IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

Case No.: 23305/2010

Date 14 January 2011

In the matter between:

KLOOF INVESTMENT 2004 CC **Applicant**

And

GARY ISAACS **Respondent**

JUDGMENT

MIA AJ:

[1] The above matter came before me on in November 2010 and judgement was given herein on 12 November 2010. An application for leave to appeal was lodged and argued before me. The following order was given:

"I have heard counsel for the applicant and the respondent herein. I have also had the benefit of perusing the record herein.

I am not persuaded that there are reasonable prospects that another court may come to a different conclusion.

The application for leave to appeal is dismissed with costs."

[2] The appellant has referred me to recently amended rule, rule 6(d) and requested that reasons for my decision in the application for leave to appeal.

My reasons for dismissing the application remain as reflected in the judgement. During address in the application for leave to appeal Mr Elliot appearing on behalf of the appellant referred to the Plascon Evans "test" in dealing with applications for final relief. In view of the disputed facts the result was the dismissal of the application. Having regard to the papers that were placed before me the test in Plascon Evans was applied and resulted in the dismissal.

[3] Mr G Elliot submitted that the court erred in not reading in the word "set-off" in clause 4.6 of the contract. Whilst it is so that language is capable of different meanings the language used by the parties in forming their agreement must be given their plain meaning in interpreting the agreement formulated and recorded in the contract. This "golden rule "of interpretation requires that the contract be given its everyday ordinary meaning.[1] Clause 4.6 of the contract does not include the word "set-off" and cannot be read into the agreement.

[4] Mr TR Tyler appearing on behalf of the respondent opposed the application for leave to appeal. He raised a point which was canvassed when the matter was first heard by me. The submission is that the word set-off cannot be read into the agreement. Further set-off is not an instrument which entitles a person to withhold payment rather it is a form of discharge. In view of the parties not having included the word set-off in clause 4.6 of the agreement I am of the view that it cannot be read in having regard to the whole of the contract. I do not think that there is a reasonable possibility that another court will come to a different conclusion.

SC MIA

Acting Judge of the High Court: WESTERN CAPE

[1] LAWSA , Volume 5: Contract , Interpretation paragraph 426