PURE TREATMENT INVESTMENTS (PVT) LTD
versus
BRYGGEN HOTELS (PVT) LTD T/A GREYS INN

HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 22 JULY AND 6 AUGUST 2015

Urgent chamber application

Ms *L Mguni* for the applicant
Z C Ncube for the respondent

MOYO J: This is an urgent application wherein applicant seeks the following relief:

Interim Relief granted

Pending the confirmation or discharge of this order that this order shall operate as a temporary order having the effect of:

(a) Interdicting the respondent from leasing out properly or portion thereof, leased to applicant to any third party until the matter under case number 1386/15 is finalized.

The facts of the matter are that applicant leases three bars from the respondent. The parties have a dispute relating to rentals and the lease agreement that is pending before this Honourable court. The lease agreement is due for expiry in October 2015.

The basis of the application is as follows from the founding affidavit:

‘(9) On 6 July 2015 I was surprised to find a lady who identified herself to me as Sibonile Mahlangu at the leased property.

(10) The said lady told me that she was a judge and had entered into an agreement of lease with respondent in respect of (sic) portion of the property that applicant is leasing from respondent.

(11) She also indicated to me that her business was to prepare and sell meals on the portion of the property that she was leasing, and also sell soft drinks.”

Applicant further states in paragraph 24 of the founding affidavit that the said third party has already started painting the property in preparation for moving in.

There are the following problems with the factual basis of applicant's case.

(1) Applicant leases three bars specifically from respondent, we are not told that this lady intends to occupy a bar or a portion of a bar.

(2) Applicant does not tell us in his founding affidavit that he in fact told this woman that he was in occupation of the three bars and it would be unlawful for respondent to lease a portion or one of them to the lady and that legal measures would be taken.

(3) Applicant did not seek to establish from the respondent itself if this lady had indeed been offered a portion of the premises that it leased.

It is for this reason that I find applicant's case wanting on detail. It looks like the applicant adopted an attitude of rushing to court before seeking to verify facts and establish that indeed harm was imminent.

The requirements for an interim interdict are as follows

(1) that the right which is sought to be protected is clear, or

(a) if it is not clear, it is *prima facie* established, though open to some doubt and

(2) there is a <u>well grounded apprehension of irreparable</u> harm if interim relief is not granted.

(3) the absence of any other remedy

(4) that the balance of convenience favours applicant (emphasis mine) per *Zesa Staff Pension Fund* v *Mushambadzi* SC 57/02.

Applicant clearly has a right to occupy the premises as leased from respondent. It is the issue of whether a <u>well grounded apprehension</u> of injury has been established which is an issue.

Applicant's founding affidavit clearly lacks content. Applicant should have been precise firstly on the area that this Sibonile Mahlangu intends to occupy or was painting.

Surely to just refer to it as a portion of the property that applicant is leasing is not adequate. Applicant leases three bars, is it one of the bars or a portion of one of the bars that this lady wants to assume occupation of? Why did applicant not inform her that she is in fact trespassing? Why did applicant not confront the landlord to establish what exactly was taking place?

Applicant seems to have adopted an I will take you to court approach without first establishing all the facts that would necessitate the granting of the relief sought.

For whether there is a well-grounded apprehension of injury is a factual finding that the court needs to make from the evidence. The apprehension should be reasonable and the Legal Dictionary defines a reasonable apprehension as fear that is justified under the circumstances as judged by the subjective standard of a "reasonable man."

Surely a reasonable man in applicant's shoes would have told the lady that it would not be possible to lease the premises since he was lawfully in occupation of same. Again a reasonable man in applicant's shoes would have sought audience with the respondent who is the landlord to establish what exactly was happening before filing this application and he would have ventilated all these critical points in his founding affidavit.

For it is not only an apprehension of fear that should exist, but it must be well-grounded.

"Well-grounded" from the Merriam Webster English dictionary means "based on good evidence and reasons" or having a firm foundation." In my view a well- grounded apprehension of irreparable harm, which is one of the requirements to be established to enable applicant to obtain the relief sought was not satisfied. It is not any fear that suffices but the fear must be well-grounded and the facts of the matter as exposed in the founding affidavit should point to that. An interdict is an extra ordinary and robust remedy that should be granted only when the applicant has made a good case for the relief sought. Where the facts are not clear, or leave a lot of questions unanswered a good case would not have been made in my view.

The granting of an interdict is a matter of discretion for the court, see *Nyambi and others* v *Ministry of Local Government and another* 2012 (1) ZLR 569.

I am not satisfied that applicant has made a case that warrants the exercise of my discretion in its favour.

I accordingly on these grounds alone, dismiss the application with costs.

Job Sibanda and Associates, applicant's legal practitioners
Calderwood, Bryce Hendrie and partners, respondent's legal practitioners