IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN

Case Number: 4083/2023
REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO
REVISED. NO

In the matter between:

KING PRICE INSURANCE CO **Plaintiff**
(Registration Number: 2009[…])

and

FREDERICK CHRISTAAN JOUBERT **Defendant**
(Identity Number: 7[…])

HEARD ON: 23 November 2023

CORAM: JORDAAN,AJ

DELIVERED ON: 24 May 2024

[1] This is an application for summary judgment brought in terms of Uniform Rule 32 of this court. The Applicant in this summary judgment application, is the Plaintiff in the action instituted against the Defendant, who in turn, is the Respondent in this application. The parties will herein be refered to as in the main action.

[2] The Defendant took out three insurance policies with the Plaintiff, vide[1]:

2.1.1 Policy number 22-23-14293 with a premium of R736 567,96;

2.1.2 Policy number 22-23- 17538 with a premium of R358 614,26;

2.1.3 Policy number 22-23-18324 with a premium of R332 998,96.

All the above-mentioned premiums were payable yearly, at end of soyabean harvesting season, which is 31 May 2023.

[3] The premiums amounting in total to R1 428 181,18, were due and payable on the 31st of May 2023. The Defendant however, failed to make payment to the Plaintiff.

[4] As a consequence the Plaintiff issued summons claiming *inter alia:*

4.1 Payment in the amount of R1 428 181,18;

4.2 Interest on the aforesaid amount calculated at 10,5% a *tempora morae* from 31 May 2023 to date of final payment, alternatively, from date of the summons until the date of final payment, alternatively, from the date of the summons until the date of final payment;

4.3 Costs of suit.

[5] The Defendant filed notice of intention to defend the action and a plea[2] wherein he admits that he concluded the insurance policies with the Plaintiff, he admits the premium per policy, he admits the amount of the premiums totalling R1 428 181,18, he admits the agreements and he admits that he refused to make payment to the Plaintiff. The Defendant pleaded that the Plaintiff repudiated the

[1] Paginated Bundle: pages 11 to 26 Annexures "KP1, KP2 and KP3"
[2] Paginated Bundle: pages 27 to 30

contract prior to the 31st of May 2023 through its omission to do a proper assessment after damages were reported timeously and by its unlawful insistence for payment prior to the 31st of May 2023.

[6] Having received the Defendant's plea, the Plaintiff filed an application for summary judgment.

[7] The Defendant did not file an affidavit opposing summary judgment, but filed a notice of intention to oppose summary judgment and heads of argument.

[8] At the hearing, the Defendant faced with the Plaintiff's submission that the Defendant failed to comply with Rule 32, submitted that it will raise a point *in limine.*

[9] Point *in Limine:*

The underwriting company in terms of the policy document (insurance Agreement) is Gemoedsrus Verskansing Eiendoms Beperk, however the deponent on behalf of the Plaintiff in his founding affidavit states that he is the Chief Executive Officer of "Gemoedsrus and Agricultural Insurance Underwriting Company". No nexus is made out between the Plaintiff and "Gemoedsrus and Agricultural Insurance Underwriting Company" on the papers. There is also no nexus between Gemoedsrus Verskansing Eiendoms Beperk and Gemoedsrus and Agricultural Insurance Underwriting Company on the papers before court. The Defendant submitted that the summary judgment application is therefore fatally defective.

[10] The Plaintiff submitted that the requirement of Rule 32 is that a person who can swear positively to the facts, explain briefly why the defence as pleaded does not raise any issue for trial. The deponent has personal knowledge and has dealt with the matter personally including dealing with the plaintiff and the defendant's broker. Even if its two different companies it is irrelevant as personal knowledge is all that is required by Rule 32.

[11] Summary judgement enables a plaintiff to obtain judgment against a defendant without resorting to trial when a defendant has no defence to a claim based on a liquid document, for a liquidated amount of money, for delivery of movable property, and for ejectment. The instant application for summary judgment is for delivery of movable property.

[12] Rule 32.(2)(a) and (B) provides:

> " *(a) Within 15 days after the delivery of the plea the plaintiff shall deliver a notice of application. for summary judgement, together with an affidavit made by the plaintiff or by any other person who can swear positively to the facts.*
>
> *(b) the plaintiff shall, in the affidavit referred to in sub rule (2)(a) verify the cause of action and the amount, if any, claimed, and identify any point of law relied upon and the facts upon which the plaintiff's claim is based, and explain briefly why the defence has pleaded does not raise any issue for trial."*

[13] Rule 32.3 provides that the defendant may:

