



IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case number: 3372/2023

In the matter between:

THE STANDARD BANK OF SOUTH AFRICA LIMITED

Applicant

and

DEON CORNELIUS MAREE

1st Respondent

JOHANNA GERTRUIDA MAREE

2nd Respondent

CORAM: LOUBSER, J

HEARD ON: 19 OCTOBER 2023

JUDGEMENT BY: LOUBSER, J

DELIVERED ON: 07 DECEMBER 2023

- [1] This is the extended return day of a *rule nisi* granted against the respondents on 30 June 2023 on an urgent and *ex parte* basis. It appears that the matter was postponed on 10 August 2023 to 24 August 2023 without the *rule nisi* having been expressly extended to that date, but on 24 August 2023 Opperman, J made the following order: "This *rule nisi* dated 30 June 2023 is extended to 19 October 2023 and the application is postponed to the opposed roll of 19 October 2023 to be argued."

- [2] It was submitted in this court that the *rule nisi* had lapsed during the period 10 August 2023 to 24 August 2023 by operation of the law. This submission, however, cannot be upheld because even should it be regarded as correct, then certainly the *rule nisi* became revived again by the order made by Opperman, J. This court is therefore called upon to decide whether the *rule nisi* dated 30 June 2023 must be confirmed or not.
- [3] In terms of the *rule nisi*, notarial bonds of the respondents were perfected in favour of the applicant, and the applicant and its duly appointed agent were granted access to certain properties of the respondents to monitor the harvesting and sale of maize crops. The applicant was also authorized to keep in its possession such movable property and effects, as referred to, as a pledge and as such security for all amounts due by the respondents pending the finalization of any application or action to be instituted by the applicant against the respondents, or such other legal steps to be instituted by it against them.
- [4] The respondents were further prohibited and interdicted, pending and during the harvest of the 1st Respondent's maize crop, from alienating or in any manner encumbering any portion of the crop without the applicant's prior written consent and/or supervision. They were also interdicted from interfering with the applicant's or its duly appointed agent's access to the properties or from preventing them to enter the properties for the purposes of monitoring or harvesting the crop. All the orders contained in the *rule nisi* were ordered to serve as an interim order with immediate effect pending the finalization of an action, application or other legal steps to be instituted by the applicant for the payment of all amounts due by the respondents to the applicant within 30 days after finalization of this application.
- [5] The confirmation of the *rule nisi* became vigorously opposed by the respondents on a number of grounds. The respondents even filed a rejoinder affidavit in the end, without seeking the consent of the court by way of a substantive application, to rebut some of the allegations made by the applicant in its replying affidavit. The court was merely requested during the hearing of the application to allow the rejoinder affidavit, to which step the applicant expressed its objection.

- [6] In the rejoinder affidavit, the respondents mention that they seek it to be allowed so that they can respond to additional matter raised in the replying affidavit by the applicant. One of the additional matters the respondents refer to, is a settlement agreement that was signed on the 17th July 2023 at Harrismith, and the 3rd August 2023 at Durban. The parties to this settlement agreement were the applicant, on the one hand, and the two respondents, the trustees of the D. C. Maree Trust and Goldensands 31 Trading CC on the other hand.
- [7] Significantly, in clause 4 of the settlement agreement, the last mentioned parties acknowledged that they were in default in relation to the agreements pertaining to a large number of accounts held with the applicant, and they further acknowledged that they were lawfully and jointly and severally indebted to and in favour of the applicant as principal debtor and sureties/guarantors in the amounts and interest thereon as stipulated in the settlement agreement. In clause 5.1 the parties undertook to settle the full outstanding balances within 4 months. In clause 5.2.2 thereof it is recorded that “the parties consent thereto that the *Rule Nisi* dated 30 June 2023 under case number 3372/2023 can be confirmed on 3 August 2023”.
- [8] In clause 8 of the agreement the following appears: “The 1st to 3rd Trustees and the Company confirm that they are fully aware of the facts of the Application under case number 3372/2023 as well as the debt due and payable and hereby together with the Respondents agree and consent that the Applicant/Bank may proceed to make this settlement agreement an order of court.”
- [9] In their answering affidavit, the two respondents contested the validity of the settlement agreement on the basis that they have entered into the agreement under duress and that they were forced to sign it. The applicant thereupon dealt with the circumstances under which the settlement agreement was entered into, to show that there was no duress of force. Amongst others, it is to these allegations or circumstances that the respondents want to respond in their rejoinder affidavit.
- [10] It speaks for itself that this settlement agreement could have a direct bearing on the question whether the *rule nisi* should be confirmed or not. In order to have the dispute regarding the agreement properly ventilated, I have decided to allow the

rejoinder application to that end. Its contents will therefore be considered together with what is set out in the answering and replying affidavits, as far as the agreement is concerned.

- [11] In their answering affidavit, the respondents say that the interim order was used to force settlement agreements on them, which agreements were intended to circumvent due process, take away the court's judicial oversight and take away their rights to a fair process. They were told to sign the settlement agreements or cease trading, and they were consequently forced to sign, they say. They further allege that, after service of the *rule nisi*, they were told that they could not deliver any crops or farm until and unless they signed settlement agreements, which basically gave the bank the authority to sell their properties without judicial oversight. They were therefore forced to choose between the lesser of two evils, namely to halt farming, or to sign agreements irrespective of the content and consequences thereof in order to keep the bank satisfied. They further said that they were in the process of issuing a summons in order to have the agreements set aside.
- [12] The respondents also say that there were ulterior motives to bringing the application on an *ex parte* basis, which included using the settlement agreements as a means of circumventing due process because due process would have afforded them a proper opportunity to consult and answer to the allegations against them. They allege that the applicant has several surety bonds registered against their immovable property, and "they intentionally left out such material allegations in order to mislead the court and abuse the *ex parte* process. They now want to disclose such security, after having forced us into an agreement, to circumvent due process." Elsewhere the respondents say they were forced to sign settlement agreements in order for the maize to be delivered.
- [13] In its replying affidavit the applicant denies that the respondents were forced to sign a settlement agreement and that they most certainly did not sign it under duress. The applicant points out that after the perfection order was obtained, the respondents through their attorney, mr. Van Wyk of Cloete and Neveling Attorneys, Harrismith, contacted the applicant's attorney to arrange for an urgent

