe between our client and her employees.

Further, that our client was summoned on several occasions to the offices of the center management and illegitimately confronted with regard to the business operations inter alia why there is no 'white face' as part of the business operations".

[9] The first (ii) of the letter became the centre of argument during the proceedings as it would appear later hereunder. There was no response to the letter. Instead, on 6 April 2013 the plaintiffs instituted the present proceedings claiming payment of the sum of R259 318.68 in respect of damages for the period 1 May 2013 to 1 February 2014 and R207 341.15 in respect of arrear rental and other costs payable under the lease as at 1 April 2013. That prompted the defendants to file a plea and raised a defence of fraud or misrepresentation and in the counterclaim, asked for payment of R2 982 188.86 coupled with cancellation of the agreement based on fraud or misrepresentation. It is said, had the defendants been told that I-R would be closing down they would not have concluded the lease agreement.

[1O] The issue therefore is whether the defendants have proved fraud or material misrepresentation attributable to the plaintiffs and if so, whether the defendants not to cancel the agreement immediately after they became aware of the misrepresentation on 7 September 2012 and claim damages, are bound by their election.

Fraud/Misrepresentation

[14] A party wishing to rely on fraud must not only plead it, but must also prove it clearly and distinctly2. The onus is the ordinary civil onus, bearing in mind that fraud is not easily inferred. The essential elements for a claim or defence based on fraud are the following:

(a) There must be a representation by the other party or by that party's agent. In the present case K who represented the plaintiffs during the negotiations [3]. Representation may consist of non-disclosure.[4] (My emphasis).

(b) It must be alleged that fraud or misrepresentation was false and or intentional or negligent[5].

(c) It must be alleged and proved that the representation induced the representative or innocent party to act[6].

(d) If damages are claimed, it must be alleged that the representee

suffered damages as a result of the fraud[7].

[15] The failure to disclose during the negations preceding the signing and conclusion of the lease agreement that I-R will be closing down, became the defendants' pleaded defence and cause of action for damages against the plaintiffs.

[16] K on behalf of the plaintiffs initially suggested that the closure of the I R did not come up during the negotiations, because at that time, she had no reason to suspect that I R would not extend the lease. This of course is not correct because before 25 July 2012, the plaintiffs rejected the I R's proposal for the renewal of the lease. Furthermore, K suggested that at the time of the signature of the lease agreement by the second defendant on 25 July 2012, she did not know that I R will not be renewing the lease. This was clearly not correct because, she knew on 25 July 2012 being the very day the second defendant signed the lease agreement. On 28 August 2012, the plaintiffs signed the agreement, yet it was not disclosed to the defendants that I R was closing down.

[17] Before K was confronted with the obvious, she had said, if she had been aware during the negotiations that I R was to close down she would not have told the second defendant because she did not think that it was a material fact to the conclusion of the agreement. The assertion did not last for long as she later conceded.

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[3] See *Feinstein v Niggli* 1981 (2) SA 684 (A).

[4] See *Stainer v Palmer-Pilgrim* 1982 (4) SA 205 (0).

[5] See *Rato Flour Mills {PTY} Ltd v Moriates* 1957 (3) ALL SA 28 (T).

[6] See *Bill Harvey's Investment Trust PTY} Ltd v Oranjegezicht Citrus Estate (PTY} Ltd* 1958 (2) ALL SA 12 (A), 1958 (1) SA 479 (A).

[7] See Truth and Reconciliation Commission v Mpumalanga 2001 (3) ALL SA 58 (CK)

that she knew on 25 July 2012 that I R was not renewing. Her evidence proceeded more or less as follows during cross- examination:

> *"Q: You did not tell her because you knew that you will scare her away, will it be fair to say that? -*
>
> *A: My Lord Ja, I think that could have been the reason.*
>
> Q. *Because had you told her, she could have said: 'I don't want to proceed with the lease'? --- That is* a *possibility".*

[18] Furthermore, in cross examination, K made a statement to this effect:

> *"I did not want to give her (the second defendant) that she had the right to cancel".*

