IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 009611/2024

DATE: 30-04-2025

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES / NO.
(2) OF INTEREST TO OTHER JUDGES: YES / NO.
(3) REVISED.
DATE 30 April 2024

[redacted]

SIGNATURE

In the matter between

ABSA BANK — Applicant

and

SEMICONDUCTOR SERVICES EXPORTS — Respondent

J U D G M E N T *EX TEMPORE*

WILSON, J: The applicant, Absa Bank, seeks summary judgment against the respondent, Semiconductor Services, on a suretyship in terms of which Semiconductor Services bound itself as surety and co-principal debtor for the debts of an entity known as the Motho Trust. The Motho Trust has been sequestrated, and Absa wishes to proceed on the suretyship against Semiconductor Services.

In resisting summary judgment, Semiconductor

Services raised a number of defences, only one of which it is necessary for me to deal with. That defence was that the Trust's liability to perform the principal obligation has been compromised in terms of a settlement agreement entered into between it and Absa on 28 July 2021. The question is whether that settlement agreement extended to the mortgage bond on which Absa seeks to execute in this case, or only to the controversies that are specifically mentioned in the settlement agreement.

Having reviewed the settlement agreement and heard from Mr Alli for Absa, in my view there is a such degree of ambiguity in the settlement agreement that it will be arguable at trial, perhaps after hearing the necessary evidence, that the settlement agreement did compromise Absa's claim on the mortgage instrument in this case against the Trust.

Mr Alli urged me to accept a particular textual interpretation of the settlement agreement that would exclude that possibility. But it seems to me that the text is such that evidence of the circumstances surrounding the settlement agreement's production is vital to fix its meaning. Mr Alli’s interpretation, while plausible, is not one that a trial court would inevitably be bound to accept.

Such was the force of Mr. Alli’s submissions that I am tempted to conclude that the defence on the settlement agreement will probably turn out to be quite weak. But the point of summary judgment is to get rid of wholly unmeritorious claims. It is not to weed out weak but arguable claims. It seems to me that, while the defence on the settlement agreement may be weak, it is clearly arguable.

For those reasons I make the following order:

1. The application for summary judgment is refused.
2. The defendant is granted leave to defend.
3. The costs of this application will be costs in the cause.

[redacted]

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WILSON J
JUDGE OF THE HIGH COURT
30 April 2025