IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: 25461/2021

- REPORTABLE: **NO**
- OF INTEREST TO OTHER JUDGES: **NO**
- REVISED

6 June 2022
DATE

L.B. VUMA

Heard on: 9 May 2022
Delivered on: 6 June 2022

In the matter between:

SALENTIAS TRAVEL AND HOSPITALITY CC **Applicant**
***t/a* VAN HOBBS DRY CLEANERS**

and

DEY STREET PROPERTIES (PTY) LTD **Respondent**

In re

DEY STREET PROPERTIES (PTY) LTD **Applicant**

and

SALENTIAS TRAVEL AND HOSPITALITY CC **Respondent**
***t/a* VAN HOBBS DRY CLEANERS**

JUDGMENT

VUMA, AJ

[1] The applicant seeks leave to appeal to the Full bench of the Gauteng Division, Pretoria, *alternatively* the Supreme Court against the whole judgment and order, including the costs order granted by me, as handed down on 22 March 2022, on the grounds that I erred both in fact and in law and in one or more of the respects to appear below-herein.

[2] It is trite that an application for leave to appeal a decision from a single Judge of the High Court is regulated by Rule 49 of the Uniform Rules of Court. The substantive law pertaining to application for leave to appeal is dealt with in section 17 of the Superior Courts Act 10 of 2013.

[3] The grounds of appeal are found in the applicant's Application for Leave to Appeal.

[4] Of note the applicant argues, *inter alia*, the following points:

4.1 That the Judge erred by not finding that a valid lease agreement is currently in existence between the applicant and the respondent; and

4.2 That the Judge erred in not finding that there is a clear dispute of fact *in re inter alia*, ownership of the property/ shop in dispute;

4.3 That the Judge erred by not finding that the respondent repudiated the lapsed lease agreement by not concluding a new lease agreement with it and thus making it not necessary for the applicant to perform thereafter.

[5] The respondent opposes the application on the basis that the applicant's grounds of appeal, *inter alia*, that the Court erred in finding firstly, that there was no extant lease agreement between the parties; and secondly, that there is no material dispute of fact raised on the papers, are mutually destructive propositions.

[6] The respondent contends that either by implication or expressly the applicant accepts that it bore the onus to prove its right to occupy the shop thus entitling it to a right to retain possession of the shop. *In re* the applicant's contention of a dispute of fact, the applicant argues that such contention in itself is a muted concession by the applicant that it has not passed the onus, hence its hope that through the Plascon-Evans Rule, its version should be accepted. The respondent thus argues that the applicant's reliance of the subsistence of a lease agreement between the parties by solely relying on extracts from its annexures to its various affidavits is impermissible in law.

[7] The respondent thus argues that there is no reasonable prospect that another court would come to a different conclusion from that of this Court.

[8] The principles governing the question whether leave to appeal should be granted are well established in our law. Such principles have their origin in the common law and they entail a determination as to whether reasonable prospects of success exist that another court, considering the same facts and the law, may arrive to a different conclusion to that of the court whose judgment is being impugned. The principles now find expression in section 17 of the Superior Court Act 10 of 2013

[9] It has also been generally accepted that the use of the word "would" in section 17 of the Superior Court Act added a further consideration that the bar for the test had been raised with regards to the merits of the proposed leave to appeal before relief can be granted. The Superior Court Act widened the scope in which leave to appeal may be granted to include a determination of whether "there is some compelling reason why the appeal should be heard."

[10] In my view, considering both the parties' arguments and the impugned judgment, the applicant has failed to make out a case for leave to appeal. Neither has it shown on what basis there are prospects of success on appeal or that there are any compelling reasons why the appeal should be heard. Furthermore, I am not persuaded that another court would come to a different conclusion.

[11] It is for the above reasons that I dismissed the application for leave to appeal with costs.

_____

Livhuwani Vuma
Acting Judge
Gauteng Division, Pretoria

ALA Heard on: 9 May 2022

ALA Judgment handed down on: 6 June 2022

Appearances

For 1st and 2nd Applicant: Adv. P.R. Du Toit

Instructed by: Rudman and Associates Inc.

For Respondent: Adv. A.W. Pullinger

Instructed by: Millers Attorneys