All of this in my view, brought to an end any suggestion that the non-disclosure or misrepresentation was not material especially taking into account the contents of the letter of 5 April 2013 from the defendants to which K conceded that it was the essence of the discussion. Of relevance, and at the risk of repetition, it was stated in the letter as follows:

> *"ii.) It was disclosed in negotiations by our client that one of the key factors and rational for our client to consider entering into the agreement was the fact that her proposed rental space would be across from the ice rink, which makes her rental space prime."*

[19] However, K and counsel for the plaintiffs suggested that I R situated across the first defendant's shop "was important but not a deciding factor" and that "had it having been a deciding factor that would have been included in the lease agreement". I cannot agree seen in the light of K's evidence quoted in paragraph 17 above. For this she had a duty to disclose the fact that I R was due to close down. But her answers and the concession she made as indicated above, in my view, displays a deliberate withholding of material information.

[20] "Deciding factor" and "material fact" or "material misrepresentation" was used inter-changeably during the evidence of K and during oral argument by counsel on behalf of the plaintiffs. Material misrepresentation is the act of intentional hiding or fabrication of a material fact which if known to the other party, could have terminated, or significantly altered the basis of a contract, deal or transaction. It is a misrepresentation

that would be likely to induce a reasonable person to manifest his assent, or that the maker knows would be likely to induce the recipient to do so.

[21] On the other hand, material fact is a fact that is important, significant or essential to a reasonable person in deciding whether to engage or not to engage in a particular transaction, issue or matter at hand. "Material" means that the subject matter of the statement or concealment relates to a fact or circumstance which would be significant to the decision to be made as distinguished from an insignificant, trivial or unimportant detail.

[22] In the present case it is the concealment of the fact that I R was closing down which is complained of. This issue cannot be said to be insignificant taking into account what was stated in the letter of 5 April 2013 to which K conceded. The submission "important factor" but not a 'deciding factor" is, in my view, without merit. K's evidence referred to in paragraphs 17 and 18 above make it overwhelmingly clear that the fact that I R was closing down, was not only 'important,' but that it was also a 'deciding factor' for the defendants in concluding the lease agreement.

[23] The second defendant says it was important because if she had known or been told that I R was to close down she would not have concluded the agreement on behalf of the first defendant. So, it was not only material, but the concealment related to a fact or circumstance which was significant in the making of a decision whether to conclude the lease agreement or not. In this regard, the evidence by the second defendant remained steadfast and consistent. I therefore find that fraud or material misrepresentation has been established. I turn now to the other issue.

Election

[24] Election of remedies is the liberty of choosing a particular remedy out of several means afforded by law for the redress of an impugned right, or choosing one out of several causes or forms of action. An election of remedies arises when one having two co-existent but inconsistent remedies chooses to exercise one, in which event she or he loses the right to thereafter exercise the other. The doctrine provides that if two or more remedies exist that are repugnant and inconsistent with one another, a party will be bound if he or she has chosen one of them. The doctrine is most commonly employed in contractual cases involving fraud which is a misrepresentation of a material fact that is intended to deceive a person who relies on it. A plaintiff can sue for either damages,

thereby acknowledging the contract and recovering the difference between the contract price and the actual value of the subject of the contract or cancellation of the contract and the return of what has been paid under its provisions, restoring the plaintiff to the position he or she would occupy had the contract never been made. If the plaintiff sought both damages and cancellation, the person would be asking a court to acknowledge and enforce the existence of a contract whilst simultaneously requesting its unmaking, that is, two inconsistent damages.

[25] Once a plaintiff elects a remedy, he or she precludes the pursuit of other inconsistent method of relief. Not all jurisdictions require a plaintiff to elect remedies and many jurisdictions have abolished this requirement because of its harsh effects. However, South Africa has not abolished the doctrine of election. For this, I find it necessary to deal with how in our own jurisdiction the courts revisited the principle of election of remedies.

