

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

12/5/14

Case Number 6812/14

In the matter between

MITCHPAP SHARE BLOCK (PTY) LTD

Plaintiff

And

JACOBUS JOHANNES KLEYNHANS T/A S.A.K. BIKES

Defendant

JUDGMENT

BAM J

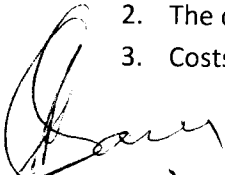
1. Plaintiff issued summons against the defendant based on a lease agreement, claiming payment of R82 566,43 and eviction of the defendant from the premises in question, as well as payment of rent from 1 February 2014 to 31 August 2016.
2. In the particulars of claim it was alleged by the plaintiff that the agreement between the parties was entered into on 6 August 2013. The defendant would have had the benefit of no rent to be paid for the period 5 August 2013 to 31 October 2013, subject to certain conditions. Initially the applicant was satisfied that the defendant has complied with the said conditions. However, the plaintiff averred that on 31 October 2013 the defendant breached the terms of the agreement.
3. The summary judgment application was resisted by the defendant stating that he had a bona fide defence against the plaintiff's claims. The defendant also took three points *in limine*.
4. I will deal briefly with the points *in limine*.
The first issue raised by the defendant was that the application or summary judgment with the heading "*Notice of Set Down for Summary Judgment*" is not an application in terms of the Rules. Although this contention may be technically correct, the contents of the notice were clear and unambiguous. This point was therefore without merit.
The second point *in limine* dealt with the requirement in terms of the Rule that the Plaintiff was obliged to state that the defendant has no *bona fide* defence. The plaintiff in fact made that averment. In my view it was not necessary to elaborate on the issue.

The third point *in limine* turned upon the allegation by Mr Carl Jack Paul, who deposed to the applicant's supporting affidavit, that he was authorised by an entity named Savyon Building (Pty) Ltd, which company was clearly not involved in any business between the plaintiff and the defendant. In perusing the applicant's supporting affidavit, it appeared that any reference to a resolution by the said company was in any event superfluous. This point also stood to be dismissed.

5. In regards to the question whether the defendant has a *bona fide* defence, it appears that there are several material disputes of fact between the parties. I do not deem it expedient to refer to the said issues in any detail. Although it may seem, *prima facie*, that the existence of the second agreement between the parties, upon which the defendant relies, may be questionable, I am of the view that it would be in the interests of justice that the disputes between the parties be properly ventilated.
6. I am, in the circumstances, of the opinion that the defendant has a *bona fide* defence and accordingly that the defendant is entitled to be granted leave to defend the matter.

Order

1. The application for summary judgment is dismissed;
2. The defendant is granted leave to defend;
3. Costs to be costs in the cause.



AJBAM JUDGE OF THE HIGH COURT

25 April 2014.