

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case No: 2021/4380

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

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SIGNATURE

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DATE

In the matter between :

LIBERTY GROUP LIMITED

First Plaintiff/Applicant

TWO DEGREES PROPERTIES (PTY) LTD

Second Plaintiff/Applicant

and

A&O IMPORTS AND EXPORTS (PTY) LTD

First Defendant/Respondent

AVIGOR GEFEN

Second Defendant/Respondent

HANNA GEFEN

Third Defendant/Respondent

JUDGMENT

STRYDOM J

[1] The applicants have instituted summary judgment proceedings seeking the following relief pursuant to the occupation of the first respondent of premises in the terms of a written lease agreement:

- 1.1 Payment of an amount of R1,010,091.01 plus interest accruing thereon, owing in respect of arrear rentals;
- 1.2 An order ejecting the respondents from the leased premises situated at Shop 119, Nelson Mandela Square at Sandton City (“the premises”);
- 1.3 Payment of holding over damages of R1,553.23 per day from 1 February 2021 to date of ejectment; and
- 1.4 Costs of suit on an attorney and client scale.

[2] Against the applicants’ claim, the respondents on or about 17 March 2021, raised the following defences in their plea:

- 2.1 The respondents contended that the lease agreement upon which the applicants placed reliance, is invalid because the person who purportedly signed the lease on behalf of the applicants was not authorised to do so;
- 2.2 The respondents admitted that the second and third respondents signed suretyships securing the debt of the first respondent, but contend that they are invalid insofar as the lease agreement is invalid;
- 2.3 The respondents deny breaching the lease or being indebted to the applicants in that there was a “*supervening impossibility of the Covid-19 pandemic and/or the ensuing government lockdown*” that excused them from payment in terms of the lease agreement.

- [3] After the respondents filed their plea, the applicants brought an application for summary judgment supported by an affidavit.
- [4] After this the respondents' attorneys withdrew and were substituted by a new attorney. This took place on 13 July 2021 at a time when the answering affidavit on behalf of the respondents was already due.
- [5] On or about 14 July 2021, the respondents filed their affidavit opposing summary judgment. In this affidavit, the respondents recast their attack on the validity of the lease agreement by now alleging that the lease agreement upon which the applicants rely was invalid, not on the basis that Mr Gaddy who signed on behalf of the applicant was not authorized to sign but on the basis that he signed this agreement much later but not before July 2020 when a copy delivered to the respondents still only reflected the signature of second respondent. The offer to contract was signed by the respondents on 31 July 2019 and accordingly, so the argument goes, the offer was not accepted within a reasonable time and it thus lapsed. The respondents were no longer prepared to admit, as they did in their pre-amended plea that the lease agreement was signed on 18 November 2019 by Mr Gaddy as it is reflected on the attachment to the particulars of claim.
- [6] In the opposing affidavit, it was stated as follows:
- 6.1 Upon receipt of the summons, the second and third respondents, for the first time, saw that the lease agreement which the second respondent signed on 31 July 2019 on behalf of the first respondent, had been signed by Mr Gaddy on behalf of the first applicant on 18 November 2019.

- 6.2 The document that the second respondent signed on behalf of the first respondent on 31 July 2019 was never signed on behalf of the landlord (the applicants), despite repeated requests that the signed document be provided to the respondents.
- 6.3 The signature of Mr Gaddy to the purported lease agreement was an after-thought. The document was never signed prior to the applicants' summons having been issued.
- 6.4 It appeared that the applicants were not prepared to accept the document which was signed on 31 July 2019 on behalf of the first respondent. By signing the lease agreement an offer was made on behalf of the first respondent which offer had to be accepted by the applicants. It was stated that the offer had to be accepted within a reasonable time.
- 6.5 The offer as per the lease agreement was signed on behalf of the first respondent was not accepted by the applicants and therefore the document never became a lease agreement.
- 6.6 It was stated that as the lease agreement was never concluded, the first respondent occupied the premises and continued to do so, on the basis of an oral or tacit lease agreement with the applicants which was later amended orally.
- [7] It was further averred by the respondents that the suretyships which were signed by the second and third respondents, would only have secured the debt in terms of the written lease agreement and not the tacit and/or oral lease agreement thereby not rendering them liable as sureties.

