IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

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

25/04/2016
DATE

SIGNATURE

25/4/2016.

Case Number: 47581/2014

BASF COUTING SERVICES (PTY) LTD	**APPLICANT**
and	
MAHOMED MAHIER TYOB N.O.	**1ST RESPONDENT**
BHIDISHI INVESTMENTS CC	**2ND RESPONDENT**

IN RE

MAHOMED MAHIER TYOB N.O.	**1ST PLAINTIFF**
BHIDISHI INVESTMENTS CC	**2ND PLAINTIFF**
and	
BASF COUTING SERVICES (PTY) LTD	**DEFENDANT**

JUDGMENT

STRYDOM AJ:

1. This is an application for rescission of a default judgment,[1] granted by his Lordship Mr Justice de Vos on ***11 November 2014***, in terms of *Rule 31(2)(b)* of the Uniform Rules of Court.[2]

2. The Applicant was previously a tenant of the building, owned by the Second Respondent, in terms of a written lease agreement (hereafter ***"the Agreement"***).

2.1. The Applicant alleged that it cancelled the Agreement, upon the Respondents repudiation, where after it vacated leased premises.

2.2. Subsequently, the Second Respondent became subject to business rescue proceedings as envisaged by Chapter 6 of the Companies Act, 2008[3] (hereafter ***"the Companies Act"***), and the First Respondent was appointed as the Business Rescue Practitioner (hereafter ***"the BRP"***) of the Second Respondent.

2.3. The Respondents hereafter issued summons against the Applicant due to alleged repudiation of the Agreement by the Applicant. The repudiation is, according to the Respondents particulars of claim, based upon the vacation of the lease property by the Applicant at the end of **August 2013** and the Applicant's failure to pay any amount of lease beyond the latter date.[4]

2.4. The Respondents claimed payment for the lease from 1 September 2013 to November 2013 (which amounted to **R421, 172. 91**) and damages in the amount of **R8, 887 881. 98**, which amount represented the remainder of the lease period.[5] The Respondents took Default Judgment on the aforesaid date for the amount of **R421, 172. 91** and the remainder of its claims were postponed *sine die*.

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[1] See: Record, p 6 & 22.
[2] Ibid.
[3] Act no 71 of 2008.
[4] See: Record, 37, par 11, p 120, par 2.5, p 138, Annexure "MMT 1".
[5] See: Record, p 37, par 11.

IN LIMINE

Leave to institute proceedings.

3. The Applicant applied in terms of section 133(1) (b) of the Companies Act that I should grant leave to them to institute this application against the Respondents.[6]

3.1. *Section 133(1)(a) and (b)* of the Companies Act provides that, during business rescue proceedings, no legal proceedings against the company under business rescue may be commenced or proceed with, *except* with the *written consent of the BRP*, or *the leave of the Court*, upon such terms the Court finds suitable.

3.2. It is *common cause* that prior to lodging this application, the Applicant sought the consent of the First Respondent to institute this application.[7] Despite not responding at all to the Applicant's request the First Respondent, as deponent of the Respondents opposing affidavit, testified as follows:[8]

> ***"I have no objection for the court to grant consent to proceed with the application."***

3.3. The First Respondent failed to give any reason why he failed to respond to the Applicant's aforesaid request. Accordingly I view his as a deliberate delaying tactic.

3.4. As indicated above, it is further *common cause* that the Company went into business rescue after the Applicant allegedly cancelled the Agreement. The First Respondent was the only person who could have consented to the institution of the action on behalf of the Second Respondent after the latter Close Corporation went into business rescue. The First Respondent obtained judgment (for a portion of the claim), instituted against the Applicant, before his Lordship, Mr Justice de Vos. The judgment of the court is not however final, to the extent that it is not appealable. The Applicant was first required to

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[6] See: Record, p 7, par 12 & 13.
[7] See: Record p 7, par 13.
[8] See: Record p 125.

seek to set the judgment aside, before it would have been entitled to appeal against either my judgment and / or the judgment of my brother de Vos. The legal proceedings, having been institute by the First Respondent on behalf of the Second Respondent against the Applicant, are accordingly not yet finalised. In view thereof I am of view that the Applicant did not need to obtain the written consent of First Respondent before it was entitled to inistitute these proceedings.

