

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No: **049270/2024**

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED

In the matter between:

NAZEER NOORMOHAMED

Plaintiff/Applicant

and

WEALTHY JT BROTHERS (PTY) LTD

Defendant/Respondent

JUDGMENT

J.F. GROBLER, AJ

[1] This is an application for summary judgment. I will hereinafter refer to the Applicant in the summary judgment application as the Plaintiff and to the Respondent as the Defendant.

[2] The Plaintiff issued Summons against the Defendant for the payment of the purchase price (i.e. for a liquidated amount of money) of immovable property in terms of a Deed of Sale and Addendum thereto, respectively attached to the Particulars of Claim as **Annexures "A" and "B"**.

[3] The Defendant entered appearance to defend and filed a Plea, whereupon the Plaintiff applied for summary judgment. The Defendant filed an opposing affidavit in terms of Rule 32(3)(b) of the Uniform Rules of Court.

[4] Rule 32(3)(b) requires of a Defendant to satisfy the Court that the Defendant has a *bona fide* defence to the Plaintiff's action and to disclose fully the nature and grounds of the defence and the material facts relied upon therefor.

[5] The word "*fully*" in the context of Rule 32, as stated in ***Maharaj v. Barclays National Bank Ltd***, 1976(1) SA (AD) on 426 A to E, connotes that:

"... While the Defendant need not deal exhaustively with the facts and the evidence relied upon to substantiate them, he must at least disclose his defence and material facts upon which it is based with sufficient particularity and completeness to enable the Court to decide whether the affidavit discloses a bona fide defence. ... At the same time the Defendant is not expected to formulate his opposition to the claim with the precision that would be required of a plea; nor does the Court examine it by the standards of pleading. ..."

[Authorities omitted]

[6] The ***Maharaj*** - matter was of course decided before the amendment of Rule 32 by GN842 of 31 May 2019. The Rule, before its amendment, provided for a Plaintiff to apply for summary judgment within 15 (fifteen) days of the date of delivery of a Notice of Intention to Defend. Plaintiffs in summary judgment applications before the 2019 amendment, brought the summary judgment applications without the benefit of knowing the particulars of the defence that is being raised by the Defendant against the Plaintiff's claim.

[7] In summary judgment applications after the 2019 amendment, Plaintiffs bring the summary judgment applications with the benefit of knowing what the

particulars are of defence that is being raised against the Plaintiffs' claim. In applications for summary judgment after the 2019 amendment to Rule 32, Plaintiffs are in terms of the amended Rule 32(2)(b) required to *inter alia*, "... explain briefly why the defence pleaded does not raise any issue for trial."

[8] The Plaintiffs' obligations in terms of the amended Rule 32(2)(b) was described as follows in the matter of ***Tumileng Trading CC v. National Security and Fire (Pty) Ltd***, 2020(6) SA 624(WCC) at paragraphs [21] and [22]:

"[21] The requirement that the Plaintiff's supporting affidavit should explain briefly why the pleaded defence 'does not raise an issue for trial' is of more interest. It cannot be taken literally, for a plea that did that would be excipiable, and there is no indication that the amended summary judgment procedure is intended as an alternative to the exception procedure. For the reasons given later with regard to cases before me, I consider that the amended rule 32(2)(b) makes sense only if the word 'genuinely' is read in before the word 'raise' so that the pertinent phrase reads 'Explain briefly why the defence as pleaded does not genuinely raise an issue for trial'. In other words, the Plaintiff is not required to explain that the plea is excipiable. It is required to explain why it is contended that the pleaded defence is a sham. That much is implicit in what the task team said in paragraph 8.3 of its memorandum. The position would have been made clearer had the words 'does not make out a bona fide defence' been used. That would have made for a more clearly discernible connection between the respective requirements of subrules (2)(b) and (3)(b). That there be such a connection is necessary if the amended rule as a whole is to be workable.

[22] What the amended rule does seem to do is to require of a Plaintiff to consider very carefully its ability to allege a belief that the Defendant does not have a bona fide defence. This is because the Plaintiff's supporting affidavit now falls to be made in the context of the deponent's knowledge of the content of a delivered plea. That provides a plausible reason for the requirement of something more than a 'formulaic' supporting affidavit from the

Plaintiff. 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 purposes of delay.”

[9] In summary judgment applications after the 2019 amendment, Defendants depose to the affidavits resisting the summary judgment applications with the benefit of knowing why the Plaintiffs contend that the defence as pleaded does not raise an issue for trial. Defendants are, in my view, required to deal fully with the nature and grounds of the defence and the material facts relied upon therefor, having regard to the Plaintiff’s brief explanation of why the defence as pleaded does not raise any issue for trial. This must, following in the wake of the **Maharaj** judgment referred to above, be done with sufficient particularity and completeness to enable the Court to decide whether the Defendant’s affidavit discloses a *bona fide* defence.

