

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 47439/2015

In the matter between:

2/12/2016

HALOCURE (PTY) LTD

Applicant

and

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHERS JUDGES:
YES/NO
(3) REVISED

2/12/16
DATE

[Signature]
SIGNATURE

THUNDERSTRUCK INV 166 (PTY) LTD
t/a Boesmanland Safaris

Respondent

In re:

THUNDERSTRUCK INV 166 (PTY) LTD
t/a Boesmanland Safaris

Plaintiff

and

HALOCURE (PTY) LTD

Defendant

JUDGMENT

MAIER-FRAWLEY AJ

1. This is an application for rescission of a default judgment granted against the applicant on 10 November 2015 for payment of the amount of R273 600.00 together with interest and costs (the judgment). The application is brought in terms of Rule 42(1)(a), alternatively, Rule 31(2)(a) of the Uniform Rules of Court.

2. The application was opposed by the Respondent.

3. The respondent, as plaintiff, issued summons against the applicant, as defendant, on 24 June 2015 for payment of the sum of R273 600.00 (inclusive of Vat), being the purchase price allegedly due and owing to it in terms of an agreement of sale allegedly concluded between the applicant and the respondent, each represented, for the purchase of three buffalo.

4. On 3 July 2015, the Sherriff of the High Court, Pretoria, South East, served the summons on the applicant at '*196 Raymond Avenue, Waterkloof, Pretoria*', this being the registered address of the applicant as cited in a company report obtained by the respondent from the Companies and Intellectual Property Commission ("CIPC") on 14 May 2014 prior to summons being issued and served. The applicant failed to file a notice of intention to defend as a result of which the Court granted default judgment in favour of the respondent on 10 November 2015.

5. The applicant became aware of the judgment on 4 December 2015 when the deputy sheriff attempted to execute a warrant of execution at the applicant's business address, being Portion No. 0 (Remaining extent) of the farm Vlakfontein, Registration Division KQ, Limpopo Province.

6. The applicant avers that its registered address was formally changed to that of '*Plaas Vlakfontein 141 KQ, Lephalale, Limpopo*' (Plaas Varkfontein address), which change was effected by the offices of the CIPC on 25 May 2015, as evidenced by the contents of a CIPC company report dated 9 December 2015. The change of registered

address thus occurred approximately six weeks before service of summons. According to the applicant, the summons was not served at its existing registered address as at 2 July 2015, same having been formally changed on 25 May 2015 and therefore, the summons did not come to its attention, nor could it have come to its attention.

7. The applicant relies on Rule 42(1)(a) to have the default judgment set aside, due to the alleged lack of proper service upon the applicant at its registered address.

8. If the court finds that the judgment stands to be set aside or rescinded on the basis that it was erroneously sought or granted in the absence of the applicant, the need to show good cause falls away.¹

9. Rule 42(1)(a) provides that:

"(1) The court may, in addition to any other powers it may have, mero motu or upon application of any party affected, rescind or vary: (a) An order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby."

10. In *Lodhi 2 Properties Investments CC v Bondev Development (Pty) Ltd* 2007 (6) SA 87 (SCA), Streicher JA held that if notice of proceedings to a party was required but was lacking and judgment was given against that party, such judgment would have been erroneously granted. The following appears at para 24: *'Where notice of proceedings to a party is required and judgment is granted against such party in his absence without notice of the proceedings having been given to him, such judgment is granted erroneously. That is so not only if the absence of proper notice appears from the record of the proceedings as it exists when judgment is granted but also if, contrary to what*

¹ See: *Rossitter & others v Nedbank Ltd* (96/2014) ZASCA 196 (1 December 2015) at par 16;

appears from such record, proper notice of the proceedings has in fact not been given....'

11. If proper notice of the proceedings had not been given, then, in the result, the respondent was procedurally not entitled to the order sought when it was granted. The order would for that reason, have been erroneously granted.