- [8] The new defences raised in the opposing affidavit in material aspects, differed from the defences raised in the initial plea on behalf of the respondents. In the initial plea it was admitted that the lease agreement was into on or about 18 November 2019 and now the conclusion of this agreement has been placed in dispute. This material amendment was explained to have come about as a result of an error. It was stated that an appropriate notice of amendment will be served.
- [9] The respondents then aver that the amendment to the plea will also make it clear that the terms of the tacit lease agreement was amended to the effect that only 8% of turnover would be paid by the first respondent for the occupation of the premises. It is then stated that this amount was paid and that the tacit amended agreement remains intact and forms the basis for the continuation of the occupation of the premises by the first respondent.
- [10] In support of the defence raised by respondents that a tacit agreement came into being and that this tacit agreement was amended, the respondents attached various WhatsApp messages wherein Mr Raggett on behalf of the applicants asked the respondents if they were in a position, after the Covid lockdown, to pay monthly rental of 8% on turnover and electricity charges. The respondent alleges that this has become the lease agreement between the parties and that they have ever since made payments in terms of this agreement. To substantiate this the respondents made reference to invoices received as well as a schedule referred to as AG 3. None of these documents were attached. In a further supplementary affidavit it is stated that the schedule AG 3 was not attached to the opposing affidavit but was attached to the

supplementary affidavit. Again it was not attached. The applicants' version in this regard is that only 2 small payments were made by the first respondent. The dates provided by the applicant appear to be wrong as two payment advises were attached to the opposing affidavit. The first payment was made on 21 December 2020 in the amount of R3 400 and a further payment in the amount of R 4 000 on 23 December 2020. These are dates after demand for payment of arrears in the amount of R 1 010 091,01 was made on 18 December 2020. No further was made for electricity or other services whilst the first respondent remained in occupation of the premises for which its monthly charges in terms of the disputed lease agreement as at 1 January 2021 amounted to R83 506, 98 per month in total. One further payment was made to applicants according to a screenshot attached to the opposing affidavit of respondents in the amount of R 4938.

[11] It was alleged by the respondent that since the tacit agreement as amended came into being the arrear rental which stood in the amount of R 513 741,96 was understood to be written-off.

[12] The respondents denied that the applicants are entitled to any relief by stating that the respondents have a valid and *bona fide* defence to the applicants' claim. They asked the court to exercise its discretion in their favour and to refuse summary judgment and grant leave to defend.

[13] On or about 23 November 2021, the respondents filed their notice to amend their plea which it alluded to in the opposing affidavit. No objection was made and the amended pages were filed thereafter.

[14] As a direct result of the substantially amended plea in which material admissions were withdrawn, the applicants filed a supplementary affidavit in support of their application for summary judgment. This was followed by a further supplementary affidavit resisting summary judgment on behalf of the respondents. In this supplementary affidavit a point was taken that the supplementary affidavit of the applicants were file 1 day after the prescribed 15 days. This affidavit was filed pursuant to material changes to the defences raised by respondent and will be allowed. The 15 day period mentioned in Rule 28(8) can be extended as the court can make a determination in this regard. The court is of the view that the period should be extended to allow this affidavit into evidence.

[15] The applicants had to bring a compelling application for the delivery of heads of argument by the respondents.

[16] The respondents' main defence against the summary judgment application is that no written agreement of lease was concluded by the applicants and the first respondent. Still part of this defence is then that a tacit agreement was entered into and that this tacit agreement was then amended. The respondent averred that they performed in terms of the tacit agreement and can remain in occupation of the premises as the tacit agreement has not been cancelled.

[17] The first question for decision by this court at this stage is whether this constitutes a *bona fide* defence which raises a genuine triable issue with reference to the facts placed before this court.

[18] In *NPGS Protection & Security Services CC v FirstRand Bank Ltd* 2020 (1) SA 494 (SCA) at para 14, it was held as follows:

“The ever-increasing perception that bald averments and sketchy propositions are sufficient to stave off summary judgment is misplaced and not supported by the trite general principles developed over many decades by our courts.”

