IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Case No. : 3418/2015

In the application between:-

STANDARD BANK OF SOTH AFRICA LTD	PLAINTIFF
and	
ROELOF ABRAHAM JANSE VAN RENSBURG	1ST DEFENDANT
SUSAN FRANCINA JOHANNA JANSE VAN RENSBURG	2ND DEFENDANT

JUDGMENT BY:	MOLOI, J
HEARD ON:	04 FEBRUARY 2016
DELIVERED ON:	18 FEBRUARY 2016

[1] This is an application for summary judgment by the plaintiff against both the defendants. The application is opposed by both the defendants, the second defendant deposing to the affidavit as required by Rule 32(3)(b) of the Uniform Rules of Court and the first defendant confirming.

[2] The opposition to the application is not addressing nor contesting the defendant's liability to the plaintiff nor the merits regarding their indebtedness to the plaintiff nor their failure to perform in terms of the

credit agreement with plaintiff. The opposition is based on technicalities such as a challenge to the lack of personal knowledge of the matter attributed to the deponent of the plaintiff's affidavit on which the application is based and the defendant's disputes having received the notice in terms of which the debt review process they had initiated as required by Section 86(10) of the National Credit Act No 34 of 2005 was terminated.

[3] THE KNOWLEDGE OF THE FACTS BY THE DEPONENT.

Rule 32(2) of the Uniform Rules of Court require that the notice of application for summary judgment should be accompanied by an affidavit by the plaintiff personally or by any other person who can swear positively to the facts verifying the cause of action and the amount, if any, claimed and stating that in his opinion there is no *bona fide* defence to the action and that the notice of intention to defend has been delivered solely for the purpose of delaying the finalisation of the matter. In this case the plaintiff is described as the Standard Bank of South Africa Limited, a company registered as a commercial bank in terms of the laws of the Republic of South Africa with registered office situated at Standard Bank House, 6 Simmonds street, Johannesburg Gauteng. In the nature of things a company cannot make an affidavit hence only one or other functionary or employee of the company can do so.

[4] In this case Tato Tebogo Phiri, (Phiri) a Manager, Specialized Legal, Personal and Business Banking Credit division of the plaintiff

deposed. Phiri confirm authorisation by the plaintiff to depose; he confirms and verify that through his position he had access to all the records and information in possession of the plaintiff pertaining to the matter; that he has perused the records in his possession and acquainted himself with the facts contained therein and as such those facts and information are within his direct knowledge and can swear positively to the facts and can verify the cause of action and the amount claimed in the summons.

[5] The complaint raised by the defendants that the said Phiri is not competent to depose to the affidavit supporting an application for summary judgment cannot hold water as he has laid a basis for his knowledge of the facts relevant to a successful claim by the plaintiff. In **Rees and Another v Investec Bank Ltd** 2014 (4) SA 220 (SCA) at 220 G, 224E it was stated that *"A verifying affidavit for summary judgment deposed to by a deponent of a corporation need not have first-hand knowledge of every fact compromising corporations cause of action"*.

In Van Niekerk & Other: **Summary Judgment: A Practical Guide**. Pages 5 to 15 it is stated that it is not necessary for a deponent to supply reasons for the allegation that the facts fall within his personal knowledge but he must at least give an indication of his office to support the inference that he has had the opportunity to obtain personal knowledge of the facts he verifies. In this case I am satisfied that the deponent had provided more than sufficient reasons why he could attest to the facts in his capacity as a manager:

Specialised Personal and Business Banking in the Credit division of the plaintiff.

[6] NON-COMPLIANCE WITH THE REQUIREMENTS OF SEC 86(10)

The real complaint the respondents have is the alleged failure of the plaintiff to give them notice of termination of the debt review process in terms of section 86 (10) of the National Credit Act No 34 of 2005. When the credit provider seeks to cancel the debt review process it is required to give notice to the defendants, the debt councillor and the National Credit Regulator. The plaintiff dispatched the termination notice to the address stated in the loan agreement to be the address at which all notices must be sent, being 11 Georges Court, 81 Commissioner Street, Bethlehem, 9701. The defendants contend having advised the plaintiff that their address had changed to that of the bonded property being 24 Pres Steyn Street, Môrelig, Bethlehem 9700 as per form 17.1 sent to the plaintiff by the defendants debt counsellor. This was done in terms of paragraph 22.3 of the loan agreement requiring to be informed of any change of address for delivery of notices. The notice of termination of debt review was sent per registered post to the agreement address on 24 June 2015. Summons was served at the same address being 11 Georges Court, 181 Commissioner Street, Bethlehem on 3 August 2015. The defendants entered appearance to defend on 21 August 2015 giving their address as 11 Georges Court, Commissioner Street, Bethlehem, being the same address the termination notice was sent to in June 2015. In my view the notice was properly delivered.

[7] The relief sought by the plaintiff includes the declaration that the bonded property namely Erf 1723 Bethlehem (Extention 19), District Bethlehem, Free State Province in extent 1489 (One Thousand Four Hundred and Eighty Nine) square metres held by Transport NR T6369/2014 be declared specially executable. This being the residential property of the defendants, I am of the view that the order sought can be followed up in the ordinary course summary judgment being such a drastic measure.

[8] As a result the following orders are made:

8.1 Summary judgment application is granted.

8.2 The defendants are ordered to pay the amount of R626 654.51;

8.3 The defendants are ordered to pay interest on the above amount at the rate of 10.22% per annum calculated from 6 July 2015 till date of payment.

8.4 The defendants are ordered to pay the costs of the action.

8.5 The defendants are ordered to pay the costs of the summary judgment application.

K. J MOLOI. J

On behalf of the plaintiff: Adv. VAN DER MERWE

Instructed by:

MCINTYRE VAN DER POST

BLOEMFONTEIN

On behalf of the defendant: Adv. ELS

Instructed by:

VAN DER HOVEN ATTORNEYS

BLOEMFONTEIN