4. As however as indicated above, the Applicant applied for leave to institute these proceedings. Accordingly, notwithstanding the aforesaid, I ***hereby grant leave to the Applicant***, as requested, to proceed with this application. I will deal with the cost in regard hereto, hereunder.

Objection of non-joinder

5. Ostensibly on the basis of a special defence of Non-joinder against the Applicants' application, the Respondents submitted that the Applicants' ***"application is fatally flawed due to the fact that the Applicant has failed to give notice to all interested parties of the application."*** [9] The Respondents further submitted that I should dismiss this application solely with reference to the following consideration:[10]

> **"1.6** ***The relief that the Applicant seeks in the notice of motion, will affect all of the 1st Respondent's creditors, and as such the Companies Act 71 of 2008, specifically requires that notice of this application should be given to all effected parties, inter alia, all of the Second Respondent's creditors. This was clearly not done and the peremptory provisions of the Companies Act have not been adhered to."***

5.1. In terms of Section 145(1)(a) of the Companies Act each creditor of the company, under business rescue proceedings, is entitled to notice of each court proceedings concerning the company.

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[9] See: Record, p 119, par. 1.5

[10] See: Ibid, par. 1.6

5.2. Regulation 125(2) of the regulations to the Companies Act however, in contradistinction to the submission of the Respondents, placed the obligation on the *BRP* to give notice to a person who is entitled thereto in terms of the latter section.

5.3. It follows accordingly that the only persons the Applicant was required to give notice to were the **FIRST** and **SECOND RESPONDENT**.

5.4. It was the obligation of the First Respondent to give notice to the creditors of the Second Respondent of the legal proceedings after the Applicants delivered this application for rescission on him. The manner in which such notice should be given by the *BRP* is stipulated in Regulation 145(2)(a) and (b). No requirement is placed on any other party to give such notice to creditors of a company in business rescue.

6. On such an express imperative duty placed upon the *BRP,* I frown upon his submission that the Applicant was required to notify the ***Second Respondent's creditors*** of this application. The First Respondent knew or should have known fully well that this obligation was placed upon him and not the Applicant. Making a directly opposite submission is a deliberate attempt to mislead the court.

7. It follows that the Respondents *in limine objection* should be dismissed with cost. I will deal with the issue of cost hereunder.

Requirements in terms of Rule 31(2)(B)

8. It is trite law that in order to succeed with an application in terms of Rule 31(2)(b) an applicant is required to demonstrate:[11]

8.1. That the judgment was granted by default by a court, and;

8.2. That the default of the Applicant was due a failure to enter an appearance to defend or a plea;

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[11] See: *De Wet and Others v Western Bank Ltd* 1977(4) SA 770 (T) at 776; 1042F to 1043C.

8.3. That the application was lodged within 20 days after the Applicant obtained knowledge of the default judgment, failing which a application for extension of time or condonation should be made;

8.4. That the Applicant has good *"good cause"* for the rescission to be granted.

9. Three requirements are normally set for a court to conclude that *good cause* exists for granting of rescission of a default judgment:

9.1.1. The Applicant must give a *reasonable explanation for the default*;

9.1.2. The Applicant must show that the application was made *bona fide*;

9.1.3. The applicant must show that he has a *bona fide* defence, which *prima facie* has some prospects of success.[12]

10. The approach of the court in determining an application for rescission is however not to consider the aforesaid requirements individually, to the extent that if one of the requirements were not fully met, the application should be dismissed. Accordingly authorities emphasize that it is unwise to give a precise meaning to the terms *good cause*. In this regard it is sufficient for the applicant to set out facts that would constitute a defence at the trial.[13] Furthermore a good defence can compensate for a poor explanation.[14]

Default judgment & 20 days requirement

11. It is common cause that Respondents obtained default judgment against the Applicant. The applicant gained knowledge of the default judgment on 27 November 2014,[15] and lodged the application on 18 December 2014.[16]

12. It follows that the Applicant's application was brought within the required 20 days time period.

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[12] See: *Chetty v Law Society, Transvaal* 1985(2) SA 756(A) at 764I to 765F.

[13] Comp.: *Sanderson Technitool (Pty) Ltd v Intermenua (Pty) Ltd* 1980 (4) SA 573 (W) at 575-576.

[14] See: *Zeeland v Milborough 1991 (4) SA* 836 (SE) at 838.

