



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION – MAKHANDA)**

CASE NO.: 2771/2017

Matter heard on: 23 March 2023

Judgment delivered on: 25 April 2023

In the matter between: -

TRANSNET SOC LTD

Plaintiff

and

BAATILE PENELOPE ZEPE N.O.

Defendant

(in re: THE DECEASED ESTATE OF MTHUTHUZELI ALLEN ZEPE)

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

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Signature

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Date

JUDGMENT

SMITH J:

[1] The plaintiff instituted civil action against the deceased estate of the late Mthuthuzeli Allen Zeppe (the deceased), claiming arrear rental arising out of three rental agreements concluded between it and the deceased. The claims are, respectively, for the payment of R726 233.49; R1 295 275; R2 512 017.88, and for ancillary relief.

[2] All three lease agreements have expired, but the deceased remained in occupation of the properties until he was evicted by virtue of a court order issued on 6 December 2021.

[3] The terms of all three lease agreements were substantially the same, except for the descriptions of the various leased properties. Apart from the usual conditions relating to the lessee's liability for rental, rates, taxes and other charges, the agreements also provided that a certificate issued by the plaintiff's financial manager, director, company secretary, credit manager or internal accountant, shall constitute *prima facie* proof of the deceased's indebtedness.

[4] In its plea, the defendant, while admitting the terms of the contracts, baldly denied liability.

[5] At the trial, the plaintiff adduced the evidence of Mr Willem van Zyl, its Acting Finance Manager. Mr van Zyl is also the Regional Head of the plaintiff's Eastern Cape Properties Division.

[6] Mr van Zyl testified that accounts payable by the plaintiff's lessees are reconciled by its accountants on a daily basis, in accordance with its standard operating procedures. He would thereafter verify the data and entries in order to ascertain that the outstanding balances are correctly reflected. The transactions in respect of the defendant's three leases were also reconciled and verified in this manner. He has also certified the correctness of the entries by appending his signature to the reconciliations done on 18 March 2023. He said that all three accounts reflect that the defendant last made payments during November 2015. He

confirmed that the amounts claimed by the plaintiff in respect of the three leases have been correctly reflected in the reconciled certificates, and that those are in fact the amounts owed by the defendant for arrear rental in respect of the three leased properties.

[7] Although Mr van Zyl was cross-examined by Mr Mzamo, who appeared for the defendant, the correctness of the amounts stated in the certificates were not disputed, neither was any different version put to him. No other witnesses were called to testify.

[8] As mentioned, in terms of the lease agreements, the certificates of balance introduced into evidence by Mr van Zyl constituted *prima facie* proof of the defendant's indebtedness to the plaintiff. This evidence was not challenged in any manner, neither did the defendant adduce any evidence to rebut that presumption.

[9] There can accordingly be little doubt that the plaintiff has succeeded in proving the defendant's indebtedness in respect all three claims on a balance of probabilities.

[10] It is common cause that the agreements provide for costs to be awarded on the attorney and client scale.

[11] In the result the following order issues:

11.1. In respect of Claim A:

- (i) Judgment in the amount of R726 233.49;
- (ii) Interest on the aforesaid amount calculated in terms of clause 38.1 of the Lease Agreement.

11.2. In respect of Claim B:

- (i) Judgment in the amount of R1 295 275.55;

- (ii) Interest on the aforesaid amount calculated in terms of clause 38.1 of the Lease Agreement.

11.3. In respect of Claim C:

- (i) Judgment in the amount of R2 512 017.88.
- (ii) Interest on the aforesaid amount calculated in terms of clause 38.1 of the Lease agreement.

11.4. Costs of suit on the attorney and client scale.

JE SMITH
JUDGE OF THE HIGH COURT

Appearances:

Counsel for the Plaintiff : Adv. N. Msizi
: Netteltons Attorneys
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Counsel for the Defendant : Adv. C. Mzamo
: Baatile Penelope Zepe N.O.
: C/o Yokwana Attorneys

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