

aREPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NUMBER: 2023-008709

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

.....
B.C. WANLESS
March 2024

DATE: 11

In the matter between:

**ANNIE JEANETTA DE JONGH, HENDRIK LOURENS DE JONGH AND HERMAN KRIEL
NNO**

(Trustees of the De Jongh Family Trust)

Applicant

and

PHILIPPIDES, ANDREW
HARPER, LEIGH DOROTHY
LEIGH HARPUR INC
Respondent

First Respondent
Second Respondent
Third

This judgment was handed down electronically by circulation to the parties' and/or the parties' representatives by email and by being uploaded to Case Lines. The date and time for hand-down is deemed to be 10h00 on 11 March 2024.

JUDGMENT (LEAVE TO APPEAL)

WANLESS J

Introduction

- [1] In this application the Applicant, namely the De Jongh Family Trust (*“the Applicant”*) seeks leave to appeal, either to the Supreme Court of Appeal (“SCA”) or the Full Court of this Division, against the judgment and order of this Court granted on 14 November 2023. The application is opposed by the First Respondent (*“the First Respondent”*).
- [2] The correct principles of law to be applied in such an application in terms of section 17 of the *Superior Court Act 10 of 2013* (*“the Act”*) are trite. This brief judgment (as necessitated by the very nature of the application itself) will not be burdened unnecessarily by setting out same and referring to the authorities dealing therewith.. Leave to appeal should only be granted if this Court is satisfied that an appeal court would (not could) come to a different finding than it did in its judgment and would grant a different order.

Grounds of appeal

- [3] These grounds are clearly set out in the *“Applicant’s Application for Leave to Appeal”*. Once again, in order not to burden this judgment unnecessarily, those grounds will not be set out herein. To do so would serve little or no purpose.
- [4] What is clearly apparent therefrom (this was also carried forward in the Applicant’s Heads of Argument filed prior to the hearing of this application and during the course of argument before this Court at the hearing of the application) is that the Applicant contends that the interpretation arrived at by this Court in respect of certain clauses of the written agreement of sale entered into between the parties (*“the agreement”*) was incorrect. On that basis, it was submitted by the Applicant that another Court would place a different interpretation upon the relevant clauses which would result in that court coming to a different finding, thereby setting aside the order granted by this Court and replacing it with an order effectively granting the Applicant the relief it sought in the Opposed Motion heard by this Court.
- [5] More particularly, it is the Applicant’s submission that upon a proper interpretation of the agreement this Court was incorrect and that a court of appeal would interpret the

agreement differently (correctly) and find that when the Applicant paid an amount to the appointed conveyancer in terms of the agreement, this payment was not made to “secure” the balance of the purchase price (as held by this Court) but was made to “pay” the balance of the purchase price. It was further submitted to this Court, on behalf of the Applicant during the course of argument at the hearing of this application, that the strength of the Applicant’s application for leave to appeal also lay in the fact that this matter involves the interpretation of an agreement. Following therefrom, it was submitted by Counsel for the Applicant that *“the Law Reports are littered with successful appeals against statutory and contractual interpretation and that the iterative process of interpretation is fraught with difficulties”*.

Discussion.

- [6] Whilst (broadly speaking) the matter involves the interpretation of the agreement and the various grounds of appeal (as dealt with above) all ultimately depend upon the manner of that interpretation, this Court, in considering this application, has nevertheless had careful regard to each of those grounds. Having done so, this Court is of the opinion that there is nothing in either the manner in which this Court carried out its interpretation of the agreement or in that interpretation itself, that would cause another Court to interfere with the findings made by this Court.
- [7] As to the submission made on behalf of the Applicant that in light of the fact that this matter is essentially one of interpretation, leave to appeal should be more readily granted, this Court cannot agree therewith. In this regard, this Court cannot accept that this is a general principle of our law. In addition thereto, this Court finds that the authority relied upon by the Applicant does not support such a proposition. Further, it is the opinion of this Court that the very fact that this matter involves interpretation of a contract, provided this Court has properly applied the correct principles of interpretation and not arrived at an interpretation which is either non-sensical or does not give the agreement true business efficacy, then it is highly unlikely that a court of appeal would interfere with the decision of this Court; set the findings of this Court aside and replace same with its own interpretation. To do so, would not be in accordance with our general principles in respect of appeal, in that an appeal court will

only do so if it is clear that the court *a quo* misdirected itself in a material manner or was clearly wrong in reaching the decision that it did.

[8] Further, with regard to the submission that the Law Reports are “*littered*” with examples where courts of appeal have interfered in respect of matters involving interpretation, it would seem to this Court that the authorities equally deal with a number of instances where such courts are reluctant and have declined to do so.

[9] Finally on this point, this Court must agree with the submissions made on behalf of the First Respondent that this Court, in coming to the findings that it did, properly considered and applied the general principles applicable to the interpretation of contracts to the largely common cause facts. Certainly, there is nothing in that consideration or application that can support a finding that another court would come to a different conclusion based on the same principles of law and findings of fact.

Conclusion

[10] In light of the foregoing, this application for leave to appeal must be dismissed. This Court may also add that in making such an order it further bears in mind the oft repeated narrative of the courts of appeal that the court *a quo* should be slow to grant applications for leave to appeal in matters where the prospects of success are not good. This avoids the unnecessary burdening of the rolls of the appeal courts.

[11] As to the issue of costs, there are no unusual circumstances pertaining to this matter that would cause this Court, in the exercise of its general discretion pertaining to the issue of costs, to deviate from the trite principle that costs should normally follow the result. In the premises, the Applicant should be ordered to pay the costs of the application for leave to appeal.

Order

[12] This Court makes the following order:

1. The application for leave to appeal is dismissed.

2. The Applicant is ordered to pay the costs of this application.

**B.C. WANLESS
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION
JOHANNESBURG**

Heard: 1 February 2024
Judgment: 11 March 2024

Appearances

For Applicant: Adv. E. L. Theron SC
Adv. J. G. Botha
Instructed by: Postma Attorneys

For Respondent: Adv. M. Smit
Instructed by: Martin Pike Incorporated
% Vos Attorneys