

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 8942/2021

(1) <u>REPORTABLE:</u>
(2) <u>OF INTEREST TO OTHER JUDGES:</u>
(3) <u>REVISED.</u>
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DATE
SIGNATURE

In the matter between:

**ARROWGEM LIMITED**

Applicant

and

**ALCM SOLUTIONS (PTY) LTD**

Respondent

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**JUDGMENT**

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**MAKUME J:**

[1] This is an application for summary judgment in which the Applicant claims as follows:

CLAIM A

- i) Payment of the sum of R21 076.79 being in respect of arrear rental.
- ii) Payment of interest on the sum of R21 076.79 at the rate of 10% per annum *a tempore morae*.
- iii) Costs on attorney and client scale.

CLAIM B

- iv) Payment of the sum of R134 823.31 in respect of arrear rental and charges.
- v) Payment of interest on the sum of R134 823.13 at the rate of 7% per annum *a tempore morae*.
- vi) Confirmation of cancellation of the lease agreement.
- vii) Payment of the sum of R183 810.33.
- viii) Payment of interest on the sum of R183 810.33 at the rate of 7% per annum *a tempore morae*.

*ix)* Costs on attorney and client scale.

[2] It is common cause that on or about the 25 April 2019 at Midrand the parties concluded a written lease agreement in terms of which the Respondent leased office 1A on the property of the Applicant known as The District 8 Killarney Road Sunninghill.

[3] The terms and conditions of the lease agreement are common cause and not disputed.

[4] The Respondent breached the agreement by failing to comply with the monthly payment in respect of rental including charges. On the 30<sup>th</sup> December 2020 the Respondent on its own vacated the leased premises.

[5] On the 18<sup>th</sup> February 2021 the Applicant issued summons claiming the amount referred to above. On the 4<sup>th</sup> May 2021 the Respondent's attorneys acting on instruction of the Respondent filed its plea and counterclaim.

[6] In its plea the Respondent admits being in arrears in respect of rental and obligation but disputes the quantum. Respondent does not say what amount it owes.

[7] On the 20<sup>th</sup> May 2021 the Applicant filed and served the Respondent's Attorneys with this application for summary judgment.

[8] During August 2021 the Respondent filed its affidavit resisting summary judgment and once again at paragraph 4.3 of the opposing affidavit the Respondent conceded that it owes some arrear rental but only in respect of the second lease concluded during January 2020. Miss Mthetwa on behalf of the Respondent does not say how much is owing. The arrear rental is the one in Claim B being the sum of R134 823.13.

[9] Miss Mthetwa says further at paragraph 4.4 that the Applicant is required to discharge its obligation by providing the Respondent with statements proving the total arrear amount and not simply make up the amount.

[10] It is worth nothing that at paragraph 5.6 the Respondent says:

“the Defendant concludes that it was in breach of lease agreement by failing to pay rent.”

[11] In terms of clause 27.5 of the lease agreement a certificate signed by a director, company secretary credit manager or internal accountant of the Lessor or its agent shall be prima facie proof of the amount of indebtedness owing by the Lessee at any time. The Respondent admits being in arrears but does not say how much. This therefore

leaves the Applicant's evidence in respect of the certificate of balance unchallenged and must be accepted as being correct.

[12] On the 17<sup>th</sup> August 2021 the application for summary judgment was by agreement removed from the opposed roll and postponed sine die wasted costs were reserved.

[13] On the 16<sup>th</sup> February 2022 Respondent's attorneys withdrew as attorneys of record for the Respondent.

[14] On the 29 March 2022 the Sheriff served the notice of set down of the application for summary judgment for the 3<sup>rd</sup> May 2022 on the Respondent.

[15] On the 5<sup>th</sup> May 2022 Ms Mthetwa appeared in person on behalf of the Respondent and applied for a postponement verbally to enable her to seek legal assistance. This was opposed. I proposed to Ms Mthetwa that I will stand down the matter till next Wednesday the 11<sup>th</sup> May 2022 to enable her to get legal assistance. She informed the court that it is not suitable she did not tell the court how much time she requires to enable her to consult a lawyer. In view of that I could not find that the Respondent deserved a postponement as this will serve to add further costs in view that there seem to be no valid defence to the Applicant's claim. Postponement was refused.

[16] The Applicant's applied for judgment Ms Mthetwa in answer verbally told the court that she does not dispute the amount of R21 076.79 in respect of claim A and as regard the amount of R183 810.83 she says she disputes that as the Applicant had by that time cancelled the agreement. Ms Mthetwa further told the court that as a result of having been locked out by the Applicant her business suffered loss and that Respondent has a counter claim against in the Applicant.

[17] It is common cause that in terms of the first lease the Respondent leased the premises for the period 1 May 2019 to 20 April 2020 which period was extended to 30 April 2023 by the second lease.

[18] The Respondent has conceded indebtedness in respect of the first and second lease in the amount of R21 076.79 and R134 823.31 respectively. It is also correct that as regards the second lease even though Ms Mthetwa admits being in arrears she cannot produce evidence to dispute the amount and in the absence of which this court should accept the certificate of balance being correct.

[19] The third amount being claimed in this matter is the sum of R183 810.35 which amount is part of the claim based on the early cancellation of the lease agreement. The Applicant says it is for damages in that for the period between the 30<sup>th</sup> December 2020 when the Respondent vacated the premises and June 2021 when the Applicant applied for summary judgment.

[20] Ms Mthetwa for the Respondent says that she disputes the amount because it is the Applicant who cancelled the agreement and that the Respondent is not liable for Applicant's loss of rental income that is why the Respondent has filed a counterclaim based on the cancellation. This is a fairly arguable issue and I have come to the conclusion that the amount of R183 810.32 is not a liquidated amount and that the Respondent should be granted leave to defend that amount in a trial.

[21] In the result I am persuaded that the Applicant has made out a case in respect of payment of the amount of R21 076.79 in claim A and the amount of R134 823.91 in claim B. I accordingly grant summary judgment against the Respondent as follows:

#### ORDER

##### CLAIM A

- a) Payment of the sum of R21 076.79.
- b) Interest on the sum of R21 076.79 at the rate of 7% per annum *a tempore morae*.
- c) Costs on the attorney and client scale which shall include the costs reserve on the 17<sup>th</sup> August 2021.

##### CLAIM B

- d) Payment of the sum of R134 823.31.
- e) Interest on the sum of R134 823.31 at the rate of 7% per annum *a tempore morae*.
- f) The Lease Agreement concluded between the Applicant and the Respondent marked Annexure C to the particulars of claim is confirmed as cancelled.
- g) Costs on the attorney client scale which shall include the costs reserve on the 17<sup>th</sup> August 2021.

[22] The balance of the Applicant's claim in respect of damages is referred to the trial court together with the Respondent's counterclaim.

DATED at JOHANNESBURG this the 17 day of MAY 2022.

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**M A MAKUME**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, JOHANNESBURG**

DATE OF HEARING : 05 MAY 2022  
DATE OF JUDGMENT : 17 MAY 2022  
FOR APPLICANT : ADV GIBSON



INSTRUCTED BY : CILLIERS LATTANZI ATTORNEYS  
FOR RESPONDENT : IN PERSON MS K MTHETWA