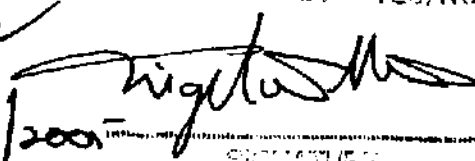


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IN THE HIGH COURT OF SOUTH AFRICA(WITWATERSRAND LOCAL DIVISION)JOHANNESBURG

CASE NO: 11765/05

2005-09-14

DO NOT SIGN IF NOT APPLICABLE	
YES	YES/NO
	
DATE	SIGNATURE
20/11/2005	

In the matter between

RENTWORKS AFRICA

Applicant

and

INNOVENT RENTAL &
ASSET MANAGEMENT SOLUTIONS (PTY) LIMITED

Respondent

J U D G M E N T

WILLIS, J: The applicants have approached the court seeking the following orders:

1. An interdict restraining the first and/or second and/or third respondent from reproducing the Innovent master rental agreement, annexure G.7 to the founding affidavit, by Glen Goodall, and thereby infringing the copyright of the applicants in the Rentworks Africa master rental agreement, annexure G.5 to the founding affidavit, by Mr Goodall, alternatively the
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copyright of the second applicant in the Rentworks Australia master rental agreement, annexure G.3 to the founding affidavit, by Mr Goodall.

2. An interdict restraining the first and/or second and/or third respondent from entering into or otherwise concluding rental finance deals on the basis of the said Innovent master rental agreement, and thereby infringing the copyright of the applicants in the Rentworks Africa master rental agreement, alternatively the copyright of the second applicant in the Rentworks Australia master rental agreement; alternatively thereby competing unlawfully with the first applicant.
3. And order that the first respondent jointly and severally with the second and third respondent, the one paying the others to be absolved, pay to the first applicant an amount calculated to be the reasonable royalty contemplated by section 24(1) A of the Copyright Act number 98 of 1978.
4. An order directing an inquiry to be held, with such procedures as the court considers necessary, for the processes of determining the amounts of such royalty as contemplated by section 24(1) B of the Copyright Act.
5. An order that the respondents jointly and severally, the one paying the others to be absolved, pay the costs of this application including the costs of counsel.
6. Further and/or alternative relief.

Counsel for the parties had no substantive disagreement with each other concerning the applicable legal principles as set out in the

Copyright Act and such well-known cases such as *Klep Valves (Pty) Limited v Saunders Valve Company Limited* 1987 (2) SA 1 (A), *Galago Publishers (Pty) Limited and Others v Erasmus* 1989 (1) SA 276 (A), *Payen Components South Africa Limited v Bovic Gaskets CC* 1995 (4) SA 441 (A).

It is also common cause that there are substantial similarities between the various clauses appearing in the applicant's master rental agreement and the respondent's master rental agreement. These have been very conveniently set out in an annexure G.10 to the applicant's founding papers. Indeed, at a glance, it is clearly apparent that such substantial similarities exist. The respondent's answering affidavit contains the following:

"I deny that the respondents have plagiarised the agreement of the applicants. In preparing its agreement the respondent made use of copies of the following agreements:

1. A Fintech agreement;
 2. A H. P. Financial Services agreement;
 3. A Bastion Financial Services agreement;
 4. An In Touch agreement;
 5. Sasfin Bank Limited agreement;
 6. I.B.M. Global finance agreements;
 7. A copy of the South African agreement upon which the applicants rely (it is common cause that this is the applicant's master rental agreement);
 8. Annexed marked "D.G.K. 3-7" copies of some of the aforesaid agreements respectively;
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9. It will be seen that those clauses upon which the applicants rely are certainly not unique to it;
10. The respondent also claim input from the banks which provided with the funding facilities as well as from its own legal advisors."

The respondent ends its answering affidavit with the following ringing phrases:

"For the sake of completeness, I deny that those affidavits, as deposed to, are sufficient to prove copyright infringement. For Mr Peach to contend that he drafted the agreement, without any reference to other pre-existing material is so improbable, it must be rejected. I have been advised it is common practice for attorneys the world over to draft agreements based substantially on precedent banks built up over time."

The similarities in the schedule G.10 notwithstanding, the following fact glares at one in considering this particular case: one is not dealing with novels or scientific or even fictional works, but one is dealing with legal documents. As every lawyer knows, precedents are the life blood of lawyers. Without precedents, all lawyers are likely to drown in a sea of confusion and/or omission. That there should be substantial similarities between the documents in question does not compel one to make the same conclusions that one would make if, for example, similar wording appeared in two novels or indeed, as I have already suggested, other written works.

It seems to me that one cannot simply brush aside that which has been said by the respondents, namely the suggestion, if not the

direct assertion, that such similarities as may appear in the documents derive from precedents that would be common as between both the applicants and the respondents.

On the other hand, the case made out by the applicant is not so clearly without substance that the application can be dismissed without further ado. Counsel for both parties agreed that as very much second prize to either the orders being granted or dismissed (as the respective cases may be) the matter should be referred to trial. I agree that the matter should be referred to trial.

There then arises the question of whether I should make an interim order. Having regard to the circumstances of this particular case it seems to me to be clear that in the event that the respondents have reached the applicant's copyright there would be an ordinary and sufficient remedy available, namely that the equivalent of a royalty be paid by the respondents to the applicant and certainly the balance of convenience does not favour the applicant with regard to making an interim order of the kind sought for example in prayer 2 of the notice of motion. Accordingly the following order is made:

1. The dispute between the parties is referred to trial.
 2. The notice of motion and supporting affidavits of the applicant are to stand in lieu of a simple summons.
 3. The applicants are to file their declaration, if any, by no later than 14 October 2005.
 4. After the filing of a declaration by the applicants the ordinary rules of the court are to apply.
 5. The costs of this application are to be costs in the trial action.
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JUDGMENT

DATE OF JUDGMENT: 2005-09-14

ON BEHALF OF APPLICANT: ADV O. SALMON

ON BEHALF OF RESPONDENT: ADV M. RIP