[19] Considering this and other authorities, it is clear that a party who wants to avoid summary judgment does not have to set out a defence exhaustively but will have to provide sufficient particularity which should not be needlessly bald, vague or sketchy. Material facts upon which the defence is based should be mentioned. At the end of the enquiry, the court must be able to conclude that the defence is *bona fide*. It is important to note that the *bona fides* of the party deposing to the affidavit is not in question but the defence. A court has a discretion which it would have to exercise judicially and where it is not persuaded that the applicant has an unanswerable case, it must conclude that there is reasonable possibility that the defence may succeed at trial. (See: *Eclipse Systems and Another V He & She Investments (Pty) Ltd and A Related Matter 2020 (6) SA 497 (WCC)*). In this judgment the legal principles are fully stated with reference to case law. I will quote relevant portions of this judgment without reference to the cases cited in the footnotes to this judgment, except a reference to the oft-quoted judgment of *Breitenbach v Fiat 1976 (2) SA 226 (T)*.

“The relevant principles

10. It is trite that summary judgment, a procedure which was adopted into our law from English law, is aimed at allowing a plaintiff to obtain a final judgment summarily ie without a trial, in instances where a defendant does not have a legitimate defence to an action and has sought to defend it merely for the purpose of delay. It is aimed at preventing a defendant from raising a bogus or

sham defence, which is bad in law, in order to unjustifiably delay a plaintiff from obtaining what is due to it.

11. Given its summary and final nature it has frequently been described as an 'extraordinary' and stringent remedy which makes drastic inroads on a defendant's right to present its case to a Court. As a result, the Supreme Court of Appeal has warned that it is a remedy which is not intended to 'shut' a defendant out of defending a matter unless it is 'very clear indeed' that it has 'no case', and it is not to be utilized to prevent a defendant who has a 'triable issue or a sustainable defence' from having its day in Court.

12. The applications for summary judgment in this matter were brought and heard before the amendments to the relevant rule came into effect on 1 July 2019. As the rule now stands an application for summary judgment can only be brought after a defendant has filed its plea, and in doing so the plaintiff must not only verify the cause of action and the amount claimed but must, in addition, also identify any point of law which it relies upon and the facts upon which its claim is based, and must also briefly explain why the defence which has been pleaded by the defendant does not 'raise any issue' for trial. What the precise ambit and effect of the amendment is and how it differs from the previous requirements and the applicable test in summary judgment matters has not yet been definitively determined, but need not be decided by us.

13. As it stood at the time, the rule simply required the plaintiff to verify the cause of action and the amount claimed, and to state that the defendant did not have a bona fide defence and had entered an appearance to defend solely for the purposes of delay; and (just as the subrule currently provides) in order to

ward off summary judgment the defendant was required to satisfy the Court, by affidavit, that it had such a defence, by disclosing 'fully' the nature and grounds thereof and the material facts upon which it was based.

i) *Ad the defendant's duty of disclosure*

14. In the seminal decision in Breitenbach v Fiat a full bench held that the obligation on a defendant to 'fully' disclose the nature and grounds of its defence and the material facts upon which it is based should not be taken literally, for to do so would require the defendant to set out, in full, all the evidence which it intended to rely on in order to resist the plaintiff's claim at trial.

15. Thus, what a defendant can reasonably be expected to set out in its affidavit depends upon the manner in which the plaintiff's claim has been formulated and the defendant need not deal 'exhaustively' with the facts and the evidence which it relies upon in order to substantiate them.

16. All that is required is for it to set out its defence with 'sufficient particularity' and in a manner which is not 'needlessly bald, vague or sketchy'. To this end the material facts upon which the defence is based should be set out in a manner which is 'sufficiently full' and complete enough to persuade the Court that, if what is alleged is proved at trial, it would constitute a defence to the claim. If the stated material facts are equivocal, ambiguous or contradictory, or fail to canvass matters which are essential to the defence which has been raised, then the affidavit will not comply with the rule and summary judgment will be granted.

17. Importantly, the defendant is not obliged to set out what is required of it with the same exactitude as would be required of a plea, and the Court is not required to evaluate what is set out, against the standards required of a pleading.

