

LOM Business Solutions t/a Set LK Transcribers/aj

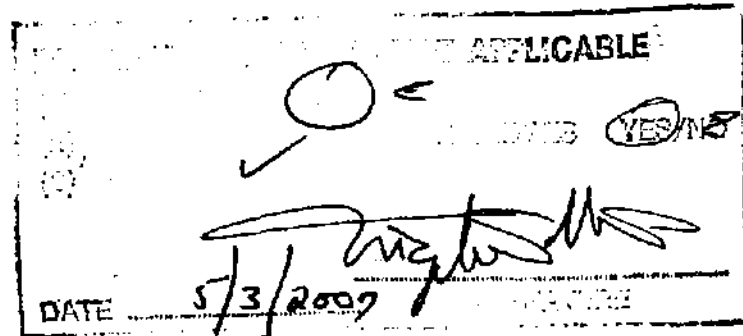
IN THE HIGH COURT OF SOUTH AFRICA

(WITWATERSRAND LOCAL DIVISION)

JOHANNESBURG

CASE NO: 26388/06

2007-02-16



10 In the matter between

VINELLA INVESTMENTS (PTY) LTD & ANOTHER

1st Applicant

RIVERBEND TRADE AND INVEST 4 (PTY) LTD

2nd Applicant

and

BARNEY'S PAINT CENTRE (PTY) LTD

Respondent

### JUDGMENT

20 WILLIS, J: This is an application for the eviction of a commercial tenant. It is clear from the voluminous papers before me that there is an acrimonious relationship in existence between the parties and, without putting too fine a point on it, the applicants are only too keen to "get rid of" the respondent and equally the respondent is anxious to take every point that it can and extract every ounce of flesh that it can obtain. One is dealing with a cat and mouse game in which both the cats and the mouse are rather large and ferocious.

This matter has an acrimonious history as I have already indicated and a dispute relating to an eviction sought earlier has already been referred to trial in Pretoria. In the voluminous papers before me there are supplementary affidavits which have been admitted from both sides. In my view the respondent can be criticised for not taking the Court into its confidence more fully and more completely than it has until the last moment when the shoe began to pinch.

The fact of the matter remains that the respondent has indeed been paying a substantial amount of money which it submits is the  
10 rental due. There are, it would seem, although imperfectly set out, disputes of fact relating to a balance brought forward and to ancillary items which the applicants are entitled to charge in terms of the lease agreement. Mr Hollander who appears for the applicants prevailed on me repeatedly to apply the well known test of *Plascon Evans* and submitted that this would result in a robust approach with the applicants obtaining the relief which they have sought.

Mr Wagener for the respondent submitted that there was a dispute of fact that should have been anticipated by the applicants and accordingly the application should be dismissed. Nevertheless having  
20 regard to the well known principles in *Plascon Evans* I do not believe I can find in this hectic dispute between the parties that there is no *bona fide* or genuine dispute between the parties. Accordingly it seems to me that it would be inappropriate to grant the relief sought by the applicants and also inappropriate especially in view of the way in which the respondent as a skilful little mouse has been scurrying around the

farmyard for me to dismiss the application. In any event the real ambit of the dispute is a narrow one. It relates to

- 1 the cancellation of the agreement;
- 2 whether the respondents have been in breach with regard to signage and closing hours;
- 3 and finally a dispute relating to the quantum of the balance brought forward.

All of these can in my view be relatively simply resolved by referring the matter to oral evidence.

- 10 I indicated to counsel for both parties the likely result of my judgment and asked them that if I were to refer the matter to oral evidence they prepare a draft order which would avoid needless complications when the matter is indeed heard. They have drafted an order and accordingly an order is made in terms of the draft marked X.

COUNSEL FOR THE APPLICANT:	ADV L HOLLANDER
ATTORNEYS FOR THE APPLICANT:	GIDEON PRETORIUS INC
COUNSEL FOR THE RESPONDENT:	S WAGENER
ATTORNEYS FOR THE RESPONDENT:	KOEKEMOER
20 DATE OF HEARING:	14 & 16 FEBRUARY 2007
DATE OF JUDGMENT:	16 FEBRUARY 2007.