



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

CASE NO: 2809/2021

DELETE WHICHEVER IS NOT APPLICABLE

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

1/2/2023
.....
DATE

[Signature]
.....
SIGNATURE

In the matter between:

STRATLAW (PTY) LTD

Applicant

and

WOUTER VAN HOVEN N.O.

First Respondent

SUZANNE VAN HOVEN N.O.

Second Respondent

JUDGMENT DELIVERED ON 1 FEBRUARY 2023

CP WESLEY AJ

1. The applicant seeks an order against the respondents, as trustees of the Wouter and Suzanne van Hoven Trust, for payment of R262 163.20 together with interest and costs. The basis for the applicant's claim is an oral contract that the applicant alleges was concluded during 2020 between the parties, in terms of which the foresaid trust would compensate the applicant for improvements made by the applicant to a property that the applicant leased from the trust, which it was about to vacate. There is conflicting evidence on the papers as to the exact date on which the oral contract was purportedly concluded.
2. In their defence the respondents deny that the oral contract was concluded at all.
3. At the outset of the hearing the applicant sought the court's condonation for the filing of a supplementary founding affidavit. The supplementary founding affidavit addressed the date on which the oral contract would have been concluded. The application was made by way of a written interlocutory application, together with the intended supplementary founding affidavit. The respondents opposed the interlocutory application, and filed an opposing affidavit. In the opposing affidavit the respondents addressed the substantive issues and facts raised in the applicant's interlocutory application and in the intended supplementary founding affidavit. I permitted argument to be made on the basis that both the

supplementary founding affidavit and the opposing affidavit were provisionally before the court in evidence.

4. In the exercise of my discretion I grant condonation for the filing of the applicant's supplementary founding affidavit, and I accept the respondents' opposing affidavit into evidence as their substantive response thereto. The reason for applicant's supplementary founding affidavit was satisfactorily explained and the respondents suffer no real prejudice if the affidavit is accepted into evidence. Ultimately, these extra affidavits do not take the case for either party much further.
5. There is, in the circumstances, a dispute of fact on the papers concerning whether or not the oral contract on which the applicant relies was concluded between the parties. The dispute of fact is, in my view, genuine and the resolution thereof is material to the determination of the application.¹
6. I am unable to resolve this dispute of fact on the papers. I am also not inclined to dismiss the application by reason of the dispute of fact, notwithstanding that the applicant is persisting with the application in the face of the dispute of fact.
7. In my view, having regard to Uniform Rule 6(5)(g), the application falls to be referred to oral evidence with a view to resolving the dispute of fact whether or

¹ *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* 2000 (1) SA 1 (CC) at para 235.

not the oral contract on which the applicant relies was concluded between the parties. Upon making that determination the court that is seized with the matter will decide the outcome of the application.

8. In the result I make the following order:

- 8.1 The application is postponed to a date to be determined by the Registrar of the Gauteng Division, Pretoria, for the hearing of oral evidence in terms of Uniform Rule 6(5)(g) on the issue that is set out in paragraph 8.2 below.
- 8.2 The issue upon which oral evidence is to be led at the aforesaid hearing is whether or not the oral contract on which the applicant relies was concluded between the parties, as alleged by the applicant in its founding papers.
- 8.3 Oral evidence shall be admitted from any person who has already deposed to an affidavit concerning the merits of the application.
- 8.4 Nothing in this order shall preclude the Court that hears the oral evidence from permitting, on such terms as to it seems meet, the evidence of any other witness to be admitted.

- 8.5 The costs of the application are reserved for determination by the Court that hears the postponed application upon the issuing of a final order.



CP WESLEY

ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances

Counsel for applicant: Adv B H Steyn

Attorney for applicant: Deneys Zeederberg Attorneys

Counsel for respondents: Adv M J Kleyn

Attorney for respondents: Cavanagh & Ritchards Attorneys

Date heard: 26 January 2023

Date of Judgment: 1 February 2023