

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 88070/2019

DATE: UNKNOWN

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ NO.
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO.
(3) REVISED.
DATE 21/7/2021
SIGNATURE 

In the matter between

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MERCHANT WEST (PTY) LTD**Applicant**

and

SUZ LOGISTICS (PTY) LTD AND 17 OTHERS**Respondent****EX-TEMPORE JUDGEMENT**

20 **HAUPT (AJ):** This is a summary judgment application by the applicant which is Merchant West (Pty) Limited against 18 defendants. The applicant has indicated that it is just proceeding against the first to the 16th defendant as there are certain trustees that ~~have not been~~ ^{are not} before this court.

 The judgment is sought in terms of an agreement, which is attached to the summons and the respondents have entered into a defence and they have also filed a special plea and a plea over the merits.

30 I do not intend to deal with each and every argument raised before me. It does not mean that I have not considered same.

To summarize, the main thrust of the argument on behalf of the respondents is that firstly, the applicants have ceded their claim to the bank and that this is a positive

statement made by the respondent and that there is nothing to oppose this. I have had regard to what is stated in the answering affidavit. In the answering affidavit no mention is made that this is the manner of practice of the applicant. I am also mindful of the fact that it is a requirement for a respondent opposing summary judgment to place sufficient facts before this court in order for the court to ascertain whether or not there is a *bona fide* defence that needs to go on trial. In this regard, I was referred to Erasmus Superior Court Practice and more particular page D1-409 and the reference to the well known authority of Breytenbach v Fiat 1976 (2) SA 226 (T).

10 Unfortunately, the respondents take the matter no further. They do not refer to a time frame. They do not refer to a particular bank. They do not take the court into their confidence to divulge ^{when} ~~where~~ this has come to their knowledge and therefore I cannot agree with the argument on behalf of the respondent that there is nothing to oppose. This court cannot work on speculation. This court must work on facts.

The second argument on behalf of the respondents is that a copy of the agreement is eligible and in essence there was not consensus when it was signed.

20 It is so that the applicant did attach a legible copy of the draft agreements that they conclude in these matters and that it was also the agreement that is applicable in the present matter. The question arises why the respondents who would seem to be people who have some business acumen if I have regard to the affidavits filed signed a document which they could not read.

It is a trite principle of law that if a party signs a document, it is assumed that that party by affixing their signature to the document is aware of what is stated in the document and that they are in agreement with that. It is not the argument before this court, that it was not the respondents who have signed the document.

30 The third argument on behalf of the respondent is that there were certain goods that were delivered three months late, and raising an issue of about R5 million that this court should take into consideration and that this is also a triable issue. Again the

respondents are very vague in this regard and I was referred to the relevant clauses in the agreement that was placed before this court addressing this issue.

It is also so that summary judgment and summary judgment proceedings are no longer extra ordinary proceedings and the Rule must be applied properly. In this regard the judgment of Joob Joob v Stocks, 2009 (5) SA (1), a Supreme Court of Appeal judgment and more particular at 12A to D is relevant.

10 In my view the respondent had sufficient opportunity to make a proper disclosure before the court to disclose their defence and to show to this court that it is a *bona fide* defence.

It would seem from reading of the papers and more particular the elaborated fashion in which the answering affidavit is drawn without much substance, that this court is confronted with the fable of the emperor that has no clothes.

I agree with the argument on behalf of the applicant that the respondents are kicking up a lot of dust but when one really sits and evaluates and unpack the arguments there is not much substance thereto.

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Therefore it is the order of the court that summary judgment be granted in favour of the applicant as set out in the draft order. There is also a request for cost on the attorney and client scale and I am satisfied with the submissions made that a proper case has been made it out for that.

Therefore in matter number 54 I grant an order as set out in the draft order, in terms of prayers 1 and 2 which draft order I mark "X".

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L C HAAPT AJ