IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 49480/2018

REPORTABLE: YES/NO
OF INTEREST TO OTHER JUDGES: NO
REVISED: NO
26 September 2022

In the matter between:

ALBERTUS JEREMIAH JANSEN VAN VUUREN PLAINTIFF

and

MATHILDE VAN DER WALT DEFENDANT

JUDGMENT

Van der Schyff J

Introduction

[1] The plaintiff and the defendant concluded an oral agreement in terms whereof the plaintiff conducted renovation and improvement work on the defendant's property at Farm [....] V[....], Gauteng (the farm). The parties did not, before the work commenced, comprehensively discuss the full extent of the work, or the costs thereof. As time passed and the defendant obtained funds, additional work was added. The plaintiff and the defendant were, at the very least, at that stage, close friends. After the renovations were done at the farm, the plaintiff resided for a substantial period of time at the defendant's property at [….] N[....]Street, M[....], Pretoria (M[....]), without paying rent. He did some maintenance – and repair work on the property, while she resided at the now-renovated farm property. A dispute arose between the parties regarding outstanding payment for the work done by the plaintiff at the farm.

[2] As their friendship deteriorated, the dispute became more intense. The plaintiff obtained a quantity surveyor's report that he claims provided a complete breakdown of the work done, but the parties could not come to an agreement regarding the final amount due and payable. In the meantime, the defendant concluded a lease agreement with a third party regarding the M[....] property. She informed the plaintiff of the lease agreement and asked him to vacate the property. On 26 April 2017, the defendant signed an acknowledgment of debt wherein she acknowledged that an amount of R314 711.04 was due and payable to the plaintiff in relation to the work done on the farm. The plaintiff subsequently instituted an action based on the defendant's failure to pay the amount of R314 711.04 in respect of the renovation and improvement work done at the farm, as acknowledged by the defendant to be the amount due and payable to the plaintiff.

[3] The defendant admitted to signing the acknowledgment of debt but pleaded that it was signed under duress. She denied that the quantity surveyor's report gave a true reflection of the work done by the plaintiff and stated that she disputed the correctness thereof all along. She confirmed during evidence that she acknowledges that she owes the plaintiff money, but disputes the extent of the claim. The defendant instituted a counterclaim against the plaintiff for faulty workmanship that she had to repair at her own costs, at both the farm and M[....] properties.

[4] The parties are throughout referred to as plaintiff and defendant for purposes of clarity. Before considering the issues, it is necessary to reflect on the credibility and reliability of the parties. Counsel for the defendant, in her heads of argument, criticised the plaintiff and submitted that he was not an honest and forthright witness. I have had the opportunity to observe the demeanour of both the plaintiff and the defendant and to listen carefully to their evidence. They are both intelligent and well-articulated. I did not get the impression that the plaintiff or the defendant intentionally tried to mislead the Court or knowingly told an untruth. It is possible that their evidence with regard to some incidents is not so reliable, but I have no reason to conclude that they were untruthful.

The plaintiff's claim

[5] As far as the plaintiff's claim is concerned, the first issue to be considered, is whether the defendant signed the acknowledgment of debt under duress. The issue as to the quantification of the plaintiff's claim only arises if the defendant makes out a case that the acknowledgment of debt was signed under duress.

[6] It is trite that a contract entered into under duress may be voided by the innocent party. The party relying on duress must prove:[1] (i) a threat of considerable evil to the person concerned; (ii) that the fear was reasonable; (iii) that the threat was of an imminent or inevitable evil and induced fear; (iv) that the threat or intimidation was unlawful or *contra bonos mores;* and (v) that the contract was concluded as a result of the duress.

[7] In order to determine whether the evidence supports a finding that there was duress, the court should have regard to the person complaining of the duress, and the circumstances in which she found herself at the time. In light of all the relevant factors, the court needs to determine whether it was reasonable for the person

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[1] *Arend v Astra Furnishers (Pty) Ltd* 1974 (1) SA 298 (C) at 306A-C.

concerned to have suffered fear and to succumb thereto.[2] Fourie J held in *P v P*[3] that the court in *Sawides v Sawides*[4] potentially opened the door to a successful reliance on duress under circumstances where the duress, although subjectively reasonable, may be objectively speaking, unreasonable.

[8] Christie in *The Law of Contract in South Africa* suggested:[5]

> 'The point is that every person who complains of duress is entitled to be seen as the sort of person he or she is, but to prevent the remedy getting out of hand is not entitled to resile from the contract if he claims to have succumbed to the fear that would be unreasonable even for the sort of person he is.'

[9] Due to the defendant's evidence, discussed below, it is also necessary to keep in mind the Supreme Court of Appeal's *obiter* remark in *Medscheme Holdings (Pty) Ltd and Another v Bhamjee*[6] that economic pressure may in appropriate cases constitute duress that would allow for the avoidance of an agreement.

[10] The parties were engaged in a complicated relationship. Although the plaintiff denies it, the Whatsapp evidence indicates that the relationship developed into a romantic relationship. The romantic relationship, and friendship, deteriorated over time. The defendant trusted the plaintiff and ultimately felt betrayed by him.

[11] The plaintiff assisted the defendant with some challenges prior to doing the renovations that underpin this litigation. The defendant allowed the plaintiff to reside in her M[....] property and on the farm, and he ultimately moved back to her M[....] property. The plaintiff's evidence is that he moved into the Mooikoof property because the defendant wanted to sell or lease the property, and it was easier to market the property when it was occupied. The defendant testified the plaintiff had

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[2] *Paragon Business Forms (Pty) Ltd v Du Preez* 1994 (1) SA 434 (SE) at 441D-G.

