

JM//
REPUBLIC OF SOUTH AFRICA



NORTH GAUTENG HIGH COURT, PRETORIA

28/11/12
CASE NO: 965/10

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED. ✓
28/11/12	
DATE	SIGNATURE

In the matter between:

FIRSTRAND BANK LIMITED trading inter alia As FNB HOME LOANS
(formerly FNB OF SOUTHERN AFRICA LIMITED)

Applicant

And

ANZEL TRADING 1002 CC

1st Respondent

ANNA SOPHIA FOURIE

2nd Respondent

PAULO GEORGE DA SILVA

3rd Respondent

J U D G M E N T

MSIMEKI, J

INTRODUCTION AND BRIEF FACTS

- [1] The Applicant lent and advanced money to the First Respondent. The Second and Third Respondents executed a deed of suretyship in favour of the Applicant and bound themselves in solidum, as sureties and co-principal debtors, jointly and severally, with the First Respondent for and in respect of the First Respondent's aforesaid liability. The Respondents defaulted with their monthly payments causing the Applicant to institute an action against them claiming payment of the whole amount. The Respondents allege that an agreement was reached with one of the Applicant's employees to the effect that they, instead of paying the required monthly instalment, could pay R15.000.00. The Applicant disputes this. They, in any event, did not pay the R15.000.00 regularly. They, for instance, did not pay all the time. This caused the Applicant to bring an application for summary judgment as they, in the meantime, had entered appearance to defend the action. The Respondents filed an opposing affidavit.
- [2] The Respondents disclosed that the property which was bought with the money had only been needed for investment.
- [3] They contend that their tenants experienced financial problems which caused them to fail to honour the agreement between them and the Respondents. This, in turn, caused the Respondents to default with their payments.

[4] It is contended on behalf of the Applicant that the agreement that the Respondents allege to have concluded with the Applicant to pay R15.000.00 instead of the full monthly instalment is very vague and does not help them. The agreement, it is contended on behalf of the Applicant, is in any event denied. The further contention is that the R15.000.00 seems to have been covering the arrears only leaving the bond repayment unattended to. It is submitted on behalf of the Applicant that nowhere was the alleged agreement reduced to writing. It is, indeed, so.

[5] The Applicant contends that the opposing affidavit does not comply with Rule 32 (3) (b). The Respondents, in their affidavit, have to disclose that they have a *bona fide* defence to the action. The opposing affidavit also has to disclose fully the nature and grounds of the defence and the material facts relied upon therefor. All this means is that what the Respondents allege in the affidavit must be such that if it is proved at the trial, it will constitute a defence to the Applicant's claim. **(Breitenbach v Fiat SA (EDMS) Bpk 1976 (2) SA 227 (T))**. The material facts in the affidavit, according to the Applicant, are bald, vague and sketchy. I agree. Not much is disclosed about this agreement. There is also no consistency in the payment.

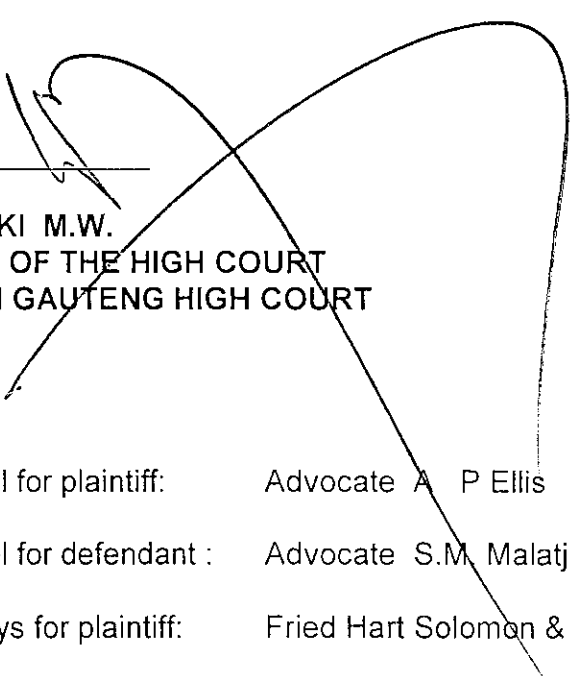
[6] The Mortgage Bond agreement in clause 27.1 provides:
"this bond, read in conjunction with the Grant of Loan Letter, constitutes the entire agreement between the mortgagor and the Bank and (save as provided in this Bond) nothing at variance with the terms hereof shall be binding unless reduced to

writing and signed by or on behalf of the Mortgagor and the Bank". This, according to the Applicant, puts the matter to rest. I agree. The alleged agreement was never reduced to writing and never became an agreement. The Respondents have also failed to disclose a defence to the Applicant's claim.

There is no reason why summary judgment should not be granted.

[7] I, in the result, make the following order:

An order is granted in terms of prayers 1, 2, 3 and 4 of the Application for summary judgment dated 17 March 2010.



MSIMEKI M.W.
JUDGE OF THE HIGH COURT
NORTH GAUTENG HIGH COURT

Counsel for plaintiff: Advocate A. P. Ellis
Counsel for defendant : Advocate S.M. Malatji
Attorneys for plaintiff: Fried Hart Solomon & Nicolson
Attorneys for defendant: Stuart Van Der Merwe Inc
Date heard: 30 April 2010
Date of judgment: