

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

Reportable:	NO
Of interest to other Judges:	NO
Circulate to Magistrates:	NO

Case no: **1356/2024**

In the application for leave to appeal:

JOHANNES STEPHANUS VAN DEN HEEVER

Applicant

(ID-Number: 8[...])

And

VKB LANDBOU (PTY) LTD

Respondent

(Registration number: 2015/[...])

In re:

VKB LANDBOU (PTY) LTD

Applicant

(Registration number: 2015/[...])

And

JOHANNES STEPHANUS VAN DEN HEEVER

Respondent

(ID-Number: 8[...])

Coram: JP DAFFUE J

Heard: 18 FEBRUARY 2025

Delivered: 18 FEBRUARY 2025

This judgment was handed down electronically by circulation to the parties' representatives by email and release to SAFLII. The date and time for hand-down is deemed to be 13H00 on 18 FEBRUARY 2025.

ORDER

1. The application for leave to appeal is dismissed with costs.

JUDGMENT

Daffue J

[1] On 28 November 2024 I granted an order in favour of the applicant, VKB Landbou (Pty) Ltd (VKB) for payment of the amount of R1 350 220.20 plus interest and a further order for the perfection of a Notarial Bond with leave to VKB to sell the movable assets in terms thereof by public auction.

[2] This is an application by the unsuccessful respondent, Johannes Stephanus van den Heever (Van den Heever) for leave to appeal to the Supreme Court of Appeal, alternatively the full bench of this division.

[3] In this application Van den Heever relies on the following grounds:

3.1 the Credit Agreements and Acknowledgements of Debt (AOD's) are unlawful and void as containing clauses prohibited by the NCA;

3.2 there are two conflicting judgments in this regard, to wit *Serfontein and Another v ABSA Bank Ltd and Others*¹ (*Serfontein*) and *Standard Bank of South Africa Ltd v Wolmarans NO and Others*², constituting compelling reasons why leave to appeal should be granted;

3.3 I failed to make any findings on the non-compliance with ss 89 to 92 of the National Credit Act 34 of 2005 (NCA);

3.4 I failed to find that VKB had unlawfully levied interest, fees and charges with specific reference to Annexure VKB2;

3.5 I erred in rejecting his version on the papers;

¹ 2023 (5) SA 579 (FB).

² (3949/2021) [2022] ZAFSHC 118 (16 May 2022).

3.6 I failed to find that the credit agreements (AR3; VKB6; VKB7; VKB8; and VKB9) are unlawful in falling foul of ss 90(2)(a) and (b) and s 3 of the NCA; and

3.7 I failed to find that Annexures VKB10 (Perfection Agreement); VKB10.1 (Written Undertaking); VKB11 (Memorandum of Agreement); and VKB12 (AOD) constituted unlawful supplementary agreements in terms of the NCA.

[4] Van den Heever's counsel stated during oral argument that leave should be granted to the full bench of this division, bearing in mind that the Supreme Court of Appeal had upheld Van Zyl J's judgment in *Serfontein*. He also accepted that as a result of that judgment, there are no conflicting judgments anymore and thus no compelling reasons why leave to appeal should be granted.

[5] It should be mentioned that, far from what is now alleged by Van den Heever as grounds of appeal, he raised the following defences in his answering affidavit, which is also evident from the written heads of argument by his counsel. I summarise these:

- a. a deficiency in the application for membership;
- b. the cession between VKB as cessionary and the cedent, i.e. the *locus standi* of VKB was placed in dispute;
- c. what VKB's claims really consist of;
- d. VKB's attempts to enforce its rights in terms of the cession;
- e. VKB's claim is not liquidated;
- f. there is a factual dispute.

[6] The alleged unlawfulness of the source documents relied upon by VKB due to non-compliance with the NCA was neither raised in the answering affidavit, nor argued before me. No factual basis was laid for these defences now relied upon. Such failure should be fatal for the application for leave to appeal. The parties did not

canvass these, either in their affidavits, or in argument. The only reference to unlawfulness or voidness is found in paragraph 66 of Van den Heever's counsel's heads of argument. It was mentioned, but not even argued in court that the 'purported entitlement to sell [Van Der Heever's] corporeal movable assets' would 'constitute an unenforceable agreement which is void *ab initio* for want of compliance with the peremptory provisions of the National Credit Act, 34 of 2005'. I specifically did not make any order in respect of the Perfection Agreement attached to the founding affidavit, but in terms of the Notarial Bond attached as Annexure VKB4 to the founding affidavit.

[7] I adjudicated the *Wolmarans* case³ referred to in the application for leave to appeal. That matter has been argued in the Supreme Court of Appeal, but judgment was reserved. In any event, the facts in that case are not on par with the facts *in casu*.

[8] Van den Heever's counsel relies on the judgment by Van Zyl J in *Serfontein* which was upheld by the Supreme Court of Appeal in *Absa Bank Limited v Johan Serfontein and Another*.⁴ The facts in *Serfontein* are totally distinguishable from the facts *in casu*. Van den Heever was not required or induced to sign any supplementary agreements as was the case in *Serfontein*. As mentioned, similar defences were not raised before me and I was not called upon to decide these issues. In any event, I am satisfied that no agreements relied upon by VKB, and on which I came to my conclusion, excluded the NCA specifically and/or were entered into contrary to any of the provisions of the NCA. Neither the Written Undertaking of 27 October 2021, nor the AOD of March 2023 were ever argued to fall foul of the NCA. The same applies to the 2017 Credit Agreement, the Standard Agreement and the Facility Letter of 16 April 2021. I am satisfied that no other court will come to a different conclusion.

[9] The Notarial Bond, Annexure VKB4, is also clearly not in conflict with the NCA. This Notarial Bond is not supplementary to any credit agreement and does not deal with the same subject matter. It deals with security. The validity of the Notarial

³ *Standard Bank of South Africa Ltd v Wolmarans NO and Others* (3949/2021) [2022] ZAFSHC 118 (16 May 2022).

⁴ (740/2023) [2024] ZASCA 11 (10 February 2025).

Bond was never an issue. Also, there cannot be any argument about an unlawful *parate executie*.

[10] I am satisfied that Van den Heever has not made out a case to be granted leave to appeal.

[11] The following order is made:

1. The application for leave to appeal is dismissed with costs.

JP DAFFUE J

Appearances

For applicant: Adv R van der Merwe
Instructed by: Honey Attorneys
Bloemfontein.

For respondent: Adv JJ Pretorius
Instructed by: Gerrit Coetzee Attorneys Inc
c/o Muller Gonsior Inc
Bloemfontein.