meeting between the applicant and the respondents to discuss the outstanding indebtedness of the respondents, the perfection of the notarial bonds, and the way forward. The proposed meeting took place on 5 July 2023 at the offices at Cloete and Neveling Attorneys in Harrismith. The meeting was attended by the respondents and their attorney, mr. Van Wyk, officials of the bank and the bank's attorney.

- [14] According to the applicant, various discussions took place at the meeting, after which the respondents told the bank officials that they were going to take a short break in order to consider what proposals should be forwarded to the bank. On 11 July 2023 messrs. Cloete and Neveling furnished the respondents' proposals to the applicant's attorney, which proposals were contained in a letter annexed to the affidavit. In terms thereof, it was proposed that the respondents be granted the opportunity to market and sell their property within a period of four months after the respondents delivered the maize harvested in order to settle the outstanding debt due. The proposals included an indication by the respondents that they were going to stop farming.
- [15] These proposals were accepted by the applicant and the settlement agreement was then drafted by the applicant's attorney and forwarded to the respondents' attorney in Harrismith for signature. It was then duly signed in Harrismith by the respondents, and some days later by the applicant in Durban. The applicant says in its replying affidavit that the first and second respondents' allegation that the settlement agreement was signed under duress, is simply untrue and constitutes a *mala fide* attempt to avoid the consequences of the settlement agreement, which was validly entered into. The respondents were at all times represented by an attorney who would certainly not have allowed them to sign a settlement agreement under duress, it says.
- [16] Lastly, the applicant informs in its affidavit that it is no longer moving for an order that the settlement agreement be made an order of court. This is so, because the respondents are attempting to create a dispute of fact regarding the validity of the settlement agreement. However, an application or action to have the agreement

be made an order of court will be instituted should it become necessary to do so, the applicant says.

- [17] In their rejoinder affidavit, the respondents contend that the applicant has abandoned the relief pertaining to the alleged settlement agreement, while it still felt the need to address certain issues pertaining thereto. The merits have therefore become irrelevant for purposes of the *ex parte* application. The merits of the claim in terms of the settlement agreement will be dealt with in the action to follow, they say.
- [18] Lastly, the respondents submit that the settlement agreement has substantial and material deviations from what was discussed, and it was concluded under suppressive circumstances. Additionally, the applicant and its attorney attempted to circumvent the National Credit Act and other enforcement procedures with the settlement agreement, which would have been contrary to public policy and an agreement to circumvent acts, rules and regulations. They say that for this reason, the applicant has abandoned the settlement agreement.
- [19] Now it is patently clear on the papers before me that the proposals which eventually culminated in the settlement agreement, came from the respondents themselves and their attorney at the time. Those proposals were accepted by the applicant, and it thereafter drafted the document for signature by all the parties. The parties signed the agreement, and there is no evidence before the court that the respondents signed the agreement with the proverbial barrel against the head. If there was such evidence, it would have been surprising, to say the least, in view of the fact that the agreement consisted of terms initially proposed by the respondents themselves.
- [20] Having regard to these circumstances, I find that there is no merit in the contentions of the respondents that the settlement agreement was designed by the applicant and its attorney only to circumvent due process, judicial oversight and the acts, rules and regulations applicable in litigation of the kind.

- [21] Nor can I find on the papers before me that the applicant has abandoned the settlement agreement. What it did abandon, for the time being, was its intention to have the agreement made an order of court. The applicant explained that it did so because it was of the view that the respondents were attempting to create a dispute of fact regarding the validity of the settlement agreement. The applicant, however, will take further steps to have the settlement agreement made an order of court, should the need for such steps arise, the applicant said.
- [22] Furthermore, where a person seeks to set aside a contract, or resist the enforcement of a contract on the ground of duress, the following elements need to be established: The fear must be a reasonable one, it must be caused by the threat of some considerable evil to the person concerned or his family, it must be a threat of an imminent or inevitable evil, the threat or intimidation must be unlawful or *contra bonos mores*, and the moral pressure used must have caused damage.¹ None of these elements were alleged by the respondents in the present matter.
- [23] It follows that the respondents have entered into a valid settlement agreement with the applicant, and that they are bound by the terms thereof, irrespective of whether the agreement was made an order of court, or not.
- [24] Clause 5.2.2 of the settlement agreement provides that the parties consent thereto that the *rule nisi* dated 30 June 2023 under case number 3372/2023 can be confirmed on 3 August 2023. The date of 3 August 2023 is of no significance, since it was the return date of the *rule nisi* at the time of the signing of the settlement agreement. That return date has been extended to the present date of the hearing.
- [25] I therefore make the following order:
1. The *rule nisi* dated 30 June 2023 is confirmed with costs, to be paid by the first and second respondents on the scale as between attorney and client, such costs to include the costs of two counsel.

¹ See *Arend and Another v Astra Furnishers (Pty) Ltd* 1974 (1) SA 298 (C) at 306, *Paragon Business Forms (Pty) Ltd v Du Preez* 1994 (1) SA 434 (SE) at 439, and *Savvides v Savvides* 1986 (2) SA 325 (T) at 329.



P. J. LOUBSER, J

For the applicant:

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