



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 43125/07

DATE: 31 MAY 2016

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHERS JUDGES: YES/NO
(3)	REVISED
31/5/2016	<i>[Signature]</i>
DATE	SIGNATURE

In the matter between:

TERSIA SWANEPOEL

Plaintiff

And

LADYBIRD PROPERTIES CC

Defendant

JUDGMENT

WENTZEL AJ:

1. This is an application for rescission of a judgment granted against the applicant for estate agent's commission. In this respect the applicant averred that the respondent relied upon a fraudulent mandate agreement (which she says was unilaterally altered) to claim estate's agents commission. She also avers that the property was not sold within the period of the mandate, averring that she had cancelled the respondent's mandate prior to the date of the alleged sale. This has not been established.
2. In the circumstances there is no basis for relief under Rule 42 as it cannot be said that the judgment was erroneously granted or was vitiated by fraud. It is thus necessary for the applicant to show good cause and to provide a reasonable explanation for her default. (Tshabalala and another v Peer 1979 4 SA 27T; Topol and Others v LS Group Management Services 1988 1 SA 639 W.)
3. This involves providing:
 - 3.1. a reasonable explanation for her default in opposing the action;
 - 3.2. a reasonable explanation for her delay in bringing this application for rescission; and

3.3. evidence of a *prima facie* defence to the action for commission.

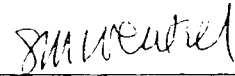
4. As I have found that there is no evidence of a defence it is not strictly necessary for me to consider the remaining requirements for relief under Rule 31 or the common law save in so far as they have a bearing upon the costs. The respondent's counsel argued that the applicant was in willful default and that attorney and client costs should be granted. It was also argued that these costs be paid by the applicant's attorney *de boniis propriis*.
5. Whilst I accept that the applicant's prior attorney was somewhat remiss in her duties, she has honestly and truthfully accepted this and explained the traumatic time she was experiencing to this Court. Neither the applicant's prior attorney nor her current attorney was aware that the mandate agreement had been validly entered into in the terms averred and accepted the applicant's say-so that it had not been signed in these terms. I thus do not believe that there is any basis for costs being awarded against any of the applicant's attorneys.
6. The question arises whether the respondent is entitled to attorney and client costs. Whilst I accept that this application has been prompted by the attempt by the Sheriff to attach first movable and thereafter the immovable property of the applicant and that very serious allegations of fraud were made which were not substantiated. I am not able to find that the application was not *bona fide* pursued or that the applicant did not and

does not continue to believe that she has a defence to the action. In the circumstances I am not inclined to grant costs on the attorney and client scale.

7. In the circumstances I make an Order as follows:

7.1. The application is dismissed with costs.

Signed and dated on this 31st day of May 2016



S WENTZEL

**ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA GAUTENG
DIVISION, PRETORIA**