[10] The **Tumileng Trading**-judgment referred to the contents of the Defendant’s opposing affidavit after the 2019 amendment as follows:

“[24] ..., rule 32(3)(b), which provides for what is required in a Defendant’s opposing affidavit, remains as it was before, As has always been the position, the opposing affidavit must ‘disclose fully the nature and grounds of the defence and the material facts relied upon therefor’. The purpose of the opposing affidavit also remains, as is historically the case, to demonstrate that the Defendant ‘has a bona fide defence to the action’. There is thus no substantive change in the nature of the ‘burden’, if that is what it is, placed on a Defendant in terms of the procedure. However, the broader form of supporting affidavit that is contemplated in terms of the amended rule 32(2)(b) will in some cases require more of a Defendant in respect of the content of its opposing affidavit than was the case in the pre-amendment regime, for the Defendant will be expected to engage with the Plaintiff’s averments concerning the pleaded defence. ...

[25] The assessment of whether a defence is bona fide is made with regard to the manner in which it has been substantiated in the opposing affidavit, viz.

upon a consideration of the extent to which ‘the nature and grounds of the defence and the material facts relied upon therefor’ have been canvassed by the deponent. That was the method by which the Court traditionally tested, insofar as it was possible on paper, whether the defence described by the Defendant was ‘contrived’, in other words, not bona fide. And the amended subrule 32(3)(b) implies that it should continue to be the indicated method. (If a case gives rise to a Defendant being able to cogently rely on ‘technical points’, it was, and remains, entitled to do so.)

*[26] The traditional import of the requirement that the facts relied upon by a Defendant be ‘fully’ disclosed was mentioned earlier in this judgment. It may be, now that the opposing affidavit falls to be made after the Defendant’s plea has been delivered, that more is required of the Defendant in terms of the amended rules than was previously demanded. After all, the qualification by Corbett JA in **Maharaj** supra loc cit, that ‘the Defendant is not expected to formulate his opposition to the claim with the precision that would be required of a plea; nor does the Court examine it by the standards of pleading’, sounds incongruous when the Court adjudicating the summary judgment already has the plea before it. But if the requirements are indeed more stringent, does it mean that the intention behind amendment was to make the procedure more draconian or drastic than it used to be? I doubt it.”*

[11] On my understanding of the current wording of Rule 32 and the authorities referred to above, the parties in a summary judgment application is required to deal succinctly and clearly with the issues in dispute and summary judgment should be refused if the Court concludes upon a consideration of the papers before the court, including the Defendant’s affidavit that there is a *bona fide* defence to the action.

THE NATURE AND GROUNDS OF THE DEFENCE AND THE MATERIAL FACTS RELIED UPON BY THE DEFENDANT AND THE PLAINTIFF’S BRIEF EXPLANATION WHY THE DEFENCE AS PLEADED DOES NOT RAISE ANY ISSUE FOR TRIAL:

[12] In the Defendant's Plea, the Defendant admitted that the Defendant signed the Deed of Sale and the Addendum attached to the Particulars of Claim as **Annexures "A" and "B"**. The Defendant, however, referred to the annexure to the Deed of Sale (i.e an annexure to **Annexure "A"**) and denied that the Plaintiff is "*the seller*" in terms of the Deed of Sale, pleading specifically that the Plaintiff "*... is not listed as the seller of the movable property in terms of the Deed of Sale ...*". The annexure to the Deed of Sale lists "Nazprop Property Management" in the table appearing under the heading "Details of Seller". The Defendant consequently pleaded that the Plaintiff is not vested with any rights in terms of the Deed of Sale and that he lacks the necessary *locus standi* to bring the action. In the alternative to pleading that the Plaintiff is not "*the seller*" and "*not listed as the seller ... in terms of the Deed of Sale*", the Defendant alleges that the Deed of Sale is invalid in that it does not comply with the requirements of Section 2(1) as read with Sections (6)(a) and (c) of the Alienation of Land Act, Act No. 68 of 1981.

[13] In the Plaintiff's brief explanation of why the defence as pleaded does not raise any issue for trial, he stated inter alia the following:

[13.1] He has personal knowledge of the negotiations and he signed the Deed of Sale and the Addendum thereto (**Annexures "A" and "B"** to the Particulars of Claim);

[13.2] He was at the time of the signing of the Deed of Sale on or about 29 November 2023 and at the time of the signing of the Addendum on or about 23 January 2024, represented by and acting care of Nazprop Property Management;

[13.3] He stated that it is clear from a mere perusal of the Deed of Sale and the Addendum that there was a manuscript amendment and that his name was inserted in manuscript, duly initialled by both himself and the Defendant, where the seller is identified in the Agreement of Sale (**Annexure "A"** to the Particulars of Claim) and the Addendum (**Annexure "B"** to the Particulars of Claim);

[13.4] He explained that “*Nazprop Property Management*” was merely used as a forwarding address for himself, but that both the agreement and the addendum indicate that he is the seller.