[3] (16300/2015) [2016] ZAGPPHC 931 (10 October 2016) at para 31.

[4] 1986 (2) SA 325 (T).

[5] 6th ed, at 315.

[6] 2005 (5) SA 339 (SCA) at paras [6] and [18].

nowhere else to stay, and she accommodated him by allowing him to stay in the M[....] property for free while he would, in turn, do maintenance and repair the roof of the property. The party's business relationship is contextualised against this background.

[12] The defendant wanted to renovate her farm property, and because the plaintiff was, in addition to being a medical doctor, also a builder-cum-renovator, they discussed the plans for the renovations and he commenced with the project. They did not make a cost estimation for the project. When the project was concluded, the defendant disputed the amounts incurred by the plaintiff, and the plaintiff obtained a report and cost estimation from a student quantity surveyor. The defendant was not satisfied with the report, and the plaintiff obtained a report from a quantity surveyor, the Brecher report. The defendant still refused to pay the amount claimed by the plaintiff. The parties were in continued discussions regarding the outstanding amount. In the meanwhile, the defendant endeavoured to secure a tenant for the M[....] property because she was suffering financial difficulty. The plaintiff was aware of the fact that the M[....] property would ultimately be leased out. The defendant secured tenants and informed the plaintiff, around 22 April 2017, that he had to vacate the property by the end of April 2017. On 23 April 2017, the plaintiff called the defendant and informed her that his trusted worker's son had passed away and, as a result, he would not be able to move out of the M[....] property at short notice. He requested a meeting for them to sort out the outstanding amounts, and she indicated that she would only be available on 26 April 2017.

[13] The defendant testified that when the discussion commenced, the plaintiff had a tape recorder with him. She said thàt is when she knew that the plaintiff was going to try and force her into a corner. They discussed the Brecher report in length. Of importance is the defendant's evidence that they subtracted some of the amounts from the amount that the plaintiff indicated was owed to him during this discussion. Then, she testified: "The two of us drew up the acknowledgment of debt together". She stayed over at the house that evening because it was late. The following morning the plaintiff confronted her and said that although she signed the acknowledgment of debt, he knew she had no intention to honour it. She said she wanted to pay him but that she could not. The events that ensued from thereon are

not relevant for determining whether the acknowledgment of debt was signed under duress since it occurred after the signing of the acknowledgment of debt.

[14] During cross-examination, the defendant said she signed the acknowledgment of debt under duress, because she had no other choice. The gist of her evidence is that she signed the acknowledgment of debt to ensure that the plaintiff would vacate the property so that she could prepare the property for the tenants. However, when it was put to the defendant during cross-examination that the plaintiff would testify that he never said that he would not move out unless she signed the acknowledgment of debt, she answered, "I am not hundred percent sure, but I think he said so."

[15] The common cause facts support a finding that the plaintiff did renovation work for the defendant and that a dispute arose regarding the final amount due and payable. After a long discussion, which resulted in some amounts being deducted, the parties reached an agreement as to the final amount due and owing to the plaintiff. The purpose of the acknowledgment of debt was not to give rise to a new independent agreement, but to finalise the longstanding dispute regarding the amount due to the plaintiff. The signed acknowledgment, however, constitutes *prima facie* proof of the amount due to the plaintiff. The defendant did not succeed in making out a case that she signed under duress, and the proof became conclusive. She might have treaded lightly in an attempt not to conflate the animosity that existed between the parties at that time, but the evidence does not show that the plaintiff was forcing her to sign by threatening that he would not vacate the property, whilst knowing that she needed the lease to prevent economic distress, or that the defendant was convinced that the signing of the acknowledgment was the only way in which she could ensure that the plaintiff would timeously vacate the property. I can merely echo Nugent JA's remark in *Medscheme Holdings (Pty) Ltd and Another v Bhamjee*:[7]

> 'While there would seem to be no principled reason why the threat of economic ruin should not, in appropriate cases, be recognised as duress,

[7] 2005 (5) SA 339 (SCA) 346.

such cases are likely to be rare. … Something more - which is absent in this case - would need to exist for economic bargaining to be illegitimate or unconscionable and thus to constitute duress.'

[16] The plaintiff's claim stands to be allowed. It is unfortunate that a project that started out while the parties were friends, turned sour and resulted in a situation where the parties could barely look at each other during the court proceedings.

Defendant's counterclaim

[17] The defendant did not lead any expert evidence substantiating her counterclaim. She presented photographs taken almost a year after the plaintiff did the work, and hearsay evidence as to what she was told by different people, whom she regarded as experts, who subsequently did repairs at the farm and M[....] properties, as to what the faults and shortcomings were in the work done by the plaintiff. In the result, the defendant's claim in reconvention stands to be absolved from the instance.

Costs

[18] The plaintiff's claim falls within the jurisdiction of the regional court. The issues were not specifically complex. As a result, although the plaintiff is entitled to costs, it is justified that costs be paid on a regional court scale.

ORDER

In the result, the following order is granted:

1. The defendant is liable to pay the plaintiff the amount of R 314 711.04 plus mora interest at the prescribed rate, from 22 June 2018 to date of final payment, and costs;

2. The defendant's claim in reconvention is absolved from the instance with costs;

3. The defendant is to pay the costs on the regional court scale.

E van der Schyff
Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email.

For the plaintiff:	Adv. A M Raymond
Instructed by:	GTA KAYSER ATTORNEYS
For the defendant:	Adv. C Joubert
Instructed by:	KENNIE BOONZAIER ATTORNEYS
Date of the hearing:	26, 27, 28 July 2022
Date of argument:	29 August 2022
Date of judgment:	26 September 2022