IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISIN, PIETERMARITZBURG

CASE NUMBER: 8149/2024P

In the matter between:

ABSA BANK LIMITED	**FIRST PLAINTIF/APPLICANT**
ABASA HOME LOANS GUARANTEE COMPANY (RF) PTY LTD	**SECOND PLAINTIFF/APPLICANT**
And	
MAFAHLENI ENGINEERS AND PROJECT MANAGERS CC	**FIRST DEFENDANT/RESPONDENT**
TREVOR SIZA ZUMA	**SECOND DEFENDNAT/RESPODENT**

JUDGMENT

P C BEZUIDENHOUT J:

[1] Applicants brought an application for summary judgment against Defendants as well as an application in terms of Rule 46A to have certain property declared executable.

[2] Defendants brought an application for condonation for the late filing of their heads of argument and practice note. This was not opposed by Plaintiffs and condonation was accordingly granted.

[3] In the application for summary judgment Plaintiffs seek judgment against First Defendant in the sum of R 1 249 777-60 and in respect of Second Defendant the sum of R 1 122 000-00 plus interest at the rate of 13% per annum. The claim results from a loan secured by a mortgage bond which was granted and which has been breached. Second Defendant signed a suretyship in the amount of R 1 122 000-00.

[4] The Defendants in their plea admitted that there was an amount owing to Plaintiffs but disputed the amount thereof. It further sets out in the plea that the property was to be placed on Help U sell programme of First Plaintiff and that this was to avoid a judgment against them. Defendants therefore in their plea seek an order that the application in terms of Rule 46A be stayed pending the sale of the property on Plaintiffs Help U sell programme or staying the application pending the outcome of the application for summary judgment. Defendants contended that the amount of the quantum was incorrect as from 19 March 2024 to sixteen days later it increased from R 1 236 564-99 to R 1 249 777-60. However this is due to the time lapse and due to the fact that the monthly instalments were not being paid and interest on the debt accruing.

[5] Defendants in their answering affidavit noted the amount of arrears of R 168 634-40 on 13 August 2024. This was not disputed or denied. It is also not disputed that no payments were made.

[6] It is therefore apparent from the application papers that it is not disputed that Defendants are indebted to Plaintiffs in a substantial amount and that no payments have been made.

[7] It is also in terms of the practice directive of this division not possible to grant summary judgment at this stage and then to stay the sale in execution of the said property. It must be done at the same time.

[8] The test to be applied is set out in Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 and Breytenbach v Fiat SA (Edms) Bpk 1976 (2) SA 226 (T)

[9] A reading of the plea, the affidavit filed opposing summary judgment the heads of argument and the submissions made on behalf of Defendants Defendants have not shown that they have any *bona fide* defence to the claim nor that such can be proved at trial. The fact that the property is listed on the Help U programme is not a defence. Plaintiffs have made out a case for the relief claimed and summary judgment as claimed should therefore be granted.

[10] Once it has been found that summary judgment should be granted the issue arises as to whether the property should be declared executable. It is common cause that the property is vacant land.

[11] The property has been enrolled on the Help U sell programme since 24 June 2024 but has still not been sold. Further if one considers the brochure in respect of the said Help U sell programme it sets out that the collection process by Plaintiff will not end during this period but will continue.

[12] The updated statement from the eThekwini Municipality indicates that the rates payable is in arrears for the sum of R 511 882-84. A valuation of the said property on 19 February 2024 was R 1 870 000-00. An affidavit by the valuer one Kribash Naidoo indicates that after an inspection of the property on 11 March 2025 that the property's market value to be R 2 500 000-00.

[13] Defendant in its opposing affidavit to the Rule 46A application raises no valid defence or reason nor during argument why the said property should not be sold in execution. The debt outstanding is large, payments have not been made for many months and the amount outstanding to the municipality is also high. Further as stated it is vacant land and is not residential property. The placing of the property for sale on the Help U programme does not stop legal proceedings and further the arrears continue to build up as the monthly instalments are still payable even though it may be on the Help

U programme. There is accordingly as I have mentioned nothing which would prevent the sale of the said property in execution.

[14] Although it is not residential property it is property of substantial value it and would in my view be just and equitable that a reserve price be set for the sale in execution. After deducting what is owing to the eThekwini Municipality from the latest valuation of the property an amount of approximately R 1 980 000-00 remains. It is also indeed so that in a forced sale a lower price is normally attained and considering these factors it would appear to me that a reserve price of R 1 500 000-00 would be appropriate in the circumstances.

[15] A draft order was provided by the Plaintiffs counsel and in my view it is unnecessary to incorporate the whole order into the judgment as it is attached to the judgment. I have made certain amendment to the said draft order.

[16] Accordingly I grant an order for summary judgment as well as for the said property to be declared executable with the reserve price of R1 500 000-00 as set out in the amended draft order attached hereto.

P C BEZUIDENHOUT J.

DRAF ORDER

Having considered the documents filed of record and having heard Counsel for the Plaintiffs and Defendants,

IT IS ORDERED THAT:

<u>FIRST ORDER</u>

1. Summary judgment is granted in favour of the First Plaintiff against the First and Second Defendants, jointly and severally, one paying the other to b absolved for:
   1.1. Payment of the sum of R 1 249 777.60 (limited to the capital amount of R1 122 000.00 in respect of the second defendant);
   1.2. Interest thereon at the rate of 13.00% per annum calculated and capitalised monthly in arrears from 5 April 2024 to date of payment in full, both days included.
2. Judgment is granted in favour of the Second Plaintiff against the First defendant for:
   2.1. payment of the sum of R 1 249 777.60;
   2.2. interest thereon at the rate of 13.00% per annum calculated and capitalised monthly in arrears from 5 April 2024 to date of payment in full, both days included.
3. Any payment in respect of the judgment set forth in paragraph 1 above shall reduce the liability in paragraph 2 above, in like amount.
4. First and Second Defendant shall pay Plaintiffs' costs of suit on an attorney and client scale.

SECOND ORDER

1. The following immovable property is declared specially executable in favour of the Second Plaintiff:

   PORTION 341 (OF 3) OF ERF 5[...] S[...]

   REGISTRATION DIVISION FU

   PROVINCE OF KWAZULU NATAL

   IN EXTENT 983 (NINE HUNDRED AND EIGHTY THREE) SQUARE METRES

   HELD BY DEED OF TRANSFER NUMBER T31689/22

   AND SUBJECT TO SUCH CONDITIONS AS SET OUT IN TH E AFORESAID DEED OF TRANSFER AND MORE ESPECIALLLY SUBJECT TO RESTRAINTS AGAINST FREE ALIENATION, TRANSFER, HYOTHECATION, MORTGAGE OR OTHER ENCUMBRANCE IN FAVOUR OF TONGAAT HULETT LIMITED,

REGISTRATION NUMBER 1892/000610/06, AND FURTHER SUBJECT TO RESTRAINTS AGAINST FREE ALIENATION AND TRANSFER IN FAVOUR OF SALTA MASTER MANAGEMENT ASSOCIATION (RF) NPC, REGISTRATION NUMBER 2021/348072/08 AND SIBAYA NODE 6 PROPRIETARY LIMITED, REGISTRATION NUMBER 2019/295127/07

(the "Property")

2. The sale in execution in respect of the Property shall be subject to a reserve price of R 1 500 000.00 (one million five hundred thousand rand).
3. The Fist and Second Defendants shall pay the Plaintiffs' costs of suit, of the application on the attorney and client scale.

JUDGMENT RESERVED ON: **15 MAY 2025**
JUDGMENT HANDED DOWN ON: **20 MAY 2025**

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