[13.5] He was at all material times and still is in a position to do all that is required to ensure transfer of the property to the Defendant subject to the Defendant making payment of the amount claimed;

[13.6] He tendered performance (registration of transfer of the property to the Defendant) against compliance of the terms of the agreement by the Defendant;

[13.7] He explained that the agreement is compliant with Section 2(1) of the Alienation of Land Act as the alienation is contained in a Deed of Alienation signed respectively by the Plaintiff and the Defendant;

[13.8] He explained that the agreement complies with Section 6(1)(a) of the Alienation of Land Act in that the names and addresses of both parties appear on the agreement with their respective residential or business addresses;

[13.9] He explained that Section 6(1)(c) of the Alienation of Land Act does not find application because he is the seller and the owner of the land and he does therefore not need to provide details of any other party.

[14] In the affidavit resisting Plaintiff’s application for summary judgment, the Defendant stated the following in compliance with the requirement to disclose fully the nature and grounds of the defence and the material facts relied upon therefor as required in Rule 32(3)(b):

[14.1] The Defendant alleged that the Plaintiff’s claim for summary judgment is based on a liquid document and that the Plaintiff failed

to comply with Rule 32(2)(c) in that it failed to annex the liquid document to the application for summary judgment;

[14.2] The Defendant stated that Nazprop Property Management is identified as the seller in the Deed of Sale (**Annexure "A"** to the Particulars of Claim) and that the Plaintiff is stated as being the representative of Nazprop Property Management;

[14.3] The Defendant again alleged that the Plaintiff was not vested with any rights in terms of the Deed of Sale and the Addendum thereto, that he cannot enforce the terms of the Deed of Sale and that he consequently lacks the necessary *locus standi*;

[14.4] The Defendant again repeated the allegation that the Deed of Sale is invalid for a lack of complying with the requirements of Section 2(1) as read with Section 6(1)(a) and (c) of the Alienation of Land Act;

[14.5] The Defendant stated that the Plaintiff does not explain who signed the agreement and in what capacity (paragraphs 18 and 22 of the affidavit resisting summary judgment);

[14.6] The Defendant stated that the Plaintiff failed to explain why Nazprop is listed as the seller and why the prerequisites of the Act have not been complied with (paragraph 31 of the affidavit resisting summary judgment).

[15] In addition to the aforementioned defences, Ms. van Niekerk on behalf of the Defendant, during the course of argument, also submitted that the Plaintiff failed to comply with the peremptory requirements of Section 19(1) of the Alienation of Land Act.

DISCUSSION:

[16] I need to consider whether the facts alleged by the Defendant constitute a good defence in law and whether that defence appears to be *bona fide*.

[17] The Defendant's defence primarily rests on an assertion that the seller is not clearly identified in the Deed of Sale and the Addendum.

[18] The Deed of Sale (**Annexure "A"** to the Particulars of Claim) identifies the seller as "*N. Noormohamed c/o*" - which Ms. van Niekerk on behalf of the Defendant conceded can only be interpreted as being an abbreviation for the words "care of" - "*From: Nazprop Property Management (The Seller)*". The insertion of "*N. Noormohamed c/o*" was made in manuscript and initialled by both the Plaintiff and the Defendant's representative.

[19] The Addendum (**Annexure "B"** to the Particulars of Claim) contains the same manuscript amendment. The words "*Nazeer Mohamed c/o*" was inserted in manuscript immediately above the words "*Nazprop Property Management (Hereinafter referred to as The Seller)*". The manuscript amendment was again duly initialled by the parties.

[20] Having been made aware of the particulars of the Defendant's defence as set out in the Plea, the Plaintiff in my view succeeded in explaining satisfactorily that he was identified as the seller by the manuscript amendments inserted in both the Deed of Sale (**Annexure "A"**) and the Addendum (**Annexure "B"**). The Plaintiff furthermore confirmed that he is the owner of the property (paragraph 5.7.3 of the affidavit supporting the summary judgment application) and he tendered registration of transfer of the property to the Defendant against compliance of the terms of the agreement by the Defendant.

[21] The Defendant did not address the Plaintiff's explanation relating to the manuscript insertions in both the Deed of Sale and the Addendum in the affidavit resisting the summary judgment application. One would have expected the Defendant to clearly address the manuscript amendments in the opposing affidavit if

the Defendant truly was uncertain about the identity of the seller in the transaction. If the Defendant was uncertain about the identity of the seller at the time of signing the Deed of Sale (on or about 29 November 2023) and the Addendum (on or about 23 January 2024), one would have expected the Defendant to state / explain why the manuscript amendments were made and why he maintains that the seller is not clearly identified. The Defendant did not substantiate the defence raised in the plea by stating necessary material facts.

