

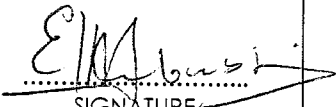
REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG, PRETORIA)

5/7/2013

CASE NO: 20713/2013

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
5/7/2013	
DATE	SIGNATURE

In the matter between:

THE STANDARD BANK OF SA LIMITED

PLAINTIFF/APPLICANT

and

PARK BOULEVARD TRADING 53 CC

FIRST DEFENDANT/RESPONDENT

CAREN ESTELLE LABUSCHAGNE

SECOND DEFENDANT/RESPONDENT

J U D G M E N T

KUBUSHI, J

- [1] This is an opposed summary judgment application. The plaintiff's claim is based on an acknowledgment of debt signed on behalf of

the first defendant by the second defendant. The second defendant also signed an unlimited suretyship in favour of the plaintiff for the debt of the first defendant as security for repayment by the first defendant.

- [2] In resisting the application the defendants have raised various defences *in limine* and also on the merits. In particular they are challenging the *quantum* of the indebtedness alleged by the plaintiff. Their defence is that they have not agreed to the use of a certificate of balance as *prima facie* proof of their indebtedness and disputes the correctness and accuracy of the alleged default and indebtedness.
- [3] Without having to decide on the points *in limine* I find that the defendants have raised a *bona fide* defence which is good in law and if raised at trial it may constitute a defence to the applicant's claim.
- [4] In a summary judgment application, where the question of whether the respondent has a *bona fide* defence arises, the court does not attempt to decide the issues or to determine whether or not there is a balance of probabilities in favour of the one party or the other. The respondent is also not required to persuade the

court of the correctness of the facts stated by him or her or where the facts are disputed, that there is a preponderance of probabilities in his or her favour. All that a court requires, in deciding whether the respondent has set out a *bona fide* defence, is:

- a. whether the respondent has disclosed the nature and grounds of his or her defence, and
- b. whether on the facts so disclosed the respondent appears to have, a defence which is *bona fide* and good in law. It is sufficient if the respondent swears to a defence, valid in law, which if advanced may succeed on trial.

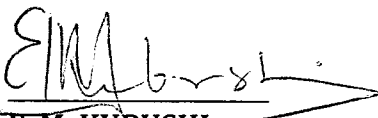
See MAHARAJ v BARCLAYS NATIONAL BANK LTD 1976 (1) SA 418 (A) at 426A – E, MARSH v STANDARD BANK OF SA LTD 2000 (4) SA 947 (W) at 949E – F and NAIR v CHANDLER 2007 (1) SA 44 (T) at 47B –C.

- [5] Summary judgment being an extraordinary stringent remedy, it should be granted only where there is no doubt that the applicant has an unanswerable case. Where doubt exists it must be refused. See TESVEN CC & ANOTHER v SOUTH AFRICAN BANK OF ATHENS 2000 (1) SA 268 (SCA) at 277H – 278A.

[6] As regards the issue of costs my view is that an appropriate cost order should be costs in the cause.

[7] In the premises I make the following order:

- a. The application for summary judgment is dismissed.
- b. The defendants are granted leave to defend the matter.
- c. Costs are costs in the cause.


E. M. KUBUSHI
JUDGE OF THE HIGH COURT

Appearances:

HEARD ON THE	: 04 JULY 2013
DATE OF JUDGMENT	: 05 JULY 2013
APPLICANTS' COUNSEL	: ADV M. RILEY
APPLICANTS' ATTORNEY	: STRYDOM BRITZ MOHULATSI INC
RESPONDENT'S COUNSEL	: ADV A. WIID
RESPONDENT'S ATTORNEY	: CHRISTO BOTHA ATTORNEYS