[15] See: Record, p 17, par 48.

[16] Record, p 1.

Explanation for default

13. The Applicants' explanation for failing to enter an appearance to defend[17] can be summarised as follows:

13.1. The Applicant and the Second Respondent entered into a written lease agreement in terms of which the Applicant's chosen *domicilium citandi et executandi* was the physical address of the leased property. Due to a *bona fide omission* the Applicant failed to change its later domicilium address. The Respondents chose, notwithstanding knowledge that the Applicant vacated the lease premises several months earlier, to serve its claim against the applicants on the Applicants chosen *domicilium citandi et executandi.*

13.2. To say the least, this is *an utterly poor explanation*. Firstly the Respondents cannot be blamed for the Applicant's omission. They where fully in their right to service summons on the Applicant's chosen address.

13.3. Having regard to the background information in respect of the dispute between the parties, I have no doubt that in the event the Respondents claim came to the attention of the Applicant, it would have defended the action. It however also appears to me that Respondent (correctly) suspected that the Applicant failed to note that it did not change its chosen domicilium address. My impression is fortified by the emphasis in the opposing papers by the Respondents of the Applicant's lack of particularity and vagueness of, and explanation for its default to deliver its Notice of opposition, considered together with the Respondents *in limine* objections.

13.4. The Respondents however, although admitting defects to the leased property raised by the Applicant, steered away from addressing these issues.

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[17] Record, p 17 &18, para 49 & 50.

14. The Respondent's counsel urged me to dismiss the Applicants' application due to the lack of proper explanation by the Applicant how it came about that it failed to enter notice of appearance.

14.1. To this extent my attention was invited to a judgment by his Lordship, Mr Acting Justice Louw on 5 October 2014 in the unreported matter of *Noble Mining & Machinery Company Ltd v Leseka Resource Management CC and Two others*. In this matter the learned judge found that service on the domicilium address of a party, by affixing a it to the principal door, was sufficient.[18] My brother Louw relied on the authority of *Van der Merwe v Bonaero Park (Edms) Bpk*[19] for finding that:

> ***"It is the obligation of the Defendant to change the domicilium citandi et executandi address or to change its registered address and accordingly I find that the service at the address referred to in the summons and the return of service was good service on the Defendant."***

14.2. This finding is agreement with authority and in my view correct. It was however not raised by the Applicant that service of the Respondents claim on it was defective. This judgment is further not authority for the proportion that an application for rescission can be *dismissed solely on the ground of a poor explanation by the applicant for his default.*

14.3. As the Court stated in *Zeeland v Milborough*[20] a good defence may compensate for a poor explanation, and ***"an measure of flexibility is required in the exercise of the Court's discretion"*** in determination of whether a good defence has been raised.

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[18] See: *Mining & Machinery Company Ltd v Leseka Resource Management CC and Two others, Case No 18528/2012, par 9-10.*

[19] 1998 (1) SA 697 (T)

[20] See: *Zeeland v Milborough, supra* at 838

MERITS OF APPLICANTS DEFENCE

Respondents cause of action

15. The Respondents cause of action against the Applicant was based on acceptance of an alleged repudiation of the Agreement by the Respondents after the Applicant vacated the leased property at the end of **August 2013** failed to make any payment beyond this date.[21]

16. The defence of the Applicant against the claim of the Respondents is that it ***cancelled the Agreement***, by written Notice on 20 June 2013, due to the Second Respondent's repudiation of the Agreement after the Respondents failed to complete the Building and maintaining the Lease property in a proper condition in order for the Applicant to conduct his business. The Counsel for the Applicant argued that in the event that a party by conduct demonstrates that it do not intent to perform in terms of the agreement, this conduct amounts to repudiation and the Applicant was accordingly not required to rely on the terms of the agreement in order to accept the repudiation of the Second Respondent and thereafter cancel the agreement.

The doctrine of repudiation

17. The Doctrine of repudiation[22] has been defined by the Court on numerous occasions and can be summarised as follows:[23]

17.1. In *Schlinkmann v Van der Walt*[24] repudiation was defined as follows:

> ***"Repudiation is in the main a question of the intention of the party alleged to have repudiated. As was said by Lord Coleridge LCJ in Freeth v Burr (1874) LR 9 CP at p 214:***

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[21] See: Record, 37, par 11, p 120, par 2.5, p 138, Annexure "MMT 1".