[26] In *Hlatswayo v Mare and Deas* 1912 AD 242 at 259, De Villiers JP dealing with the doctrine of election of remedies stated:

> *"At bottom the doctrine is based upon the application of the principle that no person can be allowed to take up two positions inconsistent with one another, or as is commonly expressed to blow hot and cold, to approbate and reprobate".*

[27] Similarly, in *Farmers' Co-operations Society (Reg) v Berry* 1912 AD 343 the Court of Appeal had an opportunity to deal with the doctrine of election when it expressed itself as follows at page 350:

> " ... *there are many cases in which justice between the parties can be fully and conveniently done by an award of damages. But that is different thing from saying that* a *defendant who has broken his undertaking has the opinion to purge his default by payment of money. For in the words of* S *Corey, (Equity Jurisprudence, sec 717 (a} "It is against conscience that* a *party should have* a *right of election whether he would perform his contract or only pay damages for breach of it. The "election is rather with injured party, subject to discretion of the court".*

[28] In *Segal v Mazzarr* 1929 CPD 634 at 644-645, Watermeyer AJ stated:

> *"Now, when an event occurs which entitles one party to* a *contract to refuse to carry out his part of the contract, that party has the choice of two courses. He can either elect to take advantage of the event or can elect no to do so. He is entitled to* a *reasonable time in which to make up his mind, but when once he has made his election he is bound by that election and*

cannot afterwards change his mind ...If, with the knowledge of the breach, he does an unequivocal act which necessarily implies that he has made his election one way, he will be held to have made his election that way".

[29] In *Bowditch v Peelmond Magill* 1921 AD 561 at page 572 dealing with the doctrine of election which concerned misrepresentation inducing a contract, Innes CJ held as follows:

"A person who has been induced to a contract by a material and fraudulent misrepresentation of the other party, may either stand by the contract or claim rescission. (Voet, 4.3 see 3, 4 7). It follows that he must make his election between those two inconsistent remedies within a reasonable time after knowledge of the deception. And the choice of one necessary involves the abandonment of the other. He cannot both approbate and reprobate".

[30] Regarding an election generally, in *Chamber of Mines of South Africa v National Union of Mineworkers and Another* 1987 (1) SA 6698 (A) at 690 0-G it was held:

"One or other of the two parties between whom some legal relationship subsists is sometimes faced with two alternatives and entirely inconsistent courses of action or remedies. The principle that in this situation the law will not allow that party to blow hot and cold is a fundamental one of general application…"

[31] The Supreme Court of Appeal in *Merry Hill (PTY) v Engelbrecht* 2008 (2) SA 544 SCA, at 550 B-E [par 15] expressly gave approval to the statement by Friedman JP in *Bekazaku Properties (PTY) Ltd v Pam Golding Properties (PTY) Ltd,* 1956 (2) SA 537 (C) at 542E-F in which it was held:

"When one party to a contract commits a breach of a material term, the other party is faced with an election. He may cancel the contract or he may insist upon due performance by the party in breach. The remedies available to innocent party are inconsistent. The choice of one necessarily excludes the other, or as it is said, he cannot both approbate and reprobate. Once he has elected to pursue one remedy, he is bound by his election and cannot resile from it without the consent of the other party".

[31] If that is so, as stated above, the defendants having known of the closure of I R, and having accepted that they were bound by the lease agreement and continued to pay rental from 7 September 2012 in accordance with their obligations, should serve as a bar disentitling the defendants to 'approbate and reprobate' and not 'to blow both hot and cold'. By the way, the plaintiffs in their plea to the counter-claim challenged the defendants about their entitlement to cancel the lease agreement and or the claim for damages. Election to keep the contract in this case was completed when the second

defendant discussed the closure of I R on 7 September 2012 [8]. Therefore, in the circumstances, the defendants would ordinarily be bound by their election to continue with the agreement and not later to cancel it, unless there is another ground upon which the defendants can rely.

[32] In *Sandwon Travel (PTY) Ltd v Cricket South Africa* 2013 (2) SA 502 (GSJ) at para 39, Wepener J alluded to the fact that there are decided cases which have held that, despite an election to keep a contract alive, the innocent party may, in the case of anticipatory breach, reconsider its position when the time for performance arrive.

