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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 22652/22

1. REPORTABLE: NO
2. OF INTEREST TO OTHER JUDGES: NO
3. REVISED: NO
DATE: 10 October 2025
SIGNATURE OF JUDGE:

In the matter between:

ABSA BANK LIMITED

Applicant

and

PIETER WILLEM ADRIAAN VAN BAALEN

1st Respondent

JUANETTE VAN BAALEN

2nd Respondent

ORDER

1. The application for summary judgment is refused.
2. The defendant is granted leave to defend the action.

3. The Registrar is directed to deliver a copy of this judgment to the South African Council for the Property Valuers Profession established under the Property Valuers Profession Act, 47 of 2000, and to draw their attention to paragraphs 45-50 of the judgment
4. The costs shall be the costs in the cause.

JUDGMENT

FLATELA J

Introduction

[1] This is an opposed application for summary judgment against the Defendants/Respondents for R1,077,867.07 plus interest at a rate of 5.55% per annum, arising from an alleged breach of three loans allegedly advanced to the Defendants at their request from 2015 to 2022. Additionally, the applicant (Absa) seeks an order to declare the defendant's immovable property as specifically executable under Rule 46A of the Uniform Rules, based on the same papers as the summary judgment application. The parties will be referred to as the Plaintiff and the Defendant for convenience.

The Applicant pleaded the case.

The First Loan

[2] Absa alleges that on 12 February 2002, a loan agreement was concluded between the Applicant and the Defendants in which the plaintiff lent R315,000 (Three Hundred and Fifteen Thousand Rand) to the Defendant (**the first loan**). The Defendants secured this loan by registering a mortgage under B[...] over their immovable property, ERF 1[...] K[...] P[...] Extension 5 Township, Registration Division IR, Province of Gauteng, which measures 1,115 square meters.

[3] The plaintiff attached a copy of the standard terms and conditions applicable to these loan agreements as annexure “B1” to the particulars of claim. Additionally, the plaintiff included a copy of the Standard Terms and Conditions registered in the Deed Office, denoted as B2, relating to all mortgage bonds.

[4] The Plaintiff asserts that it fulfilled all obligations under the First Credit Agreement and duly advanced the amount specified therein to the Defendants.

The Second Loan Agreement

[5] On 3 November 2005, the Plaintiff alleges that the parties entered into a second loan agreement, under which the Plaintiff lent the Defendants R335,000 (Three Hundred and Thirty-Five Thousand) (the second loan) at the Defendant’s specific request, in accordance with the written agreement. The Plaintiff asserts that the original loan document is missing, and after a thorough search, was unable to locate it at the time of issuing the summons. Similar to the first loan, the Plaintiff relies on the Standard Terms and Conditions for all debtors and bonds.

[6] The Plaintiff alleges that on 28 November 2005, a mortgage was registered under B[...] over their immovable property in favour of the Plaintiff as security for this debt.

[7] The Plaintiff filed a lost document affidavit from Nebresca Jemaine, the head of records management for the Plaintiff, stating that on March 11, 2022, it received a request to retrieve the home loan account number 8[...] belonging to the Defendants. Despite attempts to locate the bond and title deed, the loan agreement itself could not be retrieved from the Plaintiff’s computer systems.

[8] The Plaintiff also relied on a copy of the Standard Terms and Conditions for loan agreements (annexure “E1”) and the Standard Terms and Conditions registered in the Deed Office under BC9-2005 (annexure “E2”).

The Third Mortgage

[9] The Plaintiff contends that on 19 June 2007, in Centurion, the parties entered into a third loan agreement, in which the Plaintiff lent the Defendants, at the Defendant's instance, an amount of R250,000 (**the third loan**). This debt was secured by a mortgage registered under B[...]. A copy of the mortgage bond is included as annexure "F," with the third bond hypothecated as a Third Mortgage bond over the property.

[10] The Plaintiff states that when the summons was issued, the defendants' monthly payment under the credit agreement was R14,241.47, including interest. The Plaintiff claims that payments have not been made as per the Credit Agreement, and the Defendant owes R1,077,867.07, plus interest at a rate of 5.55% per annum from 27 January 2002 until the date of final payment.