[22] See: *Highveld 7 Properties (Pty) Ltd v Bailes* 1999 (4) SA 1307 (SCA)

[23] Comp. *Christie's Law of Contract in South Africa*, 6th Ed., p 538 and the authority referred to in note 154.

[24] 1947 2 SA 900 (E) 919.

> ***'the true question is whether the acts or conduct of the party evince an intention no longer to be bound by the contract',***
>
> ***a test which was approved by the House of Lords in Mersey Steel Co v Naylor (1884) 9 AC 434. In Re Rubel Bronze and Metal Co and Vos [1918] 1 KB at p 322 McCardie J said as follows:***
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> ***'The doctrine of repudiation must of course be applied in a just and reasonable manner. A dispute as to one or several minor provisions in an elaborate contract or a refusal to act upon what is subsequently held to be the proper interpretation of such provisions should not as a rule be deemed to amount to repudiation ... But, as already indicated, a deliberate breach of a single provision in a contract may under special circumstances, and particularly if the provision be important, amount to a repudiation of the whole bargain... In every case the question of repudiation must depend on the character of the contract, the number and weight of the wrongful acts or assertions, the intention indicated by such acts or words, the deliberation or otherwise with which they are committed or uttered, and the general circumstances of the case.'***
>
> ***To this I would add only that the onus of proving that the one party has repudiated the contract is on the other party who asserts it."***

17.2. In *Inrybelange (Edms) Bpk v Pretorius*[25] and *Van Rooyen v Minister van Openbare Werke en Gemeenskapsbou*[26] the Appellate Division approved of the aforesaid passage, together with the short test for repudiation articulate *Street v Dublin*:[27]

> ***"The test as to whether conduct amounts to such a repudiation [as justifies cancellation] is whether fairly interpreted it exhibits a deliberate and unequivocal intention no longer to be bound."***

17.3. In *Van Rooyen* added:[28]

> ***"Om 'n ooreenkoms te repudieer, hoef daar nie, soos in die aangehaalde woorde uit Freeth v Burr te kenne gegee word, 'n subjektiewe bedoeling te wees om 'n einde aan die ooreenkoms te maak nie. Waar 'n party, bv, weier om 'n belangrike bepaling van 'n ooreenkoms na te kom, sou sy optrede regtens op 'n repudiëring***

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[25] 1966 2 SA 416 (A) 427.

[26] 1978 2 SA 835 (A) 844-846.

[27] 1961 2 SA 4 (W) 10.

[28] Per Rabie JA at 845-846.

van die ooreenkoms kon neerkom, al sou hy ook meen dat hy sy verpligtinge behoorlik nakom. (Kyk De Wet en Yeats Kontraktereg en Handelsreg 3de uitg. op 117.)"

17.4. In *Highveld 7 Properties (Pty) Ltd v Bailes*[29] the Supreme Court of Appeal further indicated that:

"It follows that even a bona fide, subjective intention not to repudiate the agreement would not assist the respondent if he acted in such a way as to lead a reasonable person to the conclusion that he did not intend to fulfil his part of the original agreement."

18. It follows from the above authority that the Applicant was only called upon to demonstrate that the reasonable person in its circumstance would have considered the Respondents actions as repudiation of the agreement between the parties, before it cancelled the agreement. The Applicant could, although it was not required to do so, have relied upon *a specific important term* of the agreement between the parties, which the Respondents failed to perform, in order to cancel the agreement due to the repudiation thereof. However, if it appeared from the intention of the Respondent (in consideration of the agreement in general) that it did not intend to be bound by the agreement, the Applicant was entitled to construe the conduct as repudiation of the agreement and cancel the agreement upon such conduct.

Consideration of Prima facie bona fide defence

19. The determination of whether or not a party repudiated an agreement is a question of law[30] to be determined with reference to the evidence.

