

FORM A
FILING SHEET FOR EASTERN CAPE HIGH COURT, GRAHAMSTOWN
JUDGMENT

PARTIES:

NEDBANK LIMITED

Applicant/Plaintiff

And

TANIA VOLSCHENK

Respondent/Defendant

- Registrar: **Case No.: 26/2009**
- Magistrate:
- High Court: **EASTERN CAPE HIGH COURT, GRAHAMSTOWN**

DATE HEARD: 3 March 2009

DATE DELIVERED: 10 March 2009

JUDGE(S): **TSHIKI AJ:**

LEGAL REPRESENTATIVES –

Appearances:

- for the Appellant(s): Adv N.J. Mullins
- for the Respondent(s): Adv D. Smith

Instructing attorneys:

- Appellant(s): Joubert Galpin Searle Inc
- Respondent(s): JR Bester & Associates

CASE INFORMATION -

[1] *Nature of proceedings:*

IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE, PORT ELIZABETH)

Case No.: 26/2009
Date delivered: 10.03.2009

In the matter between:

NEDBANK LIMITED

Applicant/Plaintiff

and

TANIA VOLSCHEK

Respondent/Defendant

J U D G M E N T

TSHIKI AJ:**(A) INTRODUCTION**

[2] The plaintiff, who is the applicant has sued the respondent, the defendant in the main action for the payment of a sum of R1,820,000.00 (one million eight hundred and twenty thousand rand only) together with interest and costs. When the defendant entered an appearance to defend, the plaintiff brought an application for summary judgment. In his opposing affidavit filed on behalf of the defendant, no defence was offered to the plaintiff's claim and the material allegations in the particulars of claim were not denied. Instead the defendant has resisted the application for summary judgment on the grounds that in the affidavit supporting the application for summary judgment the deponent only verifies the cause of action without specifying which cause of action is verified.

[3] The defendant further denied the correctness of the amount claimed by the plaintiff but has not denied that he owes the plaintiff the amount claimed. According to him it is not possible for him to attack the exact calculation of the amount by the plaintiff since the plaintiff's particulars of claim do not set out how exactly the amount was calculated.

(B) NON COMPLIANCE WITH RULE 32(3)(a) OR (b)

[4] The defendant's resistance for the plaintiff's application for summary judgment is not clear. It also does not appear to comply with the provisions of Rule 32(3)(b) which provides that:

“(3) Upon hearing of an application for summary judgment the defendant may—

.....

(b) satisfy the court by affidavit (which shall be delivered before noon on the court day but one preceding the day on which the application is to be heard) or with the leave of the court by oral evidence of himself or of any other person who can swear positively to the fact that he has a *bona fide* defence to the action; such affidavit or evidence shall disclose fully the nature and grounds of the defence and the material facts relied upon therefor.”

[5] The defendant's affidavit is silent about the *bona fide* defence to which he ought to disclose in terms of rule 32(3)(b) above.

[6] *Mr Smith* who appeared for the defendant has conceded, quite correctly in my view, that the defendant has disclosed no *bona fide* defence to the plaintiff's claim. There is not even an attempt by the defendant to disclose any form of defence to the plaintiff's claim. His opposition to the plaintiff's claim does not comply with the provisions of Rule 32(3)(a) or (b) of the Rules of this Court.

[7] There is no valid basis why the defendant has resisted the plaintiff's application for summary judgment. Without full disclosure of the material facts upon which the defendant relies in his defence to the plaintiff's claim it cannot be said that the defendant has satisfied the requirements of the sub rule. He has not even made an attempt to comply with Rule 32(3)(b). The grounds which he has raised cannot assist him in resisting the granting of the summary judgment.

[8] In the result I am not persuaded that the summary judgment should not be granted.

[9] I therefore making the following order:

[8.1] Judgment is hereby granted against the defendant on behalf of the plaintiff in the sum of R1,875,478.88.

[8.2] Payment of interest on the amount of R1,867,344.45 at the plaintiff's prime overdraft rate from time to time less 2,25% calculated on a daily basis and capitalised monthly in arrears from 13 November 2009 to date of payment.

[8.3] That the property being erf 1223 Jeffreys Bay is declared specially executable.

[8.4] That the defendant is ordered to pay the costs of suit on an attorney and client scale.

P.W. TSHIKI
JUDGE OF THE HIGH COURT (ACTING)

Date case heard	-	3 March 2009
Date judgment delivered	-	10 March 2009
For the applicant	-	Adv N.J. Mullins Instructed by Joubert Galpin Searle Inc 173 Cape Road, Mill Park Port Elizabeth
For the respondent	-	Adv D. Smith Instructed by JR Bester & Associates 70 Worraker Street Newton Park Port Elizabeth