

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 3242/2019

- (1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO
(3) REVISED.

16/8/19

Date

ML Twala

ML TWALA

In the matter between:

**VALUMAX PROJECTS (PTY) LTD
(REGISTRAION NO: 2003/010184/07)**

APPLICANT

AND

**TOPROOT PROPERTY MANAGEMENT (RF)
(PTY) LTD REGISTRATION NO: 2011/010184/07)**

RESPONDENT

JUDGMENT

TWALA J

- [1] In this opposed summary judgment application, the applicant seeks an order against the respondent for payment of the sum of R412 008.90, interest on the said sum of R412 008.90 of 10.25% per annum a tempore morae until date of final payment and costs of suit on an attorney and client scale.
- [2] It is common cause that on the 5th of December 2018 the respondent signed an acknowledgment of debt acknowledging his indebtedness to the applicant in the sum of R1 020 000 together with interest on the said sum calculated at the rate of 10.25% per annum from the 8th of November 2017 to the final date of payment. It is not in dispute that the respondent paid a total sum of R700 000 towards liquidating his indebtedness to the applicant and that the capital balance outstanding is the sum of R320 000 excluding the interest.
- [3] The respondent make issue with the applicant in that the applicant is in breach of a mentorship agreement between the parties as a result whereof the respondent has suffered damages. The respondent contended further that as a result of this breach of the mentorship agreement, the respondent has a counter claim against the applicant which is substantial and in excess of the claim of the applicant. The applicant, so it was contended, did not disclose to the respondent when it bought the land for the Riverlea development project that the community living in the area was against the development of any further social housing thereon and that the applicant had given its undertaking

to the community that the remaining portion of the land, which portion was purchased by the respondent, would be developed for commercial use.

- [4] It was contended further by counsel for the respondent that, although the respondent bought the land from Landpower cc, it is an associate company of the applicant and binds the applicant according to the terms of the mentorship agreement.
- [5] Counsel for the applicant submitted that the cause of action in this case is an acknowledgment of debt signed by the respondent in favour of the applicant. The applicant acted as a financier between the purchaser and the seller which was Landpower cc and the respondent and if the respondent has a claim in this case, it is against Landpower who sold them the property or land and not the applicant.
- [6] To put matters in the correct perspective, I find it necessary to enlist clause 5 of the mentorship agreement between the parties which provides as follows:
- “5 *ROLES OF VALUMAX*
- Valumax will primarily be responsible and do what is necessary to be done:*
- 5.1 *to identify potential projects,*
- 5.2 *to make land available for purposes of executing a Project and undertraining to do what is necessary and required to be done to provide serviced and cause the Stands to be or become registerable stands.*
- 5.3 *to negotiate market related land prices with Toproot for the acquisition of the Stands.*
- 5.4 *to generally participate in the Project to the extent required from Valumax as a land developer.*

5.5 *Provide mentorship and support to ensure the projects are implemented according to specification and in budget.”*

[7] It is trite that for a defendant to succeed in resisting an application for summary judgment, it must show that it has a bona fide defence to the action of the plaintiff. Although the defendant does not have to establish such a defence as it would normally in a plea, but it must place certain facts before the Court which show that such defence may succeed in the trial that might ensue.

[8] In the case of *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture 2009 (5) SA 1 (SCA)*, the Court stated the following:

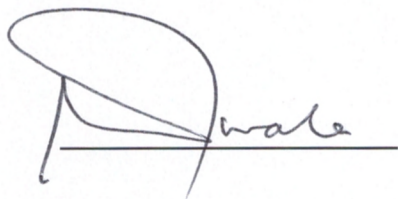
“The rationale for summary judgment proceedings is impeccable. The procedure is not intended to deprive a defendant with a triable issue or a sustainable defence of her/his day in court. After almost a century of successful application in our courts, summary judgment proceedings can hardly continue to be described as extraordinary. Our courts, both of first instance and at appellate level, have during that time rightly been trusted to ensure that a defendant with a triable issue is not shut out. In the Maharaj case at 425 G-426E, Corbett JA, was keen to ensure first, an examination of whether there has been sufficient disclosure by the defendant of the nature and grounds of his defence and the facts upon which it is founded. The second consideration is that the defence so disclosed must be both bona fide and good in law. A court which is satisfied that this threshold has been crossed is then bound to refuse summary judgment. Corbett JA also warned against requiring of the defendant the precision apposite to pleadings. However, the learned judge was equally astute to ensure that recalcitrant debtors pay what is due to a creditor.”

[9] I do not understand the applicant to be disputing that it concluded a mentorship agreement with the respondent. The applicant only state that the sale of the land in question was between the respondent and Landpower and that, if the respondent has any claim with regard to the land, it lies with Landpower which is a different company from the applicant. I do not agree with this contention of the applicant. In terms of clause 5.3 of the mentorship agreement the applicant's role was to negotiate market related land prices with the respondent for the acquisition of Stands, which is land in essence.

[10] It is incomprehensible why the applicant, knowing that there are problems with this particular land, would not inform the respondent and advise it of its failures in an attempt to develop the same land. It is further not clear why the applicant signed a mentorship agreement with these provisions knowing that the development is bound to fail due to its undertakings to the community of the area. I hold the view therefore that there is a triable issue between the parties that need to be ventilated at the trial. I am therefore inclined not to shut the door on the respondent and therefore grant leave to defend.

[11] In the circumstances, I make the following order:

1. the application for summary judgment is dismissed;
2. costs to be costs in the cause.

A handwritten signature in black ink, appearing to read 'Twala', written over a horizontal line.

TWALA M L

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION

Date of hearing: 6th August 2019

Date of Judgment: 16th August 2019

For the Applicant: Adv H Dicks

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