20. In considering the question of a *bona fide* defence, I am obliged to accept the facts alleged by the Applicant, although some of them may be disputed by the Respondents. All the Applicant must show at this stage is a *prima facie* defence against the claim of the Respondents: The Applicant was accordingly called to

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[29] Highveld 7 Properties (Pty) Ltd v Bailes 1999 (4) SA 1307 (SCA) at 1315 par [21] at F-G

[30] Ibid at 1215, par [21] AT F.

alleged facts which amount to a good defence if those facts are ultimately established on trial.[31]

21. I do not however consider this as authority for the proposition that I am called to follow the same approach to the adjudication of a rescission application, as that of an application for summary judgment. The major difference between the two proceedings is that in summary judgment proceedings the defendant (respondent) is entitled to, by way of his legal representatives and/or an affidavit *to aver a bona fide defences* against the plaintiff's claim which may ultimately amount to a defence (or defences) in the South African law. This procedure precludes a plaintiff from rebutting the evidence of the defendant in such proceedings. If the defendant advanced a *bona fide* defence, he/she/it must be given leave to defend the claim.

22. On the other hand an application for rescission is brought as an ordinary application requiring the Applicant to set out the particular grounds upon which he is required to make out a prima facie case. The respondent, who obtained a default judgment, is entitled to rebut the evidence of an Applicant in an answering affidavit, to which the Applicant is entitled to reply and the parties are further entitled to file such further affidavits as the court might allow. I could find no authority for the proposition that the normal rules of applications do not apply to rescission applications.

23. An unqualified application of the *Plascon Evans Paints case*,[32] in so far as it pertains to foreseeable factual disputes between parties, to rescission applications is in my view also not acceptable.[33] The ultimate reason is that, in normal event, a party applying for default judgment will be faced by a *foreseeable factual dispute* in respect of the defence it raised against the Respondent's claim. The Applicant is not required to prove its defence on probabilities but only to establish a *prima facie* defence. *In my view this means* a defence, which considered with the dispute thereof

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[31] Comp. Ibid, 838H.

[32] *Plascon Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984(3) SA 623 (A).

[33] Compare the application of *Plascon Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984(3) SA 623 (A) at 634 E-645C in the matter of *Storti, supra*, at 806I-J

by a Respondent, would *still leave some room for a finding that the Applicant may have reasonable prospect of success with the defence if the matter goes on trial.* If there is *no prima facie defence* it cannot said that the defence is *bona fide*.

24. To follow a different approach will be to ignore the evidence presented by a Respondent in his, her, its answering affidavit. Authority indicates that the court is entitled to consider *the probabilities of a defence where the allegations or denials are so far–fetched or clearly untenable that a Court is justified to reject them merely on the evidence in the affidavits.*[34] This only can only be done in cases where the probabilities are so greatly against the Applicant that it cannot be said that he/she/it established a *bona fide* and *prima facie* defence.[35] In this regard *bold, vague and sketchy allegations*[36] will lead to an inference (on probabilities) that the defence is not *bona fide*. This is however not the case in the present matter.

Applicant's defence

25. The Applicant described the history of the relationship between it and the Second Respondent, pertaining to the leased premises. It is clear from the history that the Applicant demanded virtually from the commencement of the lease and on several occasions over a period of years that the Second Respondent should maintain and finalize the building to the lease property. Apparently an additional portion was build to the lease premises in 2009. The Applicant testified:[37]

> ***"The additional portion to the premises was poorly built. The second respondent clearly made use of unskilled labour and inferior materials. Walls cracked and aluminium structures warped. When it rained, the floor lodded and damaged furniture and goods."***

26. On 27 July 2012,[38] about four years after commencement of the lease, the Applicant submitted a long list of remaining defects of the lease property to the Second

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[34] See: *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills (Cape)* 2003(6) SA1 at 10B par [13]
[35] See: *Plascon Evans Paints Ltd – supra at 635C.*
[36] See: *SOS-Kinderhof International v Effie Lentin Architects* 1991 (3) SA 574 at 578D-G
[37] Record, p 9, par 19.
[38] See: Record, p 12, par 33; p 93 Annexure "SG 16"; p 94, Annexure "SG 17"

Respondent. Although the Second Respondent ostensibly agreed to address the defects and indeed continued with maintenance work on the leased property, one year later it appeared that the Second Respondent failed to attend to any of the defects the Applicant complained about.[39] The Applicant construed the Second Respondent's unwillingness to attend to its reasonable demands as a repudiation of the Agreement and cancelled it as a result thereof.[40]

Respondents Answer

27. In its answering affidavit, the Respondents *admits* that the Second Respondent continued to work on the premises for years after the Agreement had commenced,[41] but claims that all work was completed during 2012.[42] The Respondents relies for the latter submission on an e-mail dated 24 March 2012.[43] This e-mail do not settle the issue whether the Respondents repaired the complained defects. The e-mail deals with outstanding issues for purposes of obtaining a fire inspection certificate, which is one of the requirements for obtaining an occupation certificate.

