

IN THE HIGH COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO: 1369/2006
DATE: 15 OCTOBER 2008

5 In the matter between:

NEDBANK LIMITED Plaintiff
and

AMALGAMATED PROPERTY HOLDINGS (PTY) LTD Defendant

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RULING

BOZALEK, J

15 During the cross-examination of the plaintiff's first witness yesterday it appeared that the defendant's case as it was being put to the witness was somewhat different to that pleaded. The case stood down a little early so that the defendant could be afforded an opportunity to formally seek an amendment to its plea.

20 This morning Mr Mouton, director of the defendant company, and who appears on behalf of the defendant in person, applied for a postponement of the matter so that defendant could amend its

plea and file a counterclaim. He tendered the wasted costs occasioned by the postponement.

5 The application for postponement was initially opposed by Mr Vos on behalf of the plaintiff, but he has withdrawn his client's opposition on the basis that the postponement would be for a limited period. This was after I indicated to the parties that if a postponement was granted I envisaged that it would only be until later this term.

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I am disposed to grant a postponement in no small part because the defendant is legally unrepresented, and I am not persuaded that the applicant, ie the defendant, is *mala fide* or that it amounts to a time wasting tactic. I propose to allow a postponement to 3
15 December 2008 to allow the defendant to place its pleadings in order. To that end I will order that the defendant must file the necessary documentation by 11 November at the latest, which is a period of some four weeks, which will give the plaintiff at least three weeks to come to terms with any new case it may have to
20 meet.

I do not propose to set out precisely what notices or documents must be filed, because it is by no means clear to me exactly what

steps defendant may or will take to refashion its case once new attorneys are appointed and consulted.

I should mention that the defendant's last set of attorneys withdrew the day before trial, Mr Mouton has mentioned that defendant will be engaging new legal representation. I hope that this proves to be the case for any number of reasons. In the first place, in my view, the defendant's interests will be better served if it is legally represented. Secondly, on the resumption of this matter I expect that it will be, that the matter will run and that the substantive dispute between the parties will be dealt with. The defendant should not be misled or lulled into believing that it will always be able to obtain a postponement or enjoy similar indulgences, because it may be legally unrepresented. In my view it is in the public interest and in the interest of the administration of justice that litigation is disposed of with reasonable expeditiousness.

I wish also to record that granting the postponement should not be understood as indicating that the applicant, defendant, has been granted leave to file a counterclaim, or that each and every proposed amendment which it may seek will be granted. On the other hand I have indicated to the representatives that I would

like to see that the substantive issues between the parties are dealt with on the resumed date, and that neither party stands on procedural points.

5 As far as the costs are concerned Mr Vos asked that the cost order be made on the scale of attorney and client, but I am not persuaded that factors are present to justify such an order. I therefore make the following order;

- 10 1. The matter is postponed for hearing to 3 December 2008;
2. Defendant must by no later than 11 November 2008 serve and file whatever notices are necessary in order for it to put its pleaded case in order, before the resumed hearing
15 on 3 December 2008;
3. The defendant is ordered to pay the wasted costs occasioned by this postponement.



BOZALEK, J