[33] Anticipatory breach occurs when a party to a contract repudiates or reneges on his or her obligations under that contract before fully performing those obligations. This can be by word: "I would not deliver the rest of the goods" or "I cannot make any more payments" or by action, for example, not showing up with the goods or stopping making payments. Anticipatory breach of a contract is sometimes described as a failure to live up to a contract term before the actual time for performance has arrived. It often occurs when one party states an intention not to fulfil or substantially fulfil a contractual obligation before it is due. Such a repudiation of contract term is generally required to be affirmatively stated. The repudiating party may not later demand performance under the contract from other party. The result of anticipatory breach is that the other party does not have to perform his obligations and cannot be liable for not doing so. This is often a defence to a lawsuit for payment or performance. (The underlining is emphasis).

[34] An innocent party may when the other contracting party commits an anticipatory breach, elect to ignore the breach and keep the contract alive in order to allow the defaulting party to repent of his or her repudiation. In *Culverwell and Anotehr v Brown* 1990 (1) SA 7 (A) at 17E-F Nicholas AJA in a dissenting judgment stated:

> *"And where the injured party refuses to accept and thereby allows the defaulting party to repent of his repudiation and giving him an opportunity to carry out his portion of the bargain, and the defaulting party nevertheless persists in his repudiation, the injured party is entitled to change his mind and notify the other party that he would no longer treat the agreement as existing, but that he would now regard it as rescinded and sue for damages"*[9].

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[8] See *Mutual Life Co of New York v Ingly* 1910 TPD 540 at pg 550.

[9] See *Cohen v Orlovski* 1930 SWA 125 at 133.

[35] In as much as the defendants might have wanted to bring themselves within the ambit of the principle of "anticipatory breach", the facts of the present case do not support such insulation. For several reasons the defendants elected not to cancel the agreement and claim damages after the fraud or misrepresentation came to their knowledge on 7 September 2012. The second defendant stated in her evidence and also as argued by counsel for the defendants: One, that acting on behalf of the first defendant, she elected to keep the contract alive despite the fraud or misrepresentation because more costs and abandonment of the M business had already taken place. Two, that I R was only closing down at the end of December 2012 suggesting therefore that there was no risk. Lastly, that K made her to believe that the closure of I R will have no significant implications on the viability of the first defendant's business. All of this, in my view, did not justify the defendants to elect to keep the contract alive and later seek to rely on fraud or material representation as their defence and claim for damages against the plaintiffs. The fact that the business deteriorated after the closure of I R, in my view was not a justification to approbate and reprobate. That is the risk or chance the defendants took when they elected to keep the contract alive despite knowledge of the fraud or misrepresentation.

[36] There is another reason why "anticipatory breach" will not find application in the present case. The plaintiffs had nothing to do in terms of the lease agreement under consideration. The plaintiffs after the 7 September 2012 when the defendants elected to be bound by the lease agreement lived up to terms and conditions of the agreement and performed in terms of the agreement. That is, they provided the defendants with the lease premises. Therefore, they did not have to wait until their actual time for performance has arrived. There was never a need for them to make any U-turn by approbating and reprobating. In the circumstances of the case, whatever motivated the defendants to keep the agreement alive after they had become aware on 7 September 2012 of the fraud or misrepresentation, does not serve as an excuse to deviate from the doctrine of election of remedies espoused in the preceding paragraphs. As a result, the defendants must fail in both their defence and counterclaim for which they carry the burden of proof.

[37] The plaintiffs' quantum has been settled by the parties in the amount of R350 000.00 plus interest at 15.5% per annum. This was on condition that the court finds for the plaintiffs.

[38] Consequently judgment is hereby granted against the defendants as follows:

38.1 Payment of the sum of R350 000.00 jointly and severally.

38.2 Interest at the rate of 15.5% per annum from 8 May 2013.

38.3 Costs of the action.

M F LEGODI

JUDGE OF THE HIGH COURT

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