



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

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| <p>DELETE WHICHEVER IS NOT APPLICABLE (1) REPORTABLE: YES/NO (2) OF INTEREST TO OTHER JUDGES: YES/NO (3) REVISED DATE: 18 August 2022 SIGNATURE:.....</p> |
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Case No. 30310/2019

In the matter between:

JUKES RESTAURANT (PTY) LTD

PLAINTIFF

And

VARSITY BAKERY (PTY) LTD

DEFENDANT

JUDGMENT

MILLAR J

1. A dispute arose between the plaintiff and defendant relating to the date of commencement of a lease of certain immovable property which the plaintiff as tenant had leased from the defendant as landlord. The plaintiff instituted action against the defendant for a declaratory order to the effect that the lease, the duration of which was 5 years, only commenced on 19 July 2017.
2. The defendant for its part takes the view that the lease commenced on 19 July 2016 and in defending against the order sought by the plaintiff, counter-claimed for cancellation of the lease agreement, eviction of the plaintiff and damages for non-payment of rental.
3. The action was set down for hearing on 11 August 2022. When the matter was called, I was informed by counsel for the plaintiff that the plaintiff would be seeking a postponement of the trial. The application for postponement was made from the bar and was predicated on what was alleged to have been an amendment to the defendant's particulars of claim which had rendered them excipiable.
4. The defendant for its part opposed the application for postponement. The defendant took the view that the plaintiff sought the postponement opportunistically because the amendment to the defendant's particulars of claim had been solely in respect of the quantum of damages of the counter-claim – borne out of the fact that the notice of exception had been delivered during the afternoon on 10 August 2022, the day before the trial was due to commence.
5. It was the case for the defendant that in any event, it was entitled to an order for the eviction of the plaintiff as it was common cause between the parties, having been agreed and recorded at a pre-trial conference on 3 August 2022 that in any event and even on the version of the plaintiff, the lease agreement between the plaintiff and the defendant had come to an end by the effluxion of time during July 2022. There was thus no lawful basis for the plaintiff to continue in occupation of the premises.

6. As happens often in the course of litigation, the matter stood down so that the respective parties could take instructions. The position of the plaintiff's legal representatives was made more difficult as they were unable to contact their client who I was informed was not presently in the Republic but in the United Kingdom. By agreement the trial stood down to the next day.
7. When the matter was recalled, the plaintiff persisted in seeking the postponement and the defendant opposing the postponement and seeking at the very least the eviction of the plaintiff from the premises.
8. Having considered the arguments advanced, I took the view that there was no basis to postpone the matter in its entirety. While the eviction claim could readily be decided based on what was common cause between the parties, the other issues go to the heart of the defendant's counterclaim for damages – the date of commencement of the lease, the date of termination of the lease and any damages to which the defendant could prove. This aspect was clearly not ripe for hearing.
9. In the circumstances, I refused the postponement, granted an order that the plaintiff vacate the premises within 90 days and that the remainder of the issues sought by the respective parties be postponed *sine die*. Since all the other issues have yet to be ventilated, and are substantive, it was appropriate that the costs be ordered to be costs in the cause.
10. A copy of the order made by me, marked "X" as amended is annexed hereto.

A MILLAR
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON: 11 & 12 AUGUST 2022

JUDGMENT DELIVERED ON: 12 AUGUST 2022

REASONS: 18 AUGUST 2022

COUNSEL FOR THE PLAINTIFF: ADV W GIBBS

INSTRUCTED BY: SD NEL ATTORNEYS INC

REFERENCE: MR H UYS

COUNSEL FOR THE DEFENDANT: ADV M LOUW

INSTRUCTED BY: BARNARD INC ATTORNEYS

REFERENCE: MR W HERBST