[11] The Plaintiff avers that the Defendants are in breach of the terms and conditions of the loan agreement and are in arrears in the amount of R517 208.41. The Plaintiff also seeks an order declaring the Defendant's property to be especially executable.

Compliance with the National Credit Act of 2005

[12] It is common cause that on 13 June 2012, a debt review order was granted in the Magistrate's Court, Kempton Park, under case number 1409/12, in which the Defendant's contractual obligations towards the Plaintiff were arranged. In terms of the order, the Defendants were required to pay an amount of R5,697 per month towards the home loan account.

[13] The plaintiff contends that the Defendant defaulted on the obligations specified in the order, as no payments or only sporadic payments were made in accordance with the terms of the order. Consequently, the Plaintiff issued notices under section 88(3)(b) of the NCA, indicating that the Defendant is in breach of the order and expressing the intention to enforce, by means of litigation, their right to recover the amounts owed by the Defendant.

[14] The Plaintiff asserts that it was entitled to proceed under section 88(3) of the NCA because the Defendant had breached the debt review prior to the commencement of the action. The Plaintiff claims that at the time the section 88(3) notice was sent, the Defendants were in arrears by R116,992.71.

[15] The Plaintiff contends that at the time the summons was issued, the Defendant's monthly instalment payable was R14,241.47, including interest. The foreclosure is sought on the Defendant's property due to the Defendant's failure to comply with the terms of the credit agreements, as outlined in the indemnity bond.

[16] The Defendants filed a Rule 23 notice excepting to the Plaintiff's particulars of claim on the grounds that the Plaintiff's particulars of claim do not disclose the cause of action, mainly because the Respondent failed to attach the true copies of the written agreement. The exception was dismissed.

The Defendant's defences

[17] The Defendants deny that they are indebted to the Plaintiff in the amount claimed or at all. The defence can be briefly summarised as follows:

- a. The Defendants assert that they have settled the outstanding amounts in full, as outlined in the review order. The court order is attached to the Applicant's particulars of claim marked as Annexure "I". To substantiate this claim, the Defendants provided a report prepared by their former debt counsellor, issued in 2019, which details the reviewed and rearranged debts, marked as Annexure "PWA 2".
- b. The First Defendant further claims that he spoke to the bank representative, who indicated that the only outstanding payment towards the home loan was R6800 (Six Thousand Eight Hundred Rands), which was then settled. He provided proof of this payment marked as Annexure "PWA 3".
- c. Furthermore, the Defendant denies the second loan and any payments made to them in relation to it. Furthermore, the Defendant denies registering the bond over the second loan.

- d. The Defendants admit to the third loan but deny that the full amount of R250,000 was paid in full; instead, the defendant claims that only R200,000 was paid.

Further defences

[18] The Defendants contest the Standard Terms and Conditions that the Applicant relies upon. For example, they dispute that Annexures "B1" and "B2" (standard terms and conditions for loan agreements and bonds) contain the terms averred by the Applicant, stating that these annexures do not include terms such as monthly repayment instalments on or before the First day of each month; interest at 5.5% per annum; or that the loan agreement constitutes the whole agreement between the parties. They emphasise that the Plaintiff is unable to provide the original loan agreements, relying instead on copies of standard terms and conditions that are not the original agreements, which fail to support the Applicant's claim.

[19] The Defendants note that none of the documents on which the Applicant relies contain the terms averred in the particulars of claim, but instead refer to other written agreements that the Applicant does not rely on in its pleadings.

[20] The Respondents contest the validity and existence of the Second Loan Agreement, deny being indebted under that agreement, dispute the terms relied upon by the Applicant as contained in the standard terms and conditions annexures, and highlight the Applicant's failure to produce the original loan agreements.

The Plaintiff's reply

[21] The Plaintiff avers that the Defendants have *no bona fide* defence in their opposition and raise no triable issues. The Plaintiff avers that the entire strategy employed by the Defendants, starting from the initial exception, evidences an opportunistic attempt to create a perceived dispute and thereby delay the finalisation of the proceedings and avoid judgment against them.

