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

**CASE NO: 6583/13**

Not reportable

Not of interest to other judges

Revised.

22/8/2017

In the matter between:

ADIL MALKI T/A

Applicant

CASABLANCA CAFÉ

And

IDA GIOVANNA GUERRA

First Respondent

MICHELLE GUERRA

Second Respondent

In Re:

IDA GIOVANNA GUERRA

First Applicant

MICHELLE GUERRA

Second Applicant

And

ADIL MALKI T/A

Respondent

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## JUDGMENT

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**MALATJI, AJ**

1. The respondent obtained an order evicting the applicant from the premises known as erf [...], also known as [...], Hatfield Pretoria. The eviction order was granted on 14 March 2016.
2. The rescission application was lodged by the applicant on 23 May 2016 and in the said application, the applicant alleges that the notice that was served on her to be ejected from the premises was handed over to her attorneys and there is a long convoluted story as regards why action was not taken timeously to file application for a rescission of a judgment.
3. I do not intend to concentrate on the first requirement for an application for rescission on an order of court of this nature as contemplated by Rule 31(2) (b). It suffices to point out that some explanation has been provided as regards the failure by the applicant to file the necessary papers to oppose the application for eviction which was launched by the respondent. I am satisfied with this explanation of default.
4. The more pertinent matter is whether a bona fide defence has been demonstrated by the respondent entitling her to a rescission that would enable her to contest the matter at trial. The court's observation in relation to this matter is that the owners of the leased premises and the applicant have handled matters in a very casual fashion. The common cause facts accepted by both parties is that the initial lease agreement had expired. The applicant was required to make certain improvements to the property in return for a reduction of rental due. The initial 5 year period was extended in accordance with a verbal agreement concluded between the parties.

5. Two matters enable the applicant to cross over to the Promised Land, to use the proverbial expression. These are that she contends that by agreement she made improvements to the leased property to the value of R424 750.00 and that grants her a lien over the property. The second one is that the parties have agreed to extend the lease agreement by another 5 years. In relation to the lien defence, it seems she meets the bona fide defence requirement as follows:

5.1 The alleged outstanding amount of R306 495.02 is far less than the improvements the applicant contends were made by her in the amount of R424 750.00 with the applicant's permission.

6. Accepting these two particular affirmations, it would seem to me that the applicant has a reasonable prospect of disputing the applicant's right to evict her and that this matter that should be ventilated at trial.

7. Our courts have recognised the tenant's lien for some time where improvements are made by a tenant with the landlord's permission. Whether substantiation of security for the lien is sufficient is a matter for a trial court to determine especially given the nature of the improvements.

8. In the result, I grant the following order:

8.1 The eviction order granted in favour of the first and second respondent on 17 March 2016 is hereby rescinded;

8.2 The applicant is afforded the opportunity to deliver and file its opposing affidavit within 15 days of this order;

8.3 Costs of this application will be costs in the main application.

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**T S S MALATJI**

ACTING JUDGE OF THE  
HIGH COURT OF SOUTH AFRICA

GAUTENG PROVINCIAL  
DIVISION, PRETORIA

**Date of Judgment:**

22 August 2017