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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 No: 4080/2016

In the application between:

BLUE GRANITE INVESTMENTS NO.2(RF)LIMITED Plaintiff

and

BAREND HENDRIK STEYN First Defendant

ANTOINETTE STEYN Second Defendant

JUDGMENT BY: C REINDERS, J

HEARD ON: 8 DECEMBER 2016

DELIVERED ON: 15 DECEMBER 2016

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[1] The Plaintiff, Blue Granite Investments No.2 (RF) Limited (hereafter "Blue Granite Investments") issued summons against the Defendants, Mr and Ms Steyn on 31 August 2016 for *inter alia* payment of an amount of R 1 855 531,59. After a notice of intention to defend was filed by Mr Steyn (first defendant), Blue Granite Investments now

moves for summary judgment against the First Defendant. Mr Steyn opposed the application on several grounds, averring that he has a *bona fide* defence against the claim by Blue Granite Investments. I do not intend to deal with these defences as they do not impress me save for the averment that the Plaintiff's certificate of balance only refers to account number [....]. This allegation necessitates closer scrutiny whether Plaintiff has availed itself of its duty to clearly make out a case for summary judgment.

[2] Six written home loan agreements were concluded on various dates ranging from 2005 to 2009 between Mr Steyn and The Standard Bank of South Africa Limited ("the bank") - so much is common cause between the parties. These would be referred to where applicable as the first to sixth home loan agreements respectively. Pursuant to these home loan agreements six mortgage bonds were registered in favour of the bank. Blue Granite Investments avers that the bank sold and ceded all of its rights in respect of the said home loan agreements and mortgage bonds to it. According to Blue Granite Investments the terms and conditions of these loan agreements were breached by the failure of Mr Steyn to pay the monthly instalments due, as a result whereof the amounts became due and payable.

[3] It is common cause that a mortgage loan account number ([....]) was allocated to the first to fifth loan agreements combined, and that a separate account number ([....]) was allocated to the sixth loan agreement. In terms of the special conditions to the sixth loan agreement (Annexure "PoC1.11"), the following is stated in clause 18 thereof:

> "Kindly note due to your fixed rate option on your first account, you now have two bond accounts. Home loan account number [....] for **R 1 280 000** at 13.6% with instalments of R 15 705.75 and home loan

account number [....] for **R 130 000** at 10,5% with instalments of R 1 189.16." (My emphasis)

[4] In support of its claim Blue Granite Investments relies on a certificate of balance (Annexure "PoC6") as proof of Mr Steyn's indebtedness in the amount of R 1 855 531.59. The bond account number on the certificate is reflected as [....]. Melissa Ross on behalf of the Plaintiff avers in her affidavit in support of the application for summary judgment that R 1 855 531.59 is due and payable and as proof of the amount invites my attention to the said certificate. However, in the summons the amount of R 1 8555 531.59 is claimed in relation to all six loan agreements (thus in relation to both account numbers [....] and loan account [....]).

[5] The certificate can therefore not be correct. It might be a typing error or an omission and most probably is. However, the deponent states so under oath and I am not prepared to speculate in favour of the Plaintiff in this regard. Account number [....] at best can only refer to the first five loan agreements and same do not add up to the claimed amount. I am therefore not persuaded that the Plaintiff has clearly proved that it is entitled to summary judgment in the amounts as claimed.

[6] In view of the conclusion reached herein above it is not necessary to deal with the question whether Mr Steyn has set out facts which, if proved at the trial, would constitute a defence. In passing by I might mention that none thereof on face value persuaded me that he has a good defence. There is not even a single allegation that he has made payment herein. The least said the better.

[7] It also needs mentioning that Mr Steyn in his opposing affidavit indicates that he is over indebted and was advised that the court may in terms of section 85 of the National Credit Act 34 of 2005 make a direct

referral to a debt councillor and declare him over indebted. The only information placed before me by Mr Steyn is that he is over indebted as a result of a divorce action between himself and Mrs Steyn and the subsequent loss of the business which he conducted. I am not satisfied on this scant information to find that Mr Steyn is over indebted and I do not exercise my discretion in this regard in his favour. In any event the authority directs that a party should not raise this as a belated defence and should take the necessary steps in this regard timeously.

See: **BMW Financial Services (SA)(Pty)Ltd v Forefront Trading CC and Another** [2010] JOL 25191(KZD)

[8] Accordingly I grant the following order:

1. The application for summary judgment is dismissed.
2. Leave is granted to the First Defendant to defend the action.
3. Costs is to be in the cause.

C. REINDERS, J

On behalf of the Plaintiff: Adv. E.G. Lubbe
Instructed by:
Van Hulsteyns
c/o Strauss Daly Inc
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On behalf of the First Defendant: Adv. J. Els
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