[22] The Applicant asserts that the Defendants' primary defence is improbable given the objective facts. The Applicant states that the defence appears to be an attempt to exploit the misplacement of original agreements to delay proceedings. The defendants have not made any payments since August 2021, resulting in significant arrears.

[23] Regarding the second defence, the Applicant avers that the second loan was included in the capital sum exceeding R800,000.00 in a 2012 debt review order, without any objection from the Defendants. The Plaintiff communicated with the defendants regarding their loan agreement defaults, as stated in the default judgment application. The Defendants made promises to pay without disputing the total amount owed.

[24] The Plaintiff asserts that the Defendant's plea lacks a *bona fide* defence that justifies denying summary judgment and doesn't present a triable issue. The Defendants are in a significant breach of their obligations.

[25] The Plaintiff contends that the Defendants did not raise any objection to the account balance, which included the second loan amount, since the debt review order was made in 2012 by the Magistrates' Court.

[26] The Plaintiff also asserts that the account statements reflecting the second loan were sent to the Defendants at all relevant times. No complaint or dispute concerning this loan was raised for over 15 years, despite the Defendants' promises to pay; they never contested the total amount outstanding as claimed by the Plaintiff during communications aimed at resolving their default under the loan agreements. This extended period of silence, along with the absence of any formal objection, strongly suggests that the defendants never challenged the validity or existence of the loan.

[27] The Plaintiff contends that the Registrar of Deeds confirmed in a bond document, which is a public document, that a power of attorney had been shown to him, authorising the bond registration by the Defendants. The Plaintiff contends that this confirmation undermines the Defendants' contention that no authorisation was

given for the bond and that no such loan was advanced, making their claim inherently improbable.

[28] The Applicant asserts that the concurrent mortgage bond objectively affirms the second loan, which is registered with the Registrar of Deeds, who has verified the power of attorney. The Registrar of Deeds specifically confirmed in a public document that the power of attorney authorising the bond registration was presented to him. The Applicant states that the absence of complaints regarding the second loan over 15 years, despite regular account statements, further supports its validity.

[29] The Plaintiff averred that a comprehensive reconciliation statement from inception to date will also be attached “MTP3” was attached to the affidavit. The statement does not start from the inception date of the first loan, but rather from 2002 or 2009.

The Legal principles applicable to summary judgment

Uniform Rules of Court

[30] Rule 32 of the Uniform Rules of Court was amended with effect from 19 July 2012. The new Rule 32 now stipulates that:

‘(1) The plaintiff may, after the defendant has delivered a plea, apply to court for summary judgment on each of such claims in the summons as is only-

- (a) on a liquid document;
 - (b) for a liquidated amount in money;
 - (c) for delivery of specified movable property; or
 - (d) for ejectment;
- together with any claim for interest and costs.

(2) (a) Within 15 days after the date of delivery of the plea, the plaintiff shall deliver a notice of application for summary

judgment, together with an affidavit made by the plaintiff or by any other person who can swear positively to the facts;

(b) The plaintiff shall, in the affidavit referred to in subrule (2)(a) verify the cause of action and the amount, if any, claimed, and identify any point of law relied upon and the facts upon which the plaintiff's claim is based, and explain briefly why the defence as pleaded does not raise any issue for trial;

(c) If the claim is founded on a liquid document a copy of the document shall be annexed to such affidavit and the notice of application for summary judgment shall state that the application will be set down for hearing on a stated day not being less than 15 days from the date of the delivery thereof.

(3) The defendant may-

(a) give security to the plaintiff to the satisfaction of the court for any judgment including costs which may be given; or

(b) satisfy the court by affidavit (which shall be delivered five days before the day on which the application is to be heard), or with the leave of the court by oral evidence of such defendant or of any other person who can swear positively to the fact that the defendant has a bona fide defence to the action; such affidavit or evidence shall disclose fully the nature and grounds of the defence and the material facts relied upon therefor.

(4) No evidence may be adduced by the plaintiff otherwise than by the affidavit referred to in subrule (2), nor may either party cross-examine any person who gives evidence orally or on affidavit: Provided that the court may put to any person who gives oral evidence such questions as it considers may elucidate the matter.

