



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: NO
- (3) REVISED: NO
- (4) DATE: 11 APRIL 2025

(5) SIGNATURE: 

CASE NUMBER: 33219/2015

In the matter between: -

Standard Bank of South Africa Limited

Plaintiff/Applicant

(Registration Number: 1962/000738/06)

And

Luvhomba Financial Services CC

Defendant/Respondent

(Registration Number: 2003/048903/223)

This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on CaseLines by the Judge or her Secretary. The date of this judgment is deemed to be 11 April 2025.

JUDGMENT

COLLIS J

INTRODUCTION

[1] This is an opposed summary judgment in terms of which the Plaintiff seeks the following relief:

1.1. Payment of the amount of R1,281,969.78;

1.2. Payment of interest on the amount of R1,281,969.78 at a rate of 10.990% per annum from 5 April 2015 to date of payment, both dates inclusive;

2. Payment of the monthly insurance premiums of R289,39;

3. That the immovable property described as Portion 4 of Erf 3269, Louis Trichardt Extension 11 Township, Registration Division L.S, Province of Limpopo, measuring 297 (two hundred and ninety-seven) square metres, held by deed of transfer number T49723/2013, subject to the conditions therein contained ("the property") be declared executable for the aforesaid amounts;

4. An order authorizing the plaintiff to execute against the property as envisaged in Rule 46(1)(a)(ii) of the Uniform Rules of Court;

5. Costs on the scale as between attorney and client.

[2] The relief sought by the Plaintiff is premised on a loan agreement concluded between the parties which was breached by the Defendant leading to the Plaintiff instituting action proceedings against the Defendant.

[3] Pursuant to the action being instituted, the summons was served on the Defendant's registered business address which is also the Defendant's chosen domicile address on 8 July 2015. Thereafter, the Defendant delivered a Notice of Intention to Defend on 10 July 2015. The Plaintiff then withdrew its Default Judgment application and called for the delivery of the Plea on 30 November 2023. The Plea was delivered on 6 March 2024 and in terms of Rule 32(2) the summary judgment application was then launched.

BACKGROUND FACTS

[4] On 30 April 2013, the plaintiff and the defendant concluded a written home loan agreement.¹

¹ Application for summary judgment: 006-7, para 5.1.

[5] Pursuant to the conclusion of the home loan agreement, the Defendant caused a mortgage bond to be registered in favour of the Plaintiff over the property.²

[6] The Defendant defaulted on payment of the home loan account. As a result of this breach the Defendant owed the Plaintiff as of 5 April 2015, an amount of R1,281,969.78 plus interest at a rate of 10.990% from 5 April 2015 together with monthly insurance premiums in the amount of R298.39.³ As per the updated Certificate of Balance, this amount has since increased to R 2 899 568.26.⁴

[7] The Plaintiff then caused notices in terms of section 129 of the National Credit Act 34 of 2005 to be issued and served on the Defendant,⁵ with summons ultimately being issued against the Defendant on 12 May 2015. The summons was served on the Defendant on 8 July 2015 this at its' chosen domicilium citandi et executandi.⁶

² Application for summary judgment: 006-7, para 7.

³ Application for summary judgment: 006-8, para 9.

⁴ Updated COB 015-2.

⁵ Application for summary judgment: 006-8, para 10.

⁶ Application for summary judgment: 006-8, para 12.

[8] On 10 July 2015 the Defendant served a notice of intention to defend the action and in the absence of the Defendant filing a plea, the Plaintiff then applied for default judgment which application was later withdrawn on 30 November 2023 in order to allow the Defendant an opportunity to file a plea.⁷

[9] As mentioned, the defendant filed its plea on 6 March 2024, which raised only one defence namely, that the defendant cited in the action is incorrect as such defendant does not exist. According to the defendant, its name is Luvhomba Financial Services (Pty) Ltd and not Luvhomba Financial Services CC. The defendant contends that it has no relationship or business with the plaintiff and that the plaintiff therefore is suing the incorrect party.⁸

[10] At the hearing Mr. Matthews Mulaudzi appeared in person on behalf of the defendant. He informed this Court that he is a member of the defendant and on this basis could appear on behalf of the defendant.

[11] His right of appearance on behalf of the defendant, was rightly challenged by the plaintiff.

⁷ Application for summary judgment: 006-9, para 14.

⁸ Defendant's plea: 005-2, para 7.

[12] On its behalf it was argued that the defendant is a close corporation and that Mr. Mulaudzi appearing on behalf of the defendant is not a legal representative. As such it was argued that he therefore does not have right of appearance to represent the defendant before this Court.

[13] Now it is trite that a company is a legal persona and it cannot appear in person. A company, and similarly a close corporation, must be represented by a duly admitted attorney or advocate.⁹

[14] In the decision of Manong¹⁰ the Supreme Court of Appeal confirmed the principle laid down in Yates Investments and further held that Superior Courts have a residual discretion to grant leave to a corporation to carry on in proceedings otherwise with the assistance of a legal representative.

