

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)

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

CASE NO: 49594/2021

8 AUGUST 2022

FHD VAN OOSTEN

In the matter between

**MENLYN MAIN INVESTMENT
HOLDINGS (PTY) LTD**

FIRST PLAINTIFF

GOVERNMENT EMPLOYEES PENSION FUND

SECOND PLAINTIFF

and

**CHRISTO MENLYN (PTY) LTD
t/a TURN & TENDER CENTRAL SQUARE**

FIRST DEFENDANT

PETER CHRISTOFORAKIS

SECOND DEFENDANT

MYRON CHRISTOFORAKIS

THIRD DEFENDANT

ANTHONY CHRISTOFORAKIS

FOURTH DEFENDANT

CHRISTOS TZELLIOS

FIFTH DEFENDANT

J U D G M E N T
(LEAVE TO APPEAL)

VAN OOSTEN J:

[1] The unsuccessful defendants, in the application for summary judgment, now seek leave to appeal against the whole of my judgment and the order granted. For ease of reference, the parties will be referred to as in the action.

[2] At the outset, I consider it necessary to clarify, what seems to be a misunderstanding, having emerged from counsel for the defendants' argument before me, concerning my approach, as set out in para 20 of the judgment. The approach adopted was specifically in respect of the summary judgment application, and *not* in regard to the plaintiffs' claim, in particular, the amount in respect of which judgment was sought and granted. It was in my consideration of the defendants' defence, that the defendants' version was accepted, in order to establish whether their version that a reduced rental was payable, constituted a bona fide, sustainable defence. The defendants did not challenge the plaintiffs' calculation of the claim amount, but merely contended that on the 7% formula, they in fact were in credit. On the basis of my finding that, on their version, the defendants were in arrears, the defence did not assist them and I proceeded to a separate determination of the plaintiffs' claims.

[3] The grounds, on which the application for leave to appeal is premised, have all been dealt with in my judgment. In argument counsel for the defendants submitted that, at worst, summary judgment should have been granted for payment of the admitted portion of the claim amount, with leave to defend on the remaining portion. Counsel for the plaintiffs, in response thereto, submitted that the ejection order should in any event stand, as it is common cause that the defendants were in arrears.

[4] Although counsel for the plaintiffs' contention is not without merit, considerations such as, the importance of this matter, the nature of the disputes raised, and lastly, the finality of summary judgment, have persuaded me to refer the matter as a whole for reconsideration by a court of appeal. This matter does not warrant the attention of the Supreme Court of Appeal, and it follows that leave to appeal to the Full Court of this Division, ought to be granted.

Order

[5] In the result, I grant the following order:

1. Leave to appeal to the full court of the Gauteng Local Division of the High Court of South Africa, is granted.
2. The costs of the application for leave to appeal are costs in the appeal.

**FHD VAN OOSTEN
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION**

COUNSEL FOR PLAINTIFFS

ADV JG DOBIE

PLAINTIFFS' ATTORNEYS

REAAN SWANEPOEL INC

COUNSEL FOR DEFENDANTS

ADV MC ERASMUS SC

DEFENDANTS' ATTORNEYS

MARK EFSTRATIOU INC

***DATE OF HEARING
DATE OF JUDGMENT***

***8 AUGUST 2022
8 AUGUST 2022***