

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No.: 1733/2011

In the matter between:

STANDARD BANK OF SA LTD

Applicant

and

LOUIS FERDINAND BANTJIES t/a
ELCON CIVILS

Respondent

JUDGMENT BY:

MATHEBULA, AJ

HEARD ON:

25 AUGUST 2011

DELIVERED ON:

8 SEPTEMBER 2011

[1] This is an application for summary judgment brought by the applicant against the respondent. The applicant had issued summons against the respondent claiming *inter alia* payments of the sum of money, cancellation of agreements and return of certain specified vehicles. There are in total five claims. The respondent is defending the claims.

[2] The applicant is relying on an affidavit deposed by its Manager for Business Recoveries, Personal and Business

Banking Credit, one Gerasimos Callinicos. The relevant parts of the affidavit is paragraphs 2 and 4 which reads as follows:

“2. In my capacity as aforesaid I have access to and have perused and am familiar with the records and documents pertaining to the defendant’s indebtedness and suretyship obligations to the Plaintiff.”

and

“4. I have read the summons issued by the plaintiff against the defendant in the above matter and I verify the causes of action and the amounts claimed by the plaintiff.”

[3] The application is opposed by the respondent and a detailed affidavit has been filed. The crux of the opposition is that the documents relied upon, were not identified, indebtedness of the respondent to the applicant is denied and that the descriptions of the vehicles in the documents relied upon do not match with the aforementioned documents. In essence that the claims are not based on liquid document or a liquidated amount of money.

[4] Both counsels submitted detailed heads of argument and I

am indebted to them. Mr Hefer submitted that all claims are liquidated claims and that the applicant satisfied the requirements of rule 32 of the Uniform Rules of Court and that the application must be granted. On the other hand, Mr Burger submitted that the application was not in accordance with the Uniform Rules of Court and therefore defective. He also referred to the documents relied upon by the applicant. In essence, it was his view that the amount claimed was not a liquidated amount.

[5] Rule 32 of the Uniform Rules of Court reads as follows:

“Where a defendant has delivered notice of intention to defend, the plaintiff may apply to court for summary judgment on each of such claims in the summons as is only:

- a) on a liquidated document;
- b) of a liquidated amount in money;
- c) for delivery of specified movable property; or
- d) for ejectment.”

The relevant part of Rule 32(2) states the following:

“Deliver notice of application for summary judgment, together

with an affidavit made by himself or by any other person who can swear positively to the facts verifying the cause of action and the amount if any, claimed. ...”

In the leading case of **CALTEX OIL (SA) LTD v CRESCENT EXPRESS (PTY) LTD & OTHERS** 1967 (1) 466 D & C L at 468 E – F the court said the following:

“For I am persuaded that the application must be refused for want of compliance by the Plaintiff with Rule 32(2). Mr Broome acknowledges that the claim is founded on a liquid document within the meaning of Rule 32(1). The documents of 1st April 1964 ought to have been identified in the affidavit made by Mr Barty as being those upon which Plaintiff founded his case. ...”

[6] I agree with Mr Burger that the application is not in accordance with the Rule. The documents have not been identified. As a result of this fatal flaw the application ought to be refused. Further, the threshold in summary judgment is the disclosure of the nature and grounds of the defence and the facts relied upon. This defence must be both *bona fide* and good in law. I am of the view that the respondent has

measured up to the threshold in this matter.

[7] As far as the costs are concerned, I will depart from the rule that the costs follow the result. The respondent requested that the costs be the costs in the cause.

[8] Accordingly, I make the following order:

8.1 The application for summary judgment is dismissed.

8.2 Costs is costs in the cause.

M. A. MATHEBULA, AJ

On behalf of the applicant: Adv. J. J. F. Hefer
Instructed by:
Lovius Block Attorneys
BLOEMFONTEIN

On behalf of the respondent: Adv. A. H. Burger SC
Instructed by:
Botha Hefer Inc.
BLOEMFONTEIN