

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

REPORTABLE

IN THE NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)

Date: 2011-07-22

Case Number: 32371/2010

In the matter between:

STANDARD BANK OF SOUTH AFRICA

Applicant

and

HAN-RIT BOERDERY CC

First Defendant

REGISTRATION NUMBER: 1999/017328/23

BERNARDUS JOHANNES BEZUIDENHOUT

Second Defendant

SUSANNA MARIA BEZUIDENHOUT

Third Defendant

JUDGMENT

SOUTHWOOD J

[1] The applicant seeks summary judgment against the defendants, jointly and severally, the one paying the others to be absolved, for payment of

R44 078,57, R111 328,78, interest on both amounts and costs. The defendants have filed answering affidavits in which they raise points *in limine* and purport to set out a defence to the claims. The defendants' counsel has conceded frankly that the defence set out in the answering affidavits is set out in a manner, which, in the circumstances is bald, vague and scanty and is not a *bona fide* defence as required by Rule 32(3)(d) – ***Breitenbach v Fiat SA (Edms) Bpk 1976 (2) SA 226 (T)*** at 228D-E. Nevertheless the defendants' counsel argues that the application should be refused because the applicant's application for summary judgment is defective. The contention is that the person who deposed to the affidavit in support of the summary judgment application could not swear positively to the facts verifying the cause of action and the amount claimed.

[2] The parties are agreed that if the point *in limine* is upheld summary judgment should be refused and that if the point is dismissed summary judgment should be granted.

[3] The deponent to the applicant's affidavit is Sarasvathie Govender, the Manager, Legal, Customer Debt Management, Personal and Business Banking Credit, a division of the applicant. Ms. Govender states –

'It is my function within the Plaintiff to deal with arrear accounts of clients of the Plaintiff. I have full access to all the Plaintiff's ledgers, books of account and files pertaining to these and all other accounts. I am able to establish the exact outstanding

amount and interest in respect of any account referred to me. I can therefore in the circumstances state that the facts herein contained fall within my personal knowledge, I am duly authorised to make this affidavit and can swear positively to facts contained herein. Unless otherwise stated, all facts herein stated are within my own personal knowledge.'

- [4] The applicant relies on ***Maharaj v Barclays National Bank* 1976 (1) SA 418 (A)** at 423A-424H and ***Standard Bank of South Africa Ltd v Secatsa Investments (Pty) Ltd* 1999 (4) SA 229 (C)** at 234B-235C for its contention that Ms. Govender can swear positively to the facts verifying the cause of action and the amount claimed. The defendants contend that the facts of those cases are distinguishable from the facts of the present case and that it is clear that Ms. Govender cannot swear positively to the facts. The defendants rely on ***Shackleton Credit Management (Pty) Ltd v Microzone Trading 88 CC and Another* 2010 (5) SA 112 (KZP)** and ***Firststrand Bank Ltd v Beyer* 2011 (1) SA 196 (GNP)**.

- [5] It is clear from the ***Maharaj*** and ***Secatsa*** judgments that the courts did not deviate from the requirement that the deponent must be able to swear positively to the facts and that they found in the particular circumstances of the cases that the deponents were such persons. In the ***Maharaj*** case, the deponent was an assistant to the Branch Manager at the branch where the defendant's account was kept and in the ***Secatsa*** case the deponent was a regional manager of the bank's credit department who had discussions with the defendant. In both

cases it was clear that the deponent did not derive his knowledge of the case solely from the files, books of account and ledgers in his possession or to which he had access. It is significant that after considering all the documents filed the court in the **Maharaj** case regarded it as 'a borderline case'. In the present case it is clear that Ms. Govender's knowledge is derived entirely from the applicant's ledgers, books of account and files pertaining to the defendants' accounts. She does not allege that she had any discussions or dealings with the defendants in connection with their accounts and the amounts claimed.

[6] In both the **Shackleton** case (paras 7 and 13) and the **Beyer** case (paras 9, 10, 19, 20 and 21) the court found that a deponent who acquires his knowledge from documents to which he has access cannot swear positively to the facts. In both cases the courts reviewed the relevant case law and the principles laid down over the years and I respectfully agree with the reasoning of the courts and the conclusion reached.

[7] While I share the concern of the court in the **Shackleton** case (para 26) that insistence on strict compliance with the requirements of the Rule by a plaintiff may lead to unmeritorious defendants raising a multitude of technical objections to applications for summary judgment I am ever mindful of the extraordinary nature of the procedure. The requirements of Rule 32(2) are straightforward and can easily be

complied with. Difficulties arise only where plaintiffs attempt to bend the rules and take short cuts. If granted, summary judgment is final and closes the door on a defendant. Accordingly, summary judgment should be granted only if the plaintiff's affidavit complies with Rule 32(2) and it appears that the deponent has personal knowledge of the facts and can verify the cause of action and the amount, if any, claimed, and can express an opinion that the defendant has no *bona fide* defence to the action and has delivered a notice of intention to defend solely for the purpose of delay.

[8] The defendants' point *in limine* must therefore be upheld and the application for summary judgment refused and leave granted to the defendants to defend.

[9] The following order is made:

- I The application for summary judgment is refused;
- II Leave is granted to the defendants to defend; and
- III Costs of the application will be costs in the cause.

B.R. SOUTHWOOD
JUDGE OF THE HIGH COURT

CASE NO: 32371/2010

HEARD ON: 14 July 2011

FOR THE APPLICANT: ADV. P. VAN DEN ORDEL

INSTRUCTED BY: Findlay & Niemeyer Inc.

FOR THE DEFENDANTS: ADV. C. MYBURGH

INSTRUCTED BY: Joop Lewies Inc.

DATE OF JUDGMENT: 22 July 2011