[22] I am accordingly unable to find that the Defendant's defence relating to an uncertainty about the identity of the seller constitutes a good defence in law and I am unable to find that the defence raised appears to be *bona fide*.

[23] The Defendant's defence relating to the non-compliance with the specified provisions of the Alienation of Land Act remains to be considered.

[24] Section 2(1) of the Alienation of Land Act is found in "*Chapter I of the Act (Formalities in Respect of Deeds of Alienation)* (ss2 – 3)" and provides as follows:

"2. Formalities in Respect of Alienation of Land

(1) No alienation of land after the commencement of this section shall, subject to the provisions of section 28, be of any force or effect unless it is contained in a deed of alienation signed by the parties thereto or by their agents acting on their written authority."

[25] The "deed of alienation" was signed by the Plaintiff and the duly authorised representative of the Defendant. As stated above, the Defendant admitted that the Defendant signed the Deed of Sale as well as the Annexure (paragraph 3 of the Defendant's Plea).

[26] I accordingly find that the deed of alienation complies with the provisions of Section 2(1) of the Alienation of Land Act.

[27] The Defendant's reliance on Section 6(a) and (c) and Section 19(1) of the Alienation of Land Act is misplaced. Section 6 and Section 19 of the Alienation of Land Act falls in Chapter II of the Act with the heading: "*Sale of Land on Instalments*" (ss4 – 25)". Upon a simple reading of the provisions of Chapter II, it applies only to a sale of land on instalments.

[28] Section 6(1)(a) and (c) provide as follows:

"6. Contents of Contract

(1) A contract shall contain:

(a) The names of the purchaser and the seller and their residential or business addresses in the Republic;

(b)

(c) If the seller is not the owner of the land, the name and address of that owner;"

[29] The definition of "*contract*" in Section 1 of the Alienation of Land Act is as follows:

" 'Contract'

(a) Means a deed of alienation under which land is sold against payment by the purchaser to, or to any person on behalf of, the seller of an amount of money in more than two instalments over a period exceeding one year;

(b) Includes any agreement or agreements which together have the same import, whatever form the agreement or agreements may take;"

[30] The Deed of Sale and the Addendum does not make provision for payment by the purchaser of an amount in money in more than two instalments over a period exceeding one year. I accordingly find that Chapter II of the Alienation of Land Act is not applicable to the Deed of Sale and the Annexure.

[31] In support of the aforementioned finding and the Defendant's reliance on Section 19 of the Alienation of Land Act, it suffices to refer to **Merry Hill (Pty) Ltd v. Engelbrecht, 2008(2) SA 544 (SCA), paragraph [13]** where the following was stated:

"[13] In considering the meaning of s19(2)(c), this Court therefore has the benefit of well-reasoned judgments supporting both points of view, as well as the contributions by academic authors referred to in those cases. Let me start with a proposition which appears to be beyond contention, namely that the purpose of ch2 of the Act, which includes s19, is to afford protection, in addition to what the contract may provide, to a particular type of purchaser – a purchaser who pays by instalments – of a particular type of land – land used or intended to be used mainly for residential purposes. In this sense, ch2, like its predecessor, the Sale of Land on Instalments Act, 72 of 1971 can be described as a typical piece of consumer protection legislation. ..."

[32] I am accordingly unable to find that the Defendant's reliance on Section 6(1)(a) and (c) and Section 19(1) of the Alienation of Land Act constitute a good defence in law.

HAVING REGARD TO ALL OF THE ABOVE, SUMMARY JUDGMENT IS GRANTED IN THE FOLLOWING TERMS:

1. The Defendant is ordered to pay to the Plaintiff the amount of R3,500,786.00;
2. The Defendant is ordered to pay interest *a tempore morae* from the date of Summons to date of final payment;

3. The Plaintiff is ordered, upon payment of the amount of R3,500,786.00, to take all necessary steps to pass transfer of the property, Erf 1[...] C[...], 8[...] L[...] Road, Centurion, to the Defendant;

4. The Defendant is ordered to pay the Plaintiff's costs of suit, costs of counsel on Scale B.

SIGNED AT PRETORIA ON THIS THE 27th DAY OF JUNE 2025.

J.F. GROBLER AJ
ACTING JUDGE OF THE GAUTENG DIVISION, PRETORIA

Date of hearing: **24 April 2025**

Date of Judgment: **27 June 2025**

For the Plaintiff: **Adv. J. Mouton**

Instructed by: **Sharief & Associates Inc**

On behalf of the Defendants: **Adv. Van Niekerk**

On instructions of: **Padayachee Attorneys**