

IN THE HIGH COURT OF SOUTH AFRICA

(TRANSVAALSE PROVISIONAL DIVISION)

NOT REPORTABLE

Case number:

19804/2007

Date: 2 June 2008

In the matter between:

LEJAY MINING SUPPLIES BK

Applicant

and

GERT NICHOLAS BRITS

Respondent

JUDGMENT

PRETORIUS J.

In this application for rescission of the default judgment, granted on 22 June 2007, the applicant requests the following relief:

- “1. *Condoning the applicant’s non-compliance with the provisions of rule 31 (2) (b) of the Rules of Court.*
2. *Rescinding the judgement under case number 19804/07 granted on 22 June 2007.*
3. *Directing the respondent to pay costs of this application only in the event and to the extent that this application is opposed. Save as aforesaid, directing the applicant to pay the costs of this application.”*

This is an application in terms of rule 31 (2) b of the Uniform Rules of Court. The respondent opposes the application.

Summons was served on 24 May 2007 on the registered address of the applicant, at 8 Etna street, Florida Hills, Roodepoort. This summons did not come to the applicant’s representative’s attention as the business had moved during March 2007. The property at 8 Etna street, Florida Hills is a house which is occupied by mr Preller and ms le Clos. They had no knowledge that the sheriff had attached the summons to the front gate of the premises. The court cannot find that the actions of the applicant’s member were wilful or *mala fide* in not

changing the address at the registrar of companies. He was negligent in not doing so. The fact that he did not contact the sheriff, after becoming aware that the Sheriff was looking for him cannot be construed *as mala fide*. He is a layman and did not realize he should contact the sheriff. He did not try and dodge service of the summons.

Applicant sets out a defence to the action. This court has to decide whether it is a *bona fide* defence. The applicant and respondent had been in a business relationship since July 2005. The respondent was unable to secure a vendor number from B & S Platinum and First Platinum to enable it to supply the mine with certain goods. The applicant had a vendor number and an agreement was reached between the applicant and respondent that the applicant would obtain the order from B & S Platinum and the respondent would manufacture conveyor brackets, which he would deliver to the applicant, who in his turn would deliver it to B & S Platinum. As soon as B & S Platinum paid the applicant, the applicant would pay the respondent.

During July 2006 B & S Platinum ceased mining operations. This had the result that the applicant informed the respondent by letter on 30 July 2006 that the applicant was returning certain goods by mutual agreement to respondent. A further letter dated 30 July 2006 was sent to the respondent with a list of goods

which should not be manufactured, due to B & S Platinum ceasing mining operations.

In **Harris v Absa Bank Ltd t/a Volkskas 2006 (4) SA 527 TPD** Moseneke J found at p 529 par 5:

“[5] The test whether 'sufficient cause' has been shown by a party seeking relief, is dual in nature, it is conjunctive and not disjunctive. An acceptable explanation of the default must co-exist with evidence of reasonable prospects of success on the merits.”

The applicant's explanation as to the default has been explained sufficiently and it is clear that had the applicant known of the action, the applicant would have opposed the action.

The reason for bringing the application for rescission of judgment 14 court days late, has also been explained. It seems as if the respondent has conceded that it is not a big issue and the court can grant condonation in this instance.

I am of the opinion that the existence of a *bona fide* defence has been proved and that the issues are real and triable. This application has to succeed.

The following order is made:

1. The applicant's non – compliance with the provisions of rule 31 (2) (b) of the Rules of Court is condoned;
2. The judgment under case number 19804/2007 granted on 22 June 2007 is rescinded;
3. The applicant to pay the costs of the application.

C Pretorius

Judge of the High Court

Case number : 19804/2007

Heard on : 27 May 2008

For the Applicant : Adv J Daniels

Instructed by : Webber Wentzel Bowens

For the Respondent : Mnr B Macdonald

Instructed by : Schnetler and associates

Date of Judgment :

