



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA**

CASE NO: 3962/2024

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| (1) | REPORTABLE:NO |
| (2) | OF INTEREST TO OTHER JUDGES: YES |
| (3) | REVISED: YES |


10/02/2025

In the matter between:

DESMOND TROLLIP

FIRST APPLICANT

and

LATROSTAX (PTY) LTD
(Reg No.: 2017/010927/07)

FIRST RESPONDENT

K2019545899 (SOUTH AFRICA) (PTY) LTD
(Reg No.: 2019/545899/07)

SECOND RESPONDENT

KELLAPRINCE AFRICA (PTY) LTD
(Reg No.: 2019/075480/07)

THIRD RESPONDENT

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email. The date and time for hand-down is deemed to be 10 February 2025 at 10:00.

JUDGMENT

Mangena AJ

[1] The second and third defendants are two independent entities. They established a company called Latrostax (Pty) Ltd (Latrostax) for the purpose of developing a portion of land in Mbombela. The second defendant held 60% shareholding, and the remaining 40% was held by the third defendant.

[2] As the development was continuing, there became a need to raise more capital from third parties. Mr Todd, who was at some point the chairperson of Latrostax, met with the plaintiff, Mr Trollip, and requested him to advance money towards the project in the form of a bridging finance. Trusting that the money will be given back to him in good equal measure, he paid an amount of R2 000 000.00 into the bank account of Latrostax. Out of this R2 000 000.00, Mr Trollip received R500 000.00 and the balance of R1 500 000.00 remains unpaid.

[3] Mr Trollip instituted proceedings against Latrostax and its shareholders. He bases his claim on an oral agreement he concluded with Mr Todd. He avers in the particulars of claim that Mr Todd presented himself to him as the authorized representative of Latrostax when the agreement was concluded. He makes further allegations regarding repayment and other ancillary matters relating to interest. He seeks no relief against the second and third defendants. Accordingly, the two entities are not participating in these proceedings.

[4] Latrostax is defending the claim and at the heart of its defence is that Mr Todd was never mandated and or authorized by the company to raise bridging finance for and on behalf of Latrostax. In amplification of its plea, Latrostax avers that the second and third defendants were shareholders and none of the directors including Mr Todd had an unfettered discretion to bind Latrostax in respect of any agreement without prior approval of the board of Latrostax.

[5] Regarding the bridging finance, Latrostax admits it needed to raise capital and the shareholders “were required to obtain bridging finance to ensure that the joint venture could continue. In securing the bridging finance, the second and third defendants did not act as agents of the first defendant or on its behalf, but independently.”

[6] The plea actuated Mr Trollip, through his attorneys, to apply for summary judgment in which he contends strenuously that the defence advanced by Latrostax is a sham and is intended to delay the finalisation of his claim. Advocate Fourie who argued for him urged me to have regard to the minutes of the board of Latrostax as well as the email exchanges between Mr Todd and Mr Tarwa, the current chairperson of the board of Latrostax. The two had been discussing various issues including the repayment of funds due and owed to Mr Trollip. There is divergence between them as to who is liable for this debt.

[7] Mr Fourie’s argument as I understand it is as follows: Mr Todd was a director of Latrostax at the time of the conclusion of the agreement with Mr Trollip. He concluded an agreement with Mr Trollip in terms of which Mr Trollip will advance an amount of R2 000 000.00 as bridging finance towards the development the company was pursuing. Latrostax will repay the money on demand together with interest calculated at prime plus 3% from the date of first payment into its account until final payment is made. Latrostax acknowledged its indebtedness to Mr Trollip when it made part payment of R500 000.00 and reflected the balance outstanding as a loan in its financial statements and other records like minutes. This, he submitted with ferocity, indicates in the strongest that Latrostax does not have a bona fide defence to the claim. If it was not for that, it would have engaged meaningfully with the documentary evidence presented by Mr Trollip in his

affidavit filed in support of the summary judgment. He cajoled me to find in favour of Mr Trollip and spare him the trauma of a delayed trial on a matter that does not raise any triable issue.

