

IN THE HIGH COURT OF SWAZILAND

MASONITE (AFRICA) LIMITED Applicant

And

SHAPIRO INVESTMENTS (PTY) LTD Respondent

Civil Case No. 437/2007

Coram	S.B. MAPHALALA - J
For the Applicant	MISS N. DLAMINI
For the Respondent	MR. N DLUDLU

JUDGMENT

10th August 2007

[1] Before court is an application in terms of Rule 30 of the High Court Rules setting aside the Defendant's Notice in terms of Rule 8 (11) and the Defendant's Notice in terms of Rule 8 (9) as an irregular step as the same matter is now pending in the Court of Appeal under Case No. 20/2007 and costs.

[2] Plaintiff was on the 13th July 2007 granted an order in terms of the provisional sentence summons dated 7th February 2007, on the same date of the judgment the Defendant filed a Notice in terms of Rule 8 (a) demanding the Plaintiff to furnish it with security *de restituendo* and a Notice in terms of Rule 8(11) which is a notice to enter into the principal case.

[3] The above-mentioned notices were simultaneously filed with the Notice of Appeal against the judgment in terms of the provisional sentence summons.

[4] The Plaintiff now seeks an order setting aside the above-cited notices citing the provisions of Rule 8 (a) of the High Court Rules and cited the legal author *Erasmus, Superior Court Practice* at *Bl - 83* and the South African case of *Van der Merwe vs Bonaero Park EDMS (BPK) 2004 S.A. 329 at 334 CF*.

[5] The Defendant has advanced *au contraire* arguments that Plaintiff ought to comply with Rule 8 (a) of the Rules of court.

[6] In my assessment of the parties arguments I am inclined to agree with the Plaintiffs position that the Defendant has waived its right to file a Notice in terms of Rule 8 (11) by filling the Notice to Appeal to the judgment granted to the Plaintiff on the 13th July 2007. it would appear to me that in the present case the immediate payment and demand for security as provided for in sub-rule (9) of Rule 8 is impracticable as the Defendant has now filled a Notice of Appeal.

[7] For the above-cited reasons in paragraph [6] *supra* the Defendant's Notice in terms of Rule 8 (a) and (11) is set aside as the matter is now pending before the Court of Appeal and both notices are in relation to the reasons stated by the Defendant on its Notice of Appeal Case No. 20/2007.

[8] As for the Notice by Plaintiff in terms of Rule 30 Defendant has not filled any opposition thereof and therefore Plaintiff is entitled to an order in terms of Prayer (a) and (b) of the Notice in terms of Rule 30.

[9] In the result, for the afore-going reasons in paragraph [6] and [7] of this judgment Defendant's Notice in terms of Rule 8 (9) and (11) is set aside. Defendant to also pay wasted costs.

S.B. MAPHALALA

JUDGE