28. The Respondents raised further disputes against the Applicants defence, all of which only strengthens my impression that the Applicant has a *prima facie* defence against the claim of the Respondents and the Second Respondent indeed repudiated the Agreement.

28.1. In this regard the Respondents dispute that the Second Respondent was obliged to present the Applicant with an ***occupation certificate*** for the leased premises before it took occupation of the premises.

28.2. This is so despite that Section 14 of the National Building Standards Act, 1977 (Act No. 103 of 1977) requires that a building may not be occupied without occupation certificate. Yet the Second Respondent leased the premises to the

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[39] Record, p 12, para 35-37; p 96 Annexure "SG18"; p94 Annexure "SG20".
[40] Record, p12, par 34, 37,
[41] Record, p 126, par 8.1, p 128, par 10,2
[42] Record, p 122-123, par 2.14; p129, par 11.5.
[43] See: Record, p 123. par 2.15; p 158.

Applicant gave him occupation and thereafter attempts to rely on clause 19.3 of the Agreement[44] which requires from the Applicant to ***"obtain all necessary premis licences authorities or other consents in respect of the conduct of the tenants business..."*** This clause, on my view, only took effect after the Second Respondent gave occupation the Applicant and is accordingly do not absolve the Second Respondent form the requirement that he should have been in possession of an ***occupation certificate*** before it gave occupation of the lease premises to the Applicant.

CONCLUSION

29. I my view that the Applicant raised *a prima facie* defence against the Respondents claim, which will amount to a good defence if those facts are ultimately established on trial. The Applicant should accordingly succeed.

COSTS

30. The only issue that remains to be decided is the question of costs.

30.1. The First Respondent should have permitted the Applicant to institute these proceedings. His failure to do so, as indicated above, was only a delaying tactic. I am of view, for the reasons advanced above, that he should be visited with a punitive cost order.

30.2. I have already dismissed the Respondents *in limine objection.* The objection of non-joinder was without any merit and the Respondents intentionally attempted to mislead the cost. This carries in itself a punitive burden in my view and places a question the *bona fides* of the Respondents claim against the Applicant. It appears as if there was a deliberate distinction made by the Applicant between (a) its claim for the payment of two months lease payments and (b) the remainder of its claim for damages; which claims are in essence of

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[44] See: Record p 46.

the same nature. This was obviously done with the intention to obtain Default Judgment against the Applicant and circumvent the requirement to lead evidence in respect of the remainder of the damages claim.

30.3. The Applicant was however clearly *laizy fair* in so far as it failed to change its chosen *domicilium citandi et executandi.* According I am of view that the Applicants should bear the cost of this application, save the costs of application for leave to institute this Application and the opposing the Respondents in *limine objection.*

ORDER

The following order is made:

1. The Applicant (defendant in the main application) is granted leave in terms of Section 133(1)(b) of the Companies Act, 2008 (Act No 71 of 2008) to institute this Application and to Defend the claim of the Respondents;
2. The Respondents is ordered to pay the costs of the Applicants for leave to institute this Application;
3. The Respondents' *in limine objection* is dismissed, the Respondents to pay the costs occasioned thereby;
4. The Default Judgment granted against the Applicant on 11 November 2014 by Lordship, Mr Justice de Vos, is hereby set aside;
5. The Applicant (defendant in the main application) is ordered to file a plea with 15 (fifteen) days of the grant of this order;
6. No order of costs is made in respect of the remainder of this application.

J.S. STRYDOM
ACTING JUDGE OF THE
NORTH GAUTENG HIGH COURT,
PRETORIA

Appearances:

Counsel for the Plaintiff:	*Adv. A Bester*
Instructed by:	*Fairbridges Wertheim BeckerInc.* *C/O Friedland Hart Solomon & Nicolson Inc* *Pretoria*
Counsel for the Defendant:	*Adv. S van Rensburg*
Instructed by:	*Aphane Gani Attorneys* *Pretoria*
Date of Trial:	25 October 2015
Date of Judgment:	25 April 2016