[8] Latrostax remains unmoved by the arguments advanced on behalf of Mr Trollip. Mr Groenewald, who appeared for Latrostax, took issue with annexures submitted in support of the summary judgment application and sought to persuade me to disallow them. He called in aid the judgment of *FirstRand Bank Limited v Badenhorst*.¹ I do not read the *Badenhorst* judgment to be a prohibition to the attachment of annexures to the supporting affidavit in a summary judgment application. Such a reading will be contrary to the clear language used in the text of Rule 32(2)(b) which requires the plaintiff to explain briefly why the defence as pleaded does not raise an issue for trial. My understanding of Rule 32(2)(b) is that it affords the plaintiff an opportunity to place facts by way of evidence in an affidavit form through which the court can be able to assess whether the defence raised in the plea is genuine and bona fide. Such evidence should still meet admissibility requirements and be of such probative value that it will enable the court to arrive at a conclusion that the plaintiff's case is unanswerable and no purpose will be served by referring it to trial.

[9] In the words of Binns-Ward J in *Tumileng Trading CC v National Security and Fire (Pty) Ltd; E & D Security Systems CC v National Security and Fire (Pty) Ltd*,² “the plaintiff is now required to engage with the content of the plea in order to substantiate its averments that the defence is not bona fide and has been raised merely for the purpose of delay”. I therefore remain unpersuaded that the annexures to the affidavit fall foul of Rule 32(2)(b) requirements. This is not to say that care should not be taken to place a limit on them given the nature of the summary judgment proceedings. Only those annexures relevant to the issue in dispute as contained in the plea should be attached. Unnecessary prolixity should still be avoided. I have therefore given them due regard in the assessment of the defence as raised by Latrostax and the attendant issue of whether

¹ *FirstRand Bank Limited v Badenhorst* [2023] ZAGPJHC 779.

² *Tumileng Trading CC v National Security and Fire (Pty) Ltd; E & D Security Systems CC v National Security and Fire (Pty) Ltd* 2020 (6) SA 624 (WCC) at para 22.

the plaintiff made out a case for a summary judgment. I now turn to the summary judgment application.

[10] The principles governing summary judgment are trite and it has often been stated that the procedure is not intended to shut out the defendant from defending unless it is clear that he/she does not have a case. For the plaintiff to succeed, the claim must be unimpeachable, and it is for that reason that summary judgment is limited only to certain categories of claims mainly those based on a liquid document, for a liquidated amount in money, for delivery of specified movable property and ejectment.

[11] The plaintiff's claim is for a liquidated amount of money paid into the first defendant's bank account and part of it has been paid back. At issue is the authority of Mr Todd to represent the first defendant at the meeting with the plaintiff. As stated earlier, the first defendant denies that Mr Todd was its agent nor was he authorized to represent it in the meeting with the plaintiff or raise any bridging finance from him. It contends that there is no resolution to support any contrary view. It further argues that the payment part made was not in acknowledgment of liability towards the plaintiff and neither was it due to any agreement between plaintiff and itself but by consequence of the third defendant as a shareholder of the first defendant having concluded an agreement with the plaintiff. There is accordingly no money owed to the plaintiff by the first defendant.

[12] There is merit in the argument advanced by the first defendant to the effect that Mr Todd was possibly representing the third defendant when he met with the plaintiff to raise the bridging finance required for the project Latrostax was pursuing on behalf of its shareholders. I say so because in the documents submitted in support of the summary judgment application, there are instances where the money paid by Mr Trollip is referenced as payment by Kellerprince/ Africa. In the minutes of 28 September 2021, two days before Mr Trollip paid in the money, Mr Todd informed the meeting that "Kellerprince has managed to secure some additional bridging finance of R3 million". This is repeated in the minutes of 27 January 2022 where the following is recorded: It is confirmed that all the bridging finance had now been paid back with the exception of R900 000 to the K2019 consortium and R2 000 000.00 to Africa, that being Des Trollip. The reference to K2019

consortium and Africa lends credence to the argument by Mr Groenewald that the shareholders had an obligation to raise funds from third parties and in doing so, they were not acting as agents for the first defendant but for themselves.