18. Finally, the defendant is also not required to persuade the Court of the truth or correctness of the facts which are set out by it, nor, where these are disputed, that there is a 'preponderance of probability' in its favour in respect of them, and the Court is not to 'endeavour to weigh or decide' disputed factual issues.

ii) *Ad a bona fide defence*

19. As far as setting out a bona fide defence is concerned, the subrule does not require the defendant to establish its bona fides: it is the defence which must be bona fide and in this regard once again it has been held that the requirement must not be taken literally, for to do so would be to demand the impossible. As was explained in *Breitenbach*:¹

'On the face of it bona fides is a separate element relating to the state of the defendant's mind. A man may believe in perfect good faith that he has a defence, and may state honestly the facts which he relies upon, yet the law may be against him, or he may be honestly mistaken about the facts. He is bona fide, but he has no defence. Another man may make averments which, if they were true, would be an answer, in law, to the plaintiff's claim; but, to his knowledge, the averments may be false. He is not bona fide. If, therefore, the averments in the defendant's affidavit disclose a defence, the question whether the defence is bona fide or not, in the ordinary sense of that expression, will depend upon his belief as to the truth or falsity of his factual statements, and as to their legal consequences. It is difficult to see how the defendant can be expected, in his affidavit to 'satisfy the court'... not only that what he alleges is an answer to the plaintiff's claim, but also that his allegations are believed by him to be true. There is no magic whereby the veracity of an honest deponent can be made to shine out of his affidavit. It must be accepted that the sub-rule was not intended to demand the impossible. It cannot, therefore, be given its literal meaning when it requires the defendant to satisfy the Court of the bona fides of his defence. It will suffice, it seems to me, if the defendant swears to a defence, valid in law, in a manner which is not inherently and seriously unconvincing.'

¹ At 227H-228B.

21. *As to the requirement that the defendant must set out the nature of its defence Erasmus² is of the view that the defendant is required to (merely) set out the 'character or kind' (sic) of defence which it intends to raise at trial. Such an approach is consonant with an understanding that a defendant is not required to set out its defence with the same degree of exactitude as would be required in a pleading."*

[20] This court will consider the defence that no written agreement was concluded having regard to the considerations referred to above. I will now turn to the facts of this matter to consider whether a *bona fide* defence has been raised by the respondents.

[21] On 31 July 2019, whilst already in occupation of the relevant premises, the second respondent signed the written lease agreement on behalf of the first respondent. This signified, on his own version, an offer to lease made to the applicants on the terms set out in the written agreement.

[22] On 30 October 2019, the second respondent signed a document titled "*Certificate issued by a tenant who is classified as a consumer in terms of the Consumer Protection Act*". In this document it was expressly stated that the second respondent confirmed that he has read and understood the entire lease.

[23] On 18 November 2019, according to the applicants, Mr Gaddy signed the lease agreement on behalf of the applicants. This fact was previously admitted by the respondents but are now denied. In my view, this already casts a doubt over the *bona fides* of the first respondent's defence. Why will an error occur in

relation to one of the most important aspects of the case? Why was the authority of Mr Gaddy attacked?

[24] On the respondents' version they repeatedly asked for a signed copy of the lease agreement but was never provided with same. The first time they became aware that the lease agreement was in fact signed was when the lease agreement was attached to the particulars of claim in this matter. According to the respondents, a copy of the lease agreement was physically provided to the respondents during or about July 2020 but still was not signed. It was stated that the respondents did not attach a copy of this unsigned lease agreement to their opposing affidavit as this agreement could not be located at this time.

[25] In my view, this statement is bald, vague and sketchy. If the respondents were so keen to obtain a copy of the written lease agreement which was delivered to them, one would have expected that they would be able to locate such copy. All which was said in the affidavit was that it cannot be located. No explanation has been provided as to what could have happened with this copy, what steps have been taken to locate same and why this copy has disappeared into thin air. Moreover, if a copy was delivered, it was highly improbable that the unsigned copy would have been presented.

[26] The time when the lease agreement was signed is of importance when the respondents' defence is considered in relation to a reasonable period during which the written lease agreement had to be signed by and on behalf of the applicants to constitute a valid lease agreement.

[27] The defence that it was not signed on 18 November 2019 is based on mere speculation and inference. Despite the fact that the agreement attached to the

particulars of claim indicated that it was signed on 18 November 2019 the bald statement is made that it was never signed on behalf of the landlord. It is stated to be an afterthought just because a signed copy was not delivered to the respondents. It is stated that it “*appears that the landlord (the Plaintiff) for whatever reason was not prepared to accept the document I have signed on 31 July 2019*”. This assumption flies in the face of what in fact happened. The applicants sent invoices in line with the terms of the written lease agreement and respondent made payments according to its tenor.

