



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: 2803/2017

In the matter between:

**COS VRYSTAAT KAAP BEDRYF BEPERK**  
(REGIST RASIENOMMER: 1999/004069/06)

Plaintiff

and

**WILLEM ABRAHAM DU PLESSIS**  
(ID NO: [...])

First Defendant

**ISABEL DU PLESSIS**  
(ID NO: [...])

Second Defendant

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**HEARD ON:** 17 AUGUST 2017

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**JUDGMENT BY:** C REINDERS, J

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**DELIVERED ON:** 19 OCTOBER 2017

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- [1] The plaintiff, Oos Vrystaat Kaap Bedryf Beperk, issued summons against the defendants Willem Abraham du Plessis and Isabel du Plessis (first and second defendants respectively) on 20 October 2016 for *inter alia* payment in the amount of R 269 857.77 together with interest at 15% per annum calculated from 1st April 2017 until date of payment. The plaintiff avers that the principal debtor Beestekraal Boerdery (Edms) Beperk owes the plaintiff the claimed amount and interest and that the defendants bound themselves in writing as sureties and co-principle debtors on 22 October 2014. Having been served with the summons the defendants entered appearance to defend. Plaintiff now moves for summary judgment against the defendants.
  
- [2] Plaintiff relies on an affidavit by its legal services manager who confirms the cause of action, the amount claimed in the summons, that the defendants have no bona fide defence and entered appearance to defend solely with the purpose of delaying plaintiff's claim.
  
- [3] The two defendants filed opposing affidavits and resist the application on several grounds.
  
- [4] It is incumbent on a plaintiff in summary judgment proceedings to establish its claim clearly.

See: **Maharaj v Barclays National Bank Ltd** 1976 (1) SA 418(A)

The defendants in their opposing affidavits have various complaints and these complaints essentially all boils down thereto

that plaintiff has not made out a proper case for summary judgment.

- [5] It is contended that the summons on a proper reading thereof is in fact a combined and not a simple summons. As such defendants aver they are prejudiced in that they are legally prohibited from excepting thereto. The point that defendants wish to raise is not clear. A simple summons is not a pleading and cannot be attacked by way of an exception.

See: **Icebreakers No.83 (Pty) Ltd v Medicross Healthcare Group (Pty) Ltd** 2011 (5) SA 130 KZD at 131 F-H.

I am of the view that the simple summons contains more than ample allegations to enable the defendants to ascertain what the allegations against them are.

- [6] The complaint by defendants that plaintiff's attorney did not sign the combined summons at least also in his capacity as attorney with the right of appearance in terms of sec 4(2) of the Right of Appearance in Courts Act 62 of 1995 is nor here nor there as same is a simple summons which does not require the signature of either counsel or an attorney with the right of appearance.
- [7] The defendants contend that plaintiff should have notified the principle debtor at least ten days beforehand of the principal debtor's failure to comply with its obligations. I agree with Mr Tsangarakis on behalf of plaintiff that the cause of action against

defendants is the deed of suretyship stating in clause 12.2 thereof as follows:

"Hierdie borgstelling sal ten volle afdwingbaar wees teen die BORG, ongeag:  
12.2.1....

12.2.2 'n versuim om die Borg van enige verstek, vertraging, versuim of kontrakbreuk deur die SKULDENAAR in kennis te stel."

In view of this finding it is not necessary to consider the argument by Mr Tsangarikis that the notices in terms of sec 129 of the National Credit Act 34 of 2005 (affixed as Annexures "12" and "13" to the summons) are demands as envisaged by clause 7.1.2 of the quotation for credit. Without deciding this point I am inclined to think that the said notices are not notices of breach but instead statutory notices of compliance.

[7] The deed of suretyship confirms that the plaintiff may institute its action in the magistrate court. Pursuant thereto the defendants aver that this court has no jurisdiction to entertain the matter. I do not agree. Not only is there no merit in such a view, it was agreed in clause 22.3 of the deed of suretyship that plaintiff is entitled to proceed in the High Court. The deed of suretyship was entered into at Jacobsdal in the jurisdictional area of this court.

[8] The defendants contend that the claim by the plaintiff is not an easily calculatable amount and therefore not liquid. Defendants relied upon and referred me to **Botha v Swanson & Company (Pty) Ltd** 1968 (2) PH F85 (C). Plaintiff relies on **Bekker & Another v Oos-Vrystaat Kaap Kooperasie Bpk** [2000] 3 All SA

301 (A) and more in particular para [21] of the judgment. In the judgment the appellate division as it then was interpreted the clause in a contract where it was agreed by the principal debtor that absent an objection to statements of account within 3 months from date of such statement, it is to be considered conclusive proof of the amount owed. Clause 18 of the deed of suretyship provides for a certificate of *inter alia* a manager of plaintiff to prima facie prove the amount, interest, interest rate and financing costs owing by the defendant. Such a certificate indicating the amount as well as the interest rate is annexed as annexures "6" and "11" to the summons in respect of the first and second defendants respectively. I do not agree with Mr Janse van Ransburg on behalf of defendants that the claim of the plaintiff is not and easily calculatable amount.

- [9] The result of the foregoing is that none of the complaints of the defendants are sufficient to convince me that plaintiff has not prima facie made out a case for summary judgment. Once a plaintiff has made out such a case, it is expected of the defendant to furnish its defence under oath in a manner which is not inherently unconvincing. It is not expected of the defendant to proof its defence at this stage. He or she must merely aver facts which if proven at the trial will constitute a defence.

See: **Breitenbach v Fiat SA (Edms) Bpk** 1976 (2) SA 226 (T)

Having had that opportunity none of the defendants disclosed any defence on the merits. Once that is so, there is nothing left at the trial to consider and no reason for me to exercise my discretion in

favour of the defendants. The remedy of summary judgment is no longer considered as "drastic" and is aimed at ensuring that recalcitrant debtors pay what is due to a creditor. It only holds terrors and are "drastic" for a defendant who has no defence.

See: **Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture 2009 (5) SA 1 (SCA)**

The plaintiff is entitled to summary judgment.

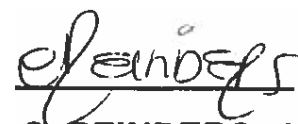
[11] Accordingly the following orders are granted:

11.1 Judgment in the amount of R 269 857.77 against both defendants jointly and severally the one to pay the other to be absolved.

11.2 Payment of interest on the amount of R 269 857.77 calculated at 15% per year from 1<sup>st</sup> of April 2017 until date of payment, which interest will be calculated on a daily balance basis and monthly capitalised.

11.3 Payment of credit life insurance premiums at the rate of R 0.51 per R 1 000.00 per month on the monthly balance calculated from 1<sup>st</sup> April 2017 until date of payment.

11.4 Costs of suit.

  
C. REINDERS, J

On behalf of the Plaintiff:

Adv. S. Tsangarakis

Instructed by:

Symington & De Kok

BLOEMFONTEIN

On behalf of the Defendants:

Adv. G.S. Janse van Rensburg

Instructed by:

Phatshoane Henney Attorneys

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