[13] The fact that R500 000.00 was paid back from the account of the first defendant is neutral in the determination of whether the defendant has met the threshold regarding the bona fides of his defence. Latrostat has admitted to this payment and they gave an explanation as to how it came about. Its explanation cannot be rejected out of hand as it is consistent with its defence.

[14] Regarding the description “loan” in the financial statements, I also do not think that it conclusively proves indebtedness to plaintiff. This is so because the first defendant has not admitted to the correctness of the contents of the documents submitted nor was I called upon to make a finding on their admissibility. In the view I take, the respondent in a summary judgment application has a right to resist admission of evidence on any recognizable ground including that it is hearsay or that it is of questionable reliability. Summary judgment proceedings are not suited to determine this kind of issues as no cross examination is allowed. It is only a trial court with the benefit of observing witnesses testify that will be able to establish circumstances under which Mr Todd concluded the agreement with the plaintiff and what the terms of those agreement are. The trial court will also be able to conduct a proper assessment of the status of the documents and make an informed ruling as to their admissibility. Wallis JA puts it better in *PriceWaterhouseCoopers Inc and Others v National Potato Co-operative and Others*:³ It is only the trial court that will be able to sort the wheat of admissible evidence from the chaff of inadmissible hearsay. With this I agree.

[15] It is also noteworthy that Mr Todd, a central figure in this case, has taken side of Mr Trollip and deposed to a confirmatory affidavit in support of his claim. He however does so laconically, and it still remains unclear to me what he was confirming in relation to the issue in dispute, which is his authority to represent the first defendant. His

³ *PriceWaterhouseCoopers Inc and Others v National Potato Co-operative and Others* [2015] 2 All SA 403 (SCA) at para 81.

confirmatory affidavit does not constitute evidence to his authority to represent Latrostax in his meeting with Mr Trollip. It therefore serves no purpose in advancing the plaintiff's case for summary judgment. The Supreme Court of Appeal deprecated this manner of using confirmatory affidavits and said the following in *Kalil N.O and Others v Mangaung Metropolitan Municipality and Others*:⁴

“Confirmatory affidavits at times may have their place but, by and large, constitute a slothful means of placing evidence before a court which is entitled to expect that the actual witnesses to an event depose to the facts. Be that as it may, when no facts are alleged, either in a respondent's answering affidavit or in a supporting confirmatory affidavit, to substantiate a denial of the version alleged by the applicant, the denial can be disregarded.”

[16] The issue regarding Mr Todd's authority to represent Latrostax remains unclear and therefore triable. The plaintiff has therefore failed to meet the requisite threshold for a summary judgment and the defendant's plea is undisturbed and in my considered view remains bona fide, genuine and raise a triable issue.

[17] The issue of costs should not detain us. Mr Trollip was justified to think that Latrostax is delaying his case. He is the plaintiff and believes in the strength of his case. The argument advanced on his behalf were not spurious. However, the strength of his case is not the test, the test is whether the defendant's plea raises a bona fide defence. Having found that it does, it is no reason to deviate from the usual costs order and make an adverse one against him. I propose to make a usual cost order applicable in summary judgment which is costs in the cause.

[18] In the result, the following order is made:

1. Summary judgment is refused.
2. Costs shall be costs in the cause.

⁴ *Kalil N.O and others v Mangaung Metropolitan Municipality and others* 2014 (5) SA 123 (SCA) at para 32.



MI MANGENA

ACTING JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MBOMBELA

APPEARANCES

Counsel for the Applicant: Adv H Fourie
Instructed by: BVR Attorneys

Counsel for the Defendant: Adv Groenewald
Instructed by: Serfontein Viljoen & Swart Attorneys

Date of Judgment: 10 February 2025