[28] In considering the *bona fide* of the respondents, the court cannot leave out of the equation the fact that it was previously admitted that the agreement was signed on 18 November 2019. The allegation on behalf of the respondents that the lease agreement was only signed during or about the time that the summons was issued is based on speculation and no, or insufficient, particularity was provided to come to this conclusion.

[29] The defence raised must also be considered in light of what the respondents aver the contractual relationship between the parties entail. To explain their right of occupation, which forms part of the defence, they allege a tacit agreement without providing any particularity as to the terms thereof. What was the terms of the tacit agreement pertaining to duration, rental payable and payment for services? When and how much was paid? The schedule and invoices referred to by the respondents were not attached. These documents would have provided a clearer picture as to what was in fact happening. Add to this the allegation that this alleged tacit agreement was amended during about July 2020 and that first respondent had to pay 8% on turn over but only made

two payments in the total amount of R 7400 thereafter. Nowhere was it stated what the turnover was and how the rental was calculated. On the respondents' own version the first respondent was in arrears of R283 271, 08 as at 22 November 2019. Such statement of account was attached to the opposing affidavit. This was the situation before the effects of the Covid 19 pandemic. The allegation that the arrears of more than R500 000 was simply written-off by the applicants is another bald, vague and sketchy allegation which undermines any finding of a *bona fide* defence. It was not stated on what basis could it have been "*understood*" that the arrears would be written-off.

[30] The alleged oral agreement allegedly supported by the WhatsApp correspondence is in itself not supported by sufficient particularity and it remains needlessly bald, vague and sketchy. This is an important part of the defence raised by the first respondent. Nowhere in the WhatsApp messages between Mr Raggett and the third respondent is it stated that this oral agreement would supersede existing agreements. It was not stated for how long this variation was going to last. The allegation of the respondents that it remained in place indefinitely is in itself vague and unexplained. In my view, it amounted to an indulgence which in terms of the written lease agreement was not binding of the applicants. The terms of the written lease agreement and the amount of rental payable in terms thereof remained unaffected and applicable.

[31] Lastly, the respondents wanted to rely on a lack of water and air-conditioning to excuse them from payment. Again it is not stated when this occurred and for how long. It is just a bald statement which lacked sufficient particularity. Moreover, this cannot be a defence in terms of the written lease agreement as

the obligation of the first respondent to make payment of the rent was not a reciprocal obligation of the applicants to grant beneficial occupation of the premises to the first respondent. (See: *Tudor Hotel Brasserie & Bar (Pty) Ltd (793/2017 ZASCA 111 at para 11 and 14)*)

[32] In my view the absence of any tangible evidence to sustain the respondents' allegations reveals the *mala fides* of the defences.

[33] In my view, the defence that the written lease agreement was not signed by and on behalf of the applicants on 18 November 2019 is not *bona fide*. If this defence is not *bona fide* the court must accept that the contractual relationship between the parties was governed by the written lease agreement. The applicant accepted the offer of the first respondent within a reasonable period after the respondents signed the agreement on 19 July 2019. In my view, the defence raised that the written lease agreement was never concluded as it lapsed because it was not signed within a reasonable period does not constitute a *bona fide* defence against the claim of the applicants.

[34] However, even if the signed lease agreement was not provided to the respondents, this does not mean that there was not acceptance and no binding lease agreement on the terms as contained in the written lease agreement.

[35] In *Pillay and Another v Shaik and others* 2009 (4) SA 74 (SCA), the SCA had occasion to comment on where an acceptance does not take place in a prescribed mode. Farlam JA held :

"This raises the question as to whether the doctrine of quasi-mutual assent can be applied in circumstances where acceptance does not take place in accordance with a prescribed mode but the conduct of

the offeree is such as to induce a reasonable belief on the part of the offeror that the offer has been duly accepted according to the prescribed mode. Viewed in the light of basic principle, the question must surely be answered in the affirmative because the considerations underlying the application of the reliance theory apply as strongly in a case such as the present as they do in cases where no mode of acceptance is prescribed and the misrepresentation by the offeree relates solely to the fact that there is consensus.”

[36] It can be found that the first respondent did not reasonably believe that his offer had not been accepted in circumstances where the first respondent took possession of the leased premises, paid the rental contemplated by the lease agreement and further stated in its initial plea that *“the first defendant could only be liable in terms of the lease agreement from the date of entering into it on 18 November 2019, alternatively from the rent obligation date of 1 September 2019”*.