[15] Therefore, in order for the Court to allow a corporation to be represented in a Superior Court without legal representation, there must be leave sought

⁹ Yates Investments (Pty) Ltd v Commissioner for Inland Revenue 1956 (1) SA 364 (A).

¹⁰ Manong & Associates (Pty) Ltd v Minister of Public Works and Another 2010 (2) SA 167 (SCA).

by way of a properly motivated formal application which shows good cause on why the rule prohibiting non-professional representation should be relaxed.

[16] In the present proceedings the defendant has not make such a formal application to appear on behalf of the defendant. Consequently, the plaintiff had argued that the defendant is not properly before Court.

[17] In the absence of such an application, this Court is not persuaded that Mr. Mulaudzi had right of appearance to appear on behalf of the defendant, and consequently, the preliminary point as raised by the plaintiff is found to be sound and that it has merit.

THE LAW

[18] Rule 32 of the Uniform Court Rules sets out the procedure for an application for summary judgment.

[19] Rule 32(2)(a) provides the following:

“(a) Within 15 days after the date of delivery of the plea, the plaintiff shall deliver a notice of application for summary judgment, 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 subrule (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 as pleaded does not raise any issue for trial.”

[20] From a procedural point of view the plaintiff has complied with the provisions of the Rule in that:

20.1 The application was brought on 28 March 2024, this within 15 days after the defendant served its plea;

20.2 The affidavit was deposed to by a person who can swear positively to the facts of the matter and has verified the cause of action and the amount claimed from the defendant;¹¹ and

20.3 The plaintiff has stipulated the points of law relied upon and the facts upon which its claim is based and why the defence raised by the defendant does not raise any issue for trial.¹²

[21] Rule 32 was designed to prevent a plaintiff's claim, based upon certain causes of action, from being delayed by what amounts to an abuse of the process of the court. In certain circumstances, therefore, the law allows the plaintiff to apply to court for judgment to be entered summarily against the defendant, thus disposing of the matter without putting the plaintiff to the expense of a trial.¹³

[22] To the matter at hand, the plaintiff's application for summary judgment seeks to achieve the exact objective of the Rule being to prevent the plaintiff's action from being delayed even further by an abuse of Court processes.

¹¹ Application for summary judgment: 006-6, para 4.

¹² Application for summary judgment: 006-7 to 006-12, para 5 to 25.

¹³ Van Loggerenberg and Bertelsmann Erasmus: Superior Court Practice RS 22, 2023, D1 Rule 32-14.

LACK OF BONA FIDE DEFENCE

[23] In its plea, the defence raised by the defendant is that the plaintiff sued the incorrect party as the defendant is a private company and not a close corporation as cited.

[24] Herein, the loan agreement annexed to the plaintiff's particulars of claim as annexure "X", sets out that the loan agreement was entered into between the plaintiff and an entity known as "Luvhomba Financial Service CC" with registration number "2003-048903-23".¹⁴

[25] Ex facie this agreement it is clear that at the time when the agreement was concluded with the defendant, that the defendant was registered as a close corporation bearing registration number as cited above. The defendant further remained registered as such when the plaintiff first instituted the action proceedings against the defendant.¹⁵

[26] As per the affidavit filed in support of this application, the plaintiff conducted a search on the Companies and Intellectual Property Commission

¹⁴ Plaintiff's particulars of claim: 001-16.

¹⁵ Affidavit in support of summary judgment: 006-10, para 19.

system, which search confirms that the defendant is still registered as a close corporation. As such there is no evidence that the defendant converted from a close corporation to a private company and further the defendant has failed to provide any evidence to the effect that it is a private company and not a close corporation.¹⁶

[27] In the absence of such rebuttal evidence being placed before this Court, it must be accepted that the defendant is a close corporation and not a private company.

[28] In its plea the defendant further denies that it entered into any agreement with the plaintiff. ¹⁷ This bear denial is also not supported by any corroboratory evidence.

[29] Absent such evidence, this Court therefore accepts that a valid agreement was concluded between the plaintiff and the defendant and that the plaintiff is entitled to enforce such agreement against the defendant as cited.

¹⁶ Affidavit in support of summary judgment: 006-11, para 21 and 22.

¹⁷ Defendant's Plea 005-2 para 6.

[30] The defendant it is alleged has failed to make payment on the loan account for several years and at the time when the application for summary judgment was brought, the arrears on the defendant's home loan account had amounted to R2,865,613.81 and they continue to escalate.¹⁸

[31] In the affidavit opposing the application for summary judgment, the defendant at great lengths makes reference to the sequestration of its member, Mr. Mulaudzi.¹⁹ The latter's sequestration is irrelevant to this action as the action herein is proceeding against the close corporation of which Mr Mulaudzi is a member and not Mr. Mulaudzi in his personal capacity. The close corporation remains a separate legal person from Mr. Mulaudzi.

