

IN THE HIGH COURT OF SOUTH AFRICA

(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO: 13096/2005

DATE: 8 October 2008

5 In the matter between:

PERRYVALE INVESTMENTS (PTY) LTD Applicant

and

S PATEL N.O. 1st Respondent

MICHAEL KATZ 2nd Respondent

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J U D G M E N T

(Application for Leave to Appeal)

DAVIS, J:

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[1] This is an application for leave to appeal against an order of this Court of 16 April 2008 which arose out of a review which was heard on 14 February 2008. As is set out in the judgment, this Court attempted to have the matter settled between the parties, unfortunately such attempts proved to be unsuccessful. The order, having been granted on 16 April 2008 pursuant to a failure of a settlement, reasons were then given on 25 July 2008. It is against this order that the second respondent has sought leave to appeal from this Court.

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[2] The application for leave to appeal was heard only after hearing submissions made by second respondent who appears in person. Pursuant to setting this matter down, this Court received a letter on 26 September 2008 from
5 attorneys acting on behalf of the applicant. I do not propose to read the entire letter into the record but it is relevant to set out aspects thereof. The letter was written by Mr Cameron-Dow on behalf of the applicant includes the following:

10 “Our decision to not expend our client’s funds irresponsibly by reacting to the massive flood of documentation from Mr Katz is the reason
for our not briefing counsel to comprehensively oppose Mr Katz’s application
15 for leave to appeal...

The learned Judge encouraged settlement and made settlement reasonably possible but historically both our client and the writer
attempted to settle this matter before the
20 Magistrate’s Court, summons for ejectment was issued and at numerous stages and intervals thereafter. We have come to the conclusion that endeavouring to settle with Mr
Katz (which of necessity would mean all

matters and not merely one or two at a time) is not reasonably possible.

We are indeed of the view that in all probability we will in due course have to launch further proceedings to prevent the number of actions and the scope of litigation from continuing to expand".

In this letter, Mr Cameron-Dow documents his version of the litigation which has taken place between his client and second respondent. Needless to say, second respondent rejects the contents of this letter and takes the view that he was entitled to pursue his rights in this court. I only read part of the letter into the record to explain why no representation was forthcoming this morning from applicant. I am now forever left with the duty of deciding whether there are reasonable prospects of success of a kind which would mean that another Court may reasonably come to a conclusion different to that arrived at by this Court.

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[3] It is important to obtain clarity what it is that is now being appealed. The order which was granted on 15 April 2008 has two components: The first concerns the question of prosecution of the applicant in terms of section 16 of the Rental Housing Act 50 of 1998, which decision has been

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taken by first respondent. That decision was set aside and applicant was ordered within 60 days from the date of the order of this Court to provide first respondent with a detailed report concerning the maintenance and repairs done to the roof of Shelbourne, Beach Road, Sea Point, subsequent to first respondent's decision of 5 August 2005.

[4] I have no information placed before me as to whether that was done and what arose from such action, if any was so taken. First respondent has not sought to intervene in these proceedings, save for the affidavit to which I have already made reference in the principal judgment. However, this morning Mr Katz informs me that that is not the subject of the appeal which he wishes to bring against the order of this Court. Mr Katz wishes to appeal the second component of the order. That component provided that the second respondent shall be entitled to 50% remission of rent from the applicant for the period September 2002 until August 2004, less certain amounts, and further that applicant and second respondent should each be liable for 50% of certain costs as set out in the order. In essence, it is this component of the order which is the subject of appeal, together with the order that the ruling that applicant shall pay a

remission of 100% of rental for the period September 2004 to June 2005 being set aside, which is the subject of the dispute this morning.

5 [5] I do not intend to get embroiled in the controversies between applicant and second respondent in relation to whether this litigation constitutes vexatious litigation or not. I am prepared to agree, that Mr Katz is an enthusiastic litigator. Before the reasons given by this

10 Court had been transcribed into writing, this Court received an application for leave to appeal amounting to some 76 pages. Thereafter a further series of affidavits were lodged, amplified on the grounds of appeal. In that sense the litigation has expanded way beyond that which

15 could reasonably be expected in a dispute of this nature. The essence of this Court's finding was that second respondent was entitled to the remission for the period September 2002 until August 2004, less certain amounts. In this, the approach of the Court was not in essence

20 different from the ruling of first respondent. The key to difference concerns the remission of 100% of the rental for the period September 2004 to June 2005.

[6] As noted in the judgment, this Court based its finding on the offer of alternative accommodation made by applicant

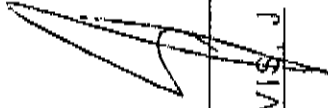
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to first respondent so that first respondent could be able to move from his apartment whilst the necessary repairs were effected to it. First respondent refused. A series of reasons have been given for that refusal. The issue of cockroach infestation was raised. In the application for leave to appeal, second respondent takes issue with this Court's finding by contending that, if the record is read carefully, it would reveal that no concession had been made in relation to the lack of cockroaches. The fact is that there is no clear evidence that apartment 701 was infested with cockroaches which was sufficient to refuse the offer.

[7] In amplification of the reasons given by second respondent, in his written application for leave to appeal, namely that he had other reasons why he had refused the offer, he submitted this morning that the offer had been linked to payment of arrear rental and to various other conditions which he found unacceptable. That may be, but in the final analysis he had been made the offer, he could have occupied that particular apartment during the period and reserved any rights that he claimed had been infringed. He refused to do so.

[8] On review, this Court found that first respondent had not taken proper account of the evidence. Mr Katz may now seek to argue further points but it appears to me that there had been an error committed by first respondent; secondly the offer was of alternative accommodation not an unreasonable one and should have been taken up by a party who wished to settle the matter as expeditiously as possible. Once that finding is made, then the further costs of various reports which flowed pursuant to the complaint had to be borne by both parties as opposed to one party, second respondent having persistently been the driving force behind the complaint.

[9] For there reasons, I find that there is no prospect that another Court would come to a conclusion different to this. Plainly this is not a matter that should bother any further court and accordingly the application for leave to appeal is dismissed.



DAVIS J