[37] I am in agreement with the argument advanced on behalf of the applicants that the court must conclude that the respondents considered this offer accepted it and occupied the lease premises according to the offer. If the first respondent did not believe the offer had been accepted, it begs the question why, on his own version, he was asking for a copy of the signed agreement. On acceptance that there exist no *bona fide* defence which renders the written lease agreement not applicable the defences raised of an oral variation of this agreement cannot be legally sustained as the written lease agreement contains a non-variation clause, unless in writing.

[38] In my view, the applicants made proper demand for performance, the first respondent remained in default and the written lease agreement was cancelled

when summons was issued. The first respondent remains in unlawful occupation and stands to be evicted from the premises.

[39] On 31 July 2019 the second and third respondents executed Deeds of Suretyships pursuant to which they bound themselves as surety and co-principle debtors with the first respondent. The court found that the written lease agreement did not lapse and in fact regulated the relationship between the parties. This would render the suretyships enforceable as the second and third respondents stood as sureties and co-principle debtors with the first respondent:-

“for the due and punctual payment and performance by the debtor of all debts (including the payment of damages) and obligations which may now be owing and which may hereafter be owing or which may arise, out of the TENANT’s occupation, use, enjoyment and/or possession of the premises described below or otherwise in terms of or in respect of an agreement of lease entered into or about to be entered into the LANDLORD and the TENANT (including any extensions, renewal or tacit relocation thereof)...”

[40] The defence raised by the respondents to avoid liability in terms of the suretyships is premised on their version of a tacit and/or oral agreement which the court found not constituting a *bona fide* defence. Consequently, the second and third respondents are bound by the suretyships.

[41] The outstanding debt in terms of the written agreement stood at R 1 010 091.01 as at 1 January 2021 as per the attachment to the applicant’s particulars of claim “POC 3”. Payments in the amount of R 7 400 was made by or on behalf of the first respondent which is not reflected on the attachment.

This amount stands to be deducted from the R 1 010 091,01 which leaves an amount of R 1 002 691,01. The applicants will be entitled to summary judgment in this amount.

[42] As far as holding over damages are concerned the respondents raised the following defence and placed reliance on the decision in *Hyprop Inv Ltd v NCS Carriers & Forwarding CC 2013 (4) SA 607 (GSJ)*:

42.1 The measure of damages is the market related rental of the premises. It is only in the absence of evidence to the contrary that the rental value of the premises is assumed to be the rental paid under the lease.

42.2 Respondent has place evidence before court to show that the rental at the end of the term of the lease was no longer market related. This was a legitimate challenge to the rental provided in the lease at the time of cancellation. This rendered the claim illiquid.

[43] The evidence place before court was that the Covid-19 pandemic has had a dramatic impact on the commercial rental market and retail industry. There exists an oversupply of retail premises and many shopping centres, including Sandton City Shopping Centre, are suffering from low occupancy rates. The evidence is not supported by fact but in the exercise of the court's discretion the court will place reliance thereon not to grant summary judgment pertaining to holding-over damages. There is also this further payment which was allegedly made by the respondents on or about 8 February 2021 in the amount of R4938,00 which may have an effect on the figure claimed as holding-over damages.

[44] This evidence cannot at this summary judgment stage be rejected and it cannot be deemed that the premises could still be let at a rate of R 48 150.00 per month.

[45] Thus, the claim for holding-over damages is not a liquid claim and is not susceptible to summary judgment.

[46] The following order is made:

46.1 Summary judgment is granted against the First, Second and Third Respondents, jointly and severally, the one paying the other to be absolved for payment in the sum of R 1 002 691,01 with interest thereon at the rate of 7% per annum, *a tempore morae* to date of final payment;

46.2 The Respondents are ejected from the premises described as Shop 119, Nelson Mandela Square at Sandton City;

46.3 The Respondents are ordered to pay, jointly and severally, the one paying the other to be absolved the cost of suit on the scale as between attorney and client;

46.4 Leave to defend the claim for holding-over damages is granted to the Respondents.

**RÉAN STRYDOM
JUDGE OF THE HIGH COURT
GAUTENG DIVISION
JOHANNESBURG**

Date of Hearing: 27 July 2022

Date of Judgment: 14 September 2022

APPEARANCES

On behalf of the Applicant: Adv. J M Hoffman

On behalf of the Respondent: Adv. L Hollander