IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL LOCAL DIVISION, PIETERMARITZBURG

CASE NUMBER: 15183/2024P

In the matter between:

INVESTEC BANK LIMITED **APPLICANT**

And

JUSTIN DAVID McGARRY **RESPONDENT**

JUDGMENT

P C BEZUIDENHOUT J:

[1] Applicant by way of application seeks payment of the sum of R11 329 106-05 together with interest from 1 June 2024 calculated monthly at the announced overdraft prime rate plus 2 % per annum from 2 June 2024 to date of payment and costs on an attorney and client scale. The application has been opposed by Respondent.

[2] The claim against Respondent is based on a guarantee signed by him on 28 February 2020 irrevocable and unconditionally guaranteeing to pay on demand as if he

was the principal debtor. This was in respect of the sum of money which may become owing by Hakuna Matata Fencing close corporation. There were various agreements concluded between Applicant and Hakuna Matata. Hakuna Matata was voluntarily wound up on 6 June 2024.

[3] Respondent disputes the certificate of balance and contends that Applicant statements omits payments made by Hakuna Matata. It was also contended that the original signed agreement was not attached and was digitally signed. The original guarantee was handed in at Court. From a reading thereof it is apparent that it is not a suretyship but an independent obligation in the form of a guarantee. The winding up of Hakuna Matata cannot assist Respondent as it was in a contribution state as appears from the report of the Trustees. Although there are allegations that certain payments were made, this has not been substantiated by any documentary proof. Respondent contends that he thought he was signing a suretyship and not a guarantee.

[4] In terms of paragraph 8 of the guarantee "The guarantor agrees to pay IFB any amount claimed by it as being due by the Client forthwith against receipt by the guarantor of a written demand from IFB therefor, stating that such amount is due and payable by the client to IFB, and without any other conditions or proof, notwithstanding that the guarantor and/or the client may dispute the amount claimed and/or the clients ability to make such payment." The statement of affairs in terms of the Companies Act of Hakuna Matata Security Fencing CC which is attached and at page 189 of the indexed bundle, Investec is listed as a preferent creditor in the sum of R11 000 000.00.

[5] It was submitted on behalf of Respondent that the amount is in dispute and that payments that were made have not been reflected. Further that Respondent thought he was signing a surety and not a guarantee. I was referred to an affidavit by one Marina Angela Batista Andries employed by Respondent where at page 213 in paragraph 16 she states:

> "No individual or corporate entity besides hakuna, save as surety, is liable for the Creditor's claim or any part thereof."

It was further submitted that Respondent was holding security in the sum of R8 000 000.00. This appears from paragraph 14 at page 213 of the papers and it was submitted that this should be set off.

[6] However, as already set out, Respondent signed a guarantee and from the report of the Trustees it appears that it is a contribution estate. Creditors would have to make a contribution. Except for a bold statement that the amount is in dispute due to payments made there is no indication on the papers when the said amounts were allegedly paid nor is there any proof of any sort attached. The fact that Respondent thought he was signing a suretyship and not a guarantee does not take the matter any further as it is clear from the document that it is a guarantee that it was headed guarantee and accordingly he is bound in terms thereof.

The following order is therefore made:

1. Respondent is ordered to pay to Applicant the sum of R11 329 106-05 plus interest on the sum of R11 329 106-05 from 1 June 2024 calculated monthly at the announced overdraft rate plus 2 % lending rate of interest charged by Applicant, per annum from 2 June 2024 to date of final payment.
2. Costs on an attorney and client scale.

P C BEZUIDENHOUT J.

JUDGMENT RESERVED ON: **9 SEPTEMBER 2025**

JUDGMENT HANDED DOWN ON: **12 SEPTEMBER 2025**

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