12. The respondent disputes that the formal change of registered address was effected by the CPIC prior to the service of the summons and avers that the summons was duly served on the applicant at its registered address in accordance with the records of the CPIC as at 3 July 2015.

13. The issue for determination accordingly is whether the applicant has shown that default judgment was erroneously sought or granted because the summons was not served by the respondent at the applicant's existing registered address on 3 July 2015. This will depend on whether or not the applicant has shown that its registered address had changed to the Plaas Varkfontein address before summons was served.

14. The applicant states that it applied to the CPIC on 21 January 2015 and again on 14 April 2015 to change its registered address to the Plaas Varkfontein address. Copies of the written applications were annexed to the replying affidavit to counter allegations in the respondent's answering affidavit to the effect that the 'effective' date of change of registered address, as depicted in the CPIC report of 9 December 2015, is not necessarily the actual date of change of registered address. This is because the said date could have been backdated in the event that lodgement of the request to the CPIC to effect a change of registered address occurred on a date subsequent to date of

service of the summons. The applicant also annexed to its replying affidavit, a certificate issued by the CPIC on Monday the 25th May 2015, which clearly reflects the applicant's address of registered office as 'Plaas Varkfontein 141 KQ Lephalale, Limpopo'. The CPIC report of 9 December 2015 does not only depict an 'effective' date of change of registered address. It shows that the Applicant's registered address in fact changed to the Plaas Vlakfontein address on 25 May 2015, as indicated in the history section of the report.

15. In his written heads of argument, counsel for the respondent criticised the CPIC report of 9 December 2015 for containing inconsistencies relating, *inter alia*, to the status of certain erstwhile directors of the applicant as well as the applicant's company secretary. Much emphasis was laid on alleged contradictions between information appearing in the said report and allegations made in the replying affidavit. It was contended on behalf of the respondent that the said report was unreliable, such that it required speculation by the Court and the respondent as to the correctness of the information appearing therein and the interpretation thereof.

16. The deponent to the founding affidavit alleges that he is the sole director of the applicant. In the CPIC report of 9 December 2015, he is depicted as the only active director of the applicant.

17. I am not persuaded that the perceived inaccuracies or inconsistencies referred to are either material or affect the cogency of the information pertaining to the change of registered address of the applicant in the CPIC report of 9 December 2015, as confirmed in the CPIC certificate mentioned earlier and relied on by the applicant. The respondent did not dispute the authenticity of the said report in its answering affidavit, nor were any inaccuracies or discrepancies alluded to by the respondent in the answering affidavit. The information concerning the change of registered address as


reflected in the 9 December 2015 CPIC report, was also not gainsaid by means of a more recent contrary report obtained from the offices of the CPIC. The applicant relied on the December CPIC report and the CPIC certificate to demonstrate that the change of registered address applied for, had been effected.

18. To my mind, criticisms levelled against the 9th December CPIC report by respondent's counsel and argument raised to challenge the reliability of the report, are unsupported by evidence and are built on supposition. In the absence of a challenge by the respondent to the authenticity or validity of the report, I am constrained to conclude that the applicant has shown that the summons was not served at its registered address. For this reason the judgment was erroneously granted.

19. The applicant gave notice that it would apply for a punitive costs order against the respondent. I am not persuaded that the respondent's conduct or opposition in the matter is such as to merit an award of costs on the scale as between attorney and client.

20. In the result, I make the following order:

- (1) The default judgment granted against the applicant on 10 November 2015 is hereby rescinded and set aside.
- (2) The costs of the application will be costs in the course.


A. MAIER-FRAWLEY
ACTING JUDGE OF THE HIGH COURT

Date of hearing: 30 November 2016

Date of judgment: 2 December 2016

Judgment delivered: 2 December 2016

Counsel for the applicant: Adv. AP Ellis

Attorneys for applicant: PDR Attorneys

Respondent's counsel: Adv. JA Kloppe

Respondent's attorneys: Spies Bester Potgieter Attorneys