REPUBLIC OF SOUTH AFRICA

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

10/1/2012

CASE NO: 49040/2010

(1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED.

15/12/2011 .... DATE

[signature] SIGNATURE

In the matter between:

SLIP KNOT INVESTMENTS 777 (PTY) LTD	**APPLICANT**
and	
NEW CENTURY HOMES (PTY) LTD	**1ST RESPONDENT**
DAWID CORNELIUS MAREE	**2ND RESPONDENT**
BAREND GABRIEL MEYER	**3RD RESPONDENT**

J U D G M E N T

HIEMSTRA AJ

[1] The applicant seeks a money judgment for the amount of R6 993 213.61 together with interest against the second and third respondents, based on a deed of

suretyship in terms of which they bound themselves jointly and severally with the first respondent as sureties and co-principal debtors for the due and punctual payment of a total amount of R13 million to be lent and advanced by the applicant to the first respondent in terms of a loan agreement between the applicant and the first respondent, which loan agreement had been entered into simultaneously with the deed of suretyship.

[2] On 9 November 2011 judgment was granted against the first respondent by agreement between the parties for the said amount. Mr J.C. Viljoen, appearing on behalf of the respondents, said that the first respondent intends to apply for rescission of this judgment. In view thereof that the judgment was granted by agreement, it is difficult to conceive of any grounds upon which the judgment could be rescinded. Mr Viljoen has not suggested any.

[3] Despite this judgment, Mr Viljoen argued vigorously that the second and third respondents are not liable because the applicant had failed to make out a case against the first respondent. However, the liability of the first respondent has manifestly been established, and I shall have no regard to the submissions to the effect that the first respondent, as principal debtor, is not liable. I shall therefore only concern myself with the defences raised by the second and third respondents against their liability in terms of the deed of suretyship.

[4] In terms of clause 3.7 of the deed of suretyship, the amount of indebtedness of the debtor (the first respondent) to the creditor (the applicant) at any time shall be determined and proved by a certificate signed by any one of the creditor's authorised signatories, whose appointment, qualification and authority need not be proved. Such a certificate has been issued and is attached to the founding affidavit. The judgment against the first respondent was based on the certificate.

[5] Mr Viljoen submitted that the suretyship does not comply with the provisions of s 6 of the General Law Amendment Act, 50 of 1956. It reads as follows:

"No contract of suretyship entered into after the commencement of this Act, shall be valid, unless the terms thereof are embodied in a written document signed by or on behalf of the surety: Provided that nothing in this section contained shall affect the liability of the signer or an aval under the laws relating negotiable instruments."

[6] I fail to understand this submission. There are two essential elements that must be embodied in the agreement:

1. the identity of the creditor, the surety and the principal debtor; and

2. the identification of the principal debt.

[7] The first of the two essential elements appears from the suretyship agreement.

[8] Although the amount of the principal debt is not contained in the agreement, it may be established by supplementary extrinsic evidence, such as a certificate as stipulated in clause 3.7.[1]

[9] I therefore find that the deed of suretyship complies with s 6 of Act 50 of 1956.

[10] Mr Viljoen lastly argued that there is a discrepancy between letters of demand addressed to the first respondent and the certificate regarding the amount of indebtedness. Apart from the fact that the alleged discrepancy is clearly as a result of interest calculations, the indebtedness appears unequivocally from the judgment against the first respondent of 9 November 2011.

[11] In terms of the judgment of 9 November 2011 and the loan agreement, the first respondent is liable to pay interest on the principal debt as from the payment date, being 28 March 2008, at the rate of 1.5% per week.

In the result I make the following order:

[1] *Sapirstein v Anglo African Shipping Co (SA) Ltd* 1978 (4) SA 1 (A) and the cases cited therein; *Du Toit v Barclays Nasionale Bank Beperk* 1985 (1) SA 563 (A); Harms, *Amler's Precedents of Pleading* 7th ed at p 367

1. The second and third respondents are ordered, jointly and severally with the first respondent to pay to the applicant:

   1.1 the amount of R6 993 213.61;

   1.2 Interest of the amount of R6 993 213.61 at the rate of 1.5% per week from 28 March 2008 to the date of payment.

2. The second and third respondents are ordered to pay the costs of the application on a scale as between an attorney and client.

J. HIEMSTRA
ACTING JUDGE OF THE HIGH COURT

Date heard:	1 December 2011
Date of judgment	14 December 2011
Counsel for the applicant:	Adv. J.F. Pretorius
Attorney for the applicant:	Sim & Botsi Attorneys, c/o Gross Papadopulo & Ass.
Counsel for the respondents	Adv. J.C. Viljoen
Attorney for the respondents	Le Roux & Du Plessis Attorneys