VAN OOSTEN J:

(LEAVE TO APPEAL)

JUDGMENT

ANTHONY CHRISTOFORAKIS

PETER CHRISTOFORAKIS

MYRON CHRISTOFORAKIS

CHRISTOS TZELLIOS

FIRST DEFENDANT

SECOND DERENDANT

THIRD DEFENDANT

FOURTH DEFENDANT

FIFTH DEFENDANT

In the matter between

(1)

(2)

(3)

MENLYN MAIN INVESTMENT HOLDINGS (PTY) LTD

8 AUGUST 2022

FIRST PLAINTIFF

SECOND PLAINTIFF

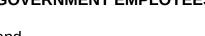
GOVERNMENT EMPLOYEES PENSION FUND

and

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

REPORTABLE: NO

REVISED





REPUBLIC OF SOUTH AFRICA

CASE NO: 49594/2021

FHD VAN OOSTEN

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

OF INTEREST TO OTHER JUDGES: NO

[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 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 ejectment 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