[32] In support for having sued the close corporation, the plaintiff relied of the decision Hip Hop Pantsula Production Close Corporation²⁰ wherein the defendant in a summary judgment application had argued that Nedbank could not obtain judgment against the close corporation as the sole member of the close corporation had been deceased thus the administration of the sole

¹⁸ Plaintiff's Rule 46 supplementary affidavit: 015-7, para 13.3.

¹⁹ Affidavit opposing summary judgment: 017-4, para 9.

²⁰ Nedbank Limited v Hip Hop Pantsula Production Close Corporation 2022 JDR 1145 (GJ).

member's estate had to be wound up first. In this decision the Court held that (at para 7):

"The identity of the defendant is separate from that of its members. The defendant is a separate legal entity from its members and has legal rights and responsibilities. It is capable of entering into legally binding agreements and can sue or be sued in a court of law. The Salmon Rule has been rigidly applied in our law for over a century, which was devised by the House of Lords in the matter of *Salmon v Salmon & Co Ltd* 1897 AC 22; 1895 -99 All ER Rep 33 (HL), where it was held that a company, duly formed to take over the business of a person who became the beneficial owner of all its shares, was nevertheless in law a different person altogether from that person. In the matter of *Francis George Hill Family Trust v SA Reserve Bank* 1992 3 SA 91 (A) at 97 the court held that "It is trite that a company with limited interest is an independent legal person and separate from its shareholders or directors."

[33] The defendant being a separate legal entity from Mr. Mulaudzi is entitled to be sued for any breach committed by the defendant. Mr. Mulaudzi is merely the member of the defendant. The home loan agreement was concluded with the defendant and the defendant is accordingly the party against whom the

action was brought. As such the sequestration of Mr. Mulaudzi's remains irrelevant to these proceedings as Mr. Mulaudzi is not the person being sued.

[34] In the opposing affidavit, the deponent further contends that the plaintiff should have joined the trustees appointed subsequent to his sequestration. This argument however holds no water as the proceedings was initiated against the defendant-close corporation and not against Mr. Mulaudzi in his personal capacity.

[35] The wrong party having been sued as contended for by the defendant is the only defence raised by the defendant, and as already mentioned this defence is meritless.

[36] As the defendant has failed to discharge the onus which the Rule requires it to meet, i.e. that it has a bona fide defence which raises issues to be determined at trial it must therefore follow, that the plaintiff would be entitled to the relief which it seeks.

COSTS

[37] In its Particulars of Claim, the plaintiff seeks costs on an attorney and client scale as provided for in the underlying mortgage bond²¹ in the event of any default on the part of the defendant. This Court is satisfied to award the plaintiff such costs as it is the successful party herein.

[38] Consequently, summary judgment is entered in favour of the Plaintiff against the Defendant for:

38.1 Payment of the amount of R2,899,568.26;

38.2 Payment of interest on the amount of R2,899,568.26 at the rate of 13.240% per annum from 25 October 2024 to date of payment both dates inclusive.

38.3 The immovable property described as:

PORTION 4 OF ERF 3269, LOUIS TRICHARDT EXTENSION 11 TOWNSHIP, REGISTRATION DIVISION L.S., PROVINCE OF LIMPOPO, MEASURING 297 (TWO HUNDRED AND NINETY SEVEN) SQUARE METRES, HELD BY DEED OF

²¹ Mortgage bond: 001-35, clause 1.1.3.

TRANSFER NUMBER T49723/2013, SUBJECT TO THE CONDITIONS THEREIN CONTAINED.

("the Property")

is declared executable for the aforesaid amounts.

38.4 The Registrar is authorized to issue a writ of execution in terms of Rule 46 as read with Rule 46A for the attachment of the Property.

38.5 The sale of the Property in execution shall be subject to a reserve price set as R1 191 179.70.

38.6 A copy of this order is to be served on the Defendant, as soon as practicable after this order is granted, but prior to the sale-in-execution.

38.7 The Defendant may prevent the sale of the property referred to in this Order if the Defendant pays to the Plaintiff the arrear amount owing to the Plaintiff, together with the Plaintiff's permitted summary judgment charges

and reasonable costs of enforcing the agreement up to the time of reinstatement, prior to the property being sold in execution.

38.8 The Defendant is advised that the arrear amount is not the full amount of the judgment debt, but the amount owing by the Defendant to the Plaintiff, without reference to the accelerated amount.

38.9 The arrear amount, enforcement costs and summary judgment referred to in this Order may be obtained from the Plaintiff.

38.10 The Defendant are advised that the provisions of section 129(3) and (4) of the National Credit Act, Act 34 of 2005 may apply to the Judgment granted in favour of the Plaintiff.

38.11 The Defendant shall pay the costs of the action on a scale as between attorney and client.



C. COLLIS

JUDGE OF THE HIGH COURT

GAUTENG DIVISION PRETORIA

APPEARANCES

Counsel for the Plaintiff: Adv. L V Swandle

Instructed By: Van Hulsteyns Attorneys

C/O Riaan Bosch Attorneys

Counsel for the Defendant: Appearance by Mr. Mulaudzi

Date of Hearing: 11 November 2024

Date of Judgment: 11 April 2025