> *"(a) Give security to the satisfaction of the court for any judgement including* cost *which may be given; and or*
>
> *(b) satisfy the court by affidavit (which shall be delivered five days before the day on which the application is to be heard), or with leave of the court by oral evidence of such defendant or of any other person who can swear positively to the fact that the defendant has a bona fide defence to the action; such affidavit or evidence shall disclose fully the nature and grounds of the defence and the material facts relied upon therefore."*

[14] The rationale and requirements for the grant or refusal of summary judgment are trite and are summarised in the Supreme Court of Appeal

judgment of Joob Joob Investments[3] as follows:

> "The rationale for summary judgment proceedings is impeccable. The procedure is not intended to deprive a defendant with a triable issue or a sustainable defence of her/his day in court. After almost a century of successful application in our courts, summary judgment proceedings can hardly continue to be described as extraordinary. Our courts, both of first instance and at appellate level, have during that time rightly been trusted to ensure that a defendant with a triable issue is not shut out. In the *Maharaj* case at 425G-426E, Corbett JA was keen to ensure, first, an examination of 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. The second consideration is that the defence so disclosed must be both bona fide and good in law. A court which is satisfied that this threshold has been crossed is then bound to refuse summary judgment. Corbett JA also warned against requiring of a defendant the precision apposite to pleadings. However, the learned judge was equally astute to ensure that recalcitrant debtors pay what is due to a creditor.
>
> Having regard to its purpose and its proper application, summary judgment proceedings only hold terrors and are drastic for a defendant who has no defence. Perhaps the time has come to discard these labels and to concentrate rather on the proper application of the rule, as set out with customary clarity and elegance by Corbett JA in the *Maharaj* case at 425G-426E."

[15] The test for the granting of a summary judgment is whether the Defendant has satisfied the Court that he has a *bona fide* defence to the action.[4] What this entails is whether the facts put up by the Defendant raised a triable issue and a sustainable defence in law deserving of their day in court. The defense must not be bald, vague or sketchy.

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[3] 2009 (5) 1 (SCA) at 11G-12D

[4] Rule 32(3) of the Uniform Rules of Court

[16] The defendant has not filed an affidavit in terms of Rule 32.(3)(b). The defendant chose to raise a *in limine point,* through submissions from the bar and by filing heads of argument. His plea on the merits are but allegations as it is not contained in an affidavit in terms of rule 32.3.

[17] The point *in limine* assert that there is no nexus between the Plaintiff and the deponent and the company that he works for nor between the Plaintiff's underwriting company and the deponent's company or the company for which the deponent works. There is no requirement in Rule 32 for such a nexus, what is required is any other person who can swear positively to the facts.

[18] In paragraph 1.3 and 1.6 of the deponent's affidavit he states:[5]

> "In my capacity as managing director, I have personally dealt with the issues giving rise to the plaintiff's cause of action".
>
> "I have personally dealt with the issues and discussed the matter with the insurer (the plaintiff), and the defendant's broker."

[19] The deponent in accordance with Rule 32.(2)(a) is any other person who can swear positively to the facts. The summary judgement application is brought by the same plaintiff as in the main action with who the defendant admits to having entered into policy agreements. This court having regard to the *dictum* in Maharaj[6] is satisfied that the deponent is a person who can swear positively to the facts.

[20] Accordingly the application for summary judgement is not fatally defective as submitted in the point *in limine.*

[21] The deponent verified the cause of action, the facts upon which the claim is based, the amount claimed, the plaintiff performed in terms of the

[5] Paginated Bundle: Page 39 paragraph 1.3 and 1.6
[6] 1976 (1) SA 418 (A)

contract while the defendant did not raise a dispute on the assessment within the time frame allowed, failed to comply with terms of the agreement, while admitting entering into the insurance policy, that the premiums were payable as stipulated in the agreement and the amount of the premiums totaling R1 428 181,18. Thereby asserting that defendant raised no issue for trial.

[22] The defendant by not submitting an affidavit as required in Rule 32.3 has not disclosed the nature and grounds of his defence and the material facts relied upon.

[23] The defendant's argument failed to assail the detailed account provided in the plaintiff's affidavit. The defendant as already pointed out herein failed to file an affidavit as provided in Rule 32.3

[24] Accordingly, I make the following order:

ORDER

[25] Having read the papers and heard the submission of counsel, the following order is made:

26.1 The Defendant's point in limine is dismissed with costs,

26.2 Summary judgement is entered in favour of the Plaintiff against the Defendant for payment of R1,428,181.18,

26.2.1 Interest on the aforesaid amount of RI,428,181.18 calculated at 10.5% a *tempore mora* from 31 May 2023 to date of final payment:

26.2.2 Costs of suit on party and party scale.

M.T. JORDAAN, AJ

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