

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : 671/2009

In the matter between:-

HIGH POINT TRADING 733 BK
t/a HIGH POINT BRIDGING

Applicant

and

STEENKAMP DE VILLIERS AND COERTZE

1st Respondent

IZAK JACOB STEENKAMP

2nd Respondent

JOHANN MARKS DE VILLIERS

3rd Respondent

REHAN COETZEE

4th Respondent

HEARD ON:

27 AUGUST 2009

DELIVERED ON:

10 DECEMBER 2009

JUDGMENT BY:

SIMELANE, AJ

[1] This is an application by the applicant to compel the respondents to pay R49 955,00 (forty nine thousand nine hundred and fifty five rand) together with interest at the rate of 15,5% per year from 1 August 2008, the respondents to pay that amount jointly and severally, the one paying the others to be absolved and that the respondents pay the costs of this application on a scale as between attorney and client.

[2] There are four aspects of importance in this application, namely:

- (a) The citation of the first respondent as a partnership and the other respondents as partners of the first respondent.
- (b) The interpretation of annexure “V5”, i.e. whether Steenkamp De Villiers and Coetzee Ingelyf in terms of annexure “V5” was merely to act as agent for Oosthuizen or whether “V5” created an agreement binding on Steenkamp De Villiers en Coetzee Ingelyf to pay the applicant from the proceeds of the sale of the two immovable properties in question.
- (c) The applicability of the National Credit Act.
- (d) The application for a punishing order of costs against the respondents.

[3] **Citation:** The first respondent is cited as Steenkamp De Villiers and Coetzee prokureurs and the second, third and fourth respondents are cited as partners of the first respondent and are sued jointly and severally in view of their position as partners.

- [4] The application by the applicant is based on a bridging agreement. B.J.J. Oosthuizen was owner of two erven, namely, Erf 27471 and Erf 27472 situated at Vista Park, Extension 163. He borrowed a sum of money from High Point Trading 733 CC. This money would be payable out of the proceeds of the sale of the two erven by the agent Steenkamp De Villiers and Coetzee Ingelyf.
- [5] B.J.J. Oosthuizen signed an acknowledgement of debt in favour of the creditor – High Point Trading 733 CC trading as High Point Bridging. The acknowledgement of debt is marked “V3”. This transaction is based on a contract between Oosthuizen and High Point Trading 733 CC. The contract marked “V4” expressly stipulates that Steenkamp De Villiers and Coetzee Ingelyf shall pay the applicant out of the proceeds of the sale of the two immovable properties on the happening of a specific event, i.e. the sale of the two immovable properties.
- [6] Steenkamp De Villiers and Coetzee Ingelyf in turn made and signed an undertaking to pay over to High Point Trading 733 CC from the proceeds of the sale of the two immovable

properties. The sale occurred but Steenkamp De Villiers en Coetzee Ingelyf did not pay over to High Point Trading 733 CC alleging that there were no proceeds available.

[7] High Point Trading 733 CC now brings an application against Steenkamp De Villiers en Coetzee Ingelyf to pay on the strength of that undertaking, namely “V5”. In the papers before the court the first respondent is not cited as an incorporated company but as a firm of attorneys and the second, third and fourth respondents as partners of the first respondent.

[8] In the opposing affidavit the first respondent objects to this citation and avers that it is not a partnership but an incorporated company incorporated according to the laws of the Republic of South Africa with the registration number 2007/007414/21. The first respondent alleges further that the second, third and fourth respondents are not partners but directors of that incorporated company.

[9] In the replying affidavit the applicant does not respond to this averment which therefore means that this averment is not

contested by the applicant. It has not been gainsaid. Moreover, these are motion proceedings and the rule in **Plascon-Evans** applies in terms of which the respondents' averments in this regard would, if there was a dispute of facts, prevail.

[10] In the premises the objection that the wrong parties have been cited ought to be upheld and it becomes unnecessary to deal with the merits of the matter.

[11] The application is dismissed with costs.

A. SIMELANE, AJ

On behalf of applicant: Adv. N. du Preez
Instructed by:
Strydom & Bredenkamp Attorneys
p/a E G Cooper Majiedt Inc.
BLOEMFONTEIN

On behalf of respondents: Adv. H J Benade
Instructed by:
Steenkamp De Villiers & Coetzee Inc.
BLOEMFONTEIN

/sp