

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No: 3704/2012

In the matter between:-

DELTA CRANE & PLANT HIRE

Plaintiff

and

JABULANI REUBEN MPEMBE N.O.
KWANAZE MARTHA MPEMBE N.O.
HENNING JOHANNES SMIT N.O.
JABULANI REUBEN MPEMBE N.O.

1st Defendant
2nd Defendant
3rd Defendant
4th Defendant

JUDGMENT BY: THAMAGE, AJ

HEARD ON: 6 DECEMBER 2012

DELIVERED ON: 20 DECEMBER 2012

[1] This is an application for summary judgment against the first to fourth defendant.

[2] Plaintiff issued summons against the four defendants for payment of leasing of goods as well as the supply thereof in the sum of R294 259,20. The transaction was preceded by a credit application incorporating a deed of suretyship in terms whereof the fourth defendant undertook liability for all obligations of the trust to

plaintiff. As per deed of surety, the maximum credit applied for was R120 000,00. All four defendants entered appearance to defend.

- [3] The issue to be decided is as to whether the defendants have a *bona fide* defence and that appearance to defend is not entered for purposes of delay.

- [4] In terms of Rule 32(3) of the Uniform Court Rules, the defendant has to disclose a *bona fide* defence and the full nature and ground thereof. The two primary considerations in an application of this nature is firstly whether there has been sufficient disclosure by a defendant of the nature and grounds of his defence and the facts upon which it is founded and secondly is that the defence so disclosed is both *bona fide* and good in law see **MAHARAJ v BARCLAYS NATIONAL BANK LTD** 1976 (1) SA 418 (A) AT 425G – 426E.

- [5] First to third defendants *ex facie* the documents filed do not opposed the application although defendant counsel stated that all four are opposing the application and that the fourth defendant's

affidavit covers all of the defendants. I cannot reconcile myself with the argument as there is no where in the affidavit purporting same, neither did the fourth defendant say he is authorised to depose of the affidavit on behalf of the others. Counsel for defendant attempted to read a deed of trust which did not form part of the documents which were in front of the court, which procedure is highly irregular. It was never denied by the fourth defendant that there has been lease and supply of goods to defendant, what is put forward is that the credit limit was not to exceed R120 000. This in itself does not sufficiently disclose the nature and grounds of the defendant's defence. See **MAHARAJ v BARCLAYS NATIONAL BANK LTD** *supra*.

- [6] Fourth defendant also contest that there were no invoices sent to defendant between February 2012 and all of a sudden on 31 July 2012 and invoice amounting to R294 259,20 was sent, thus putting a suspicion to the claim. It is not sufficient for a defendant to state that he or she has no knowledge of the allegations in the plaintiff's summons. See **BORDER CONCRETE ENGINEERING CO (PTY) LTD v KNICKELBEIN** 1982 (2) SA 648 (E) at 651, nor to state that the plaintiff's allegations must be subject to grave

suspicion. See WESTERN PROVINCE HARDWARE AND TIMBER CO (PTY) LTD v FRANK FLETCHER 1971 (2) PH F77.

- [7] Lastly, it has been argued that the defendants were never placed on *mora* with the consequences that summons were premature. On the contrary, plaintiff's counsel correctly argued that issue of summons constitute a demand.
- [8] In the premise, I come to the conclusion that the defendants have no *bona fide* defence and that appearance to defend was solely entered for purposes of delaying the action.
- [9] The following order is made:
- 9.1 Summary judgment in the amount of R294 259,20 is granted against all four defendants jointly and severally the one paying absolves the others.
- 9.2 Interest at the rate of 15,5% p.a. from date of service of summons to date of payment.
- 9.3 Costs of suit on attorney and client scale.

S. J. THAMAGE, AJ

On behalf of plaintiff: Adv. P. Leeuwner
Instructed by:
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BLOEMFONTEIN

On behalf of defendant: Adv. M. M. Ndobela
Instructed by:
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