[31] The principles governing the summary judgment have long been settled. Despite the changes introduced by the amendment of rules governing summary

judgment, *Maharaj v Barclays National Bank Limited*¹ remains authoritative. T Corbet JA said the following:

‘Accordingly, one of the ways in which a defendant may successfully oppose summary judgment is by satisfying the Court by affidavit that he has a bona fide defence to the claim. Whether the defence is based upon facts in the sense that material facts alleged by the plaintiff in his summons or combined summons are disputed or new facts are alleged constituting a defence, the Court does not attempt to decide these issues or to determine whether or not there is a balance of probabilities in favour of the one party or the other. All that the Court enquires into is (a) whether the defendant has “fully” disclosed the nature and grounds of his defence and the material facts upon which it is founded, and (b) whether on the facts so disclosed the defendant appears to have as either whole or part of the claim, a defence which is both bona fide and good in law.

[32] Referring to the extraordinary and drastic nature of the summary judgment remedy in *Maharaj*², Corbett JA said that, *‘the grant of the remedy is based on the supposition that the plaintiff’s claim is unimpeachable and that the defendant’s defence is bogus and bad in law’*.

[33] In *Shepstone v Shepstone*³, Miller J said the following:

“The court will not be disposed to grant summary judgment where, giving due consideration to the information before it, it is not persuaded that the plaintiff has an unanswerable case” and that... “a defendant may successfully resist summary judgment where his affidavit shows that there is a reasonable possibility that the defence he has advanced may succeed on trial.”

¹ *Maharaj v Barclays National Bank Limited* 1976(1) SA418 A at page 426

² *Maharaj v Barclays National Bank Limited* 1976 (1) SA 418 (A) at page 124.

³ *Shepstone v Shepstone* 1974 (2) SA 462 E-H

Thus, where the court has a doubt as to whether the plaintiff's case is unanswerable at trial, such doubt should be exercised in favour of the defendant and summary judgment should be refused. Furthermore, the court has an unfettered discretion, to grant or refuse the application for summary judgment even if, in the latter, the standard requirements resisting it have not been met.'

[34] Maswazi AJ in *Chris Hani District Municipality v HJT Transport Mining Civils (Pty) Limited*⁴, an unreported case of the Eastern Cape Division, a matter that came after the effective date of the amendment of Rule 32 neatly summarised the principles of the new rules as follows:

'The other innovation introduced by the new rule is the requisite allegations that the plaintiff must make in the supporting affidavit. Whilst in the old rule, the plaintiff was required to verify the cause of action and merely state that in his view the defendant does not have a *bona fide* defence, under the new rule, he must in addition deal with any points of law raised in the plea to explain why the plea does not raise a triable issue. Under the old rule, it was the defendant who was required to elaborately set out his defence in such manner that the nature of the defence is fully disclosed and the facts underpinning such a defence point to the existence of a defence. Under the new rule, the plaintiff for his part is required, since the summary judgment is filed after the defendant has filed a plea, to deal with the allegations made in the plea in his own affidavit, to which the defendant must answer.⁵

What is apparent from the new rules is that the defendant must file a plea first so that if summary judgment is sought, any affidavit filed by the defendant to resist the summary judgment is consistent with the defence set out in his plea. In my view this gives the summary judgment remedy its true value from its original and classical inception, as a remedy against a defenceless defendant who files a spurious

⁴ *Chris Hani District Municipality v HJT Transport Mining Civils (Pty) Limited* (1379/2020).

⁵ *Ibid*, paras 11- 12.

defence just so that the proceedings are delayed at the expense of a plaintiff with a meritorious claim. What is then called for, in my view, at a minimum, is the consistency between the plea where the defendant alleges his defence and affidavit filed on the basis of which the latter resists summary judgment. A defendant who pleads a particular defence in his plea and alleges vastly different facts in his affidavit filed to resist summary judgment can hardly be said, in the absence of a plausible explanation, to have a bona defence. What is more, were such tendency were to be countenanced, summary judgment would lose its true value and purpose.⁶

Discussion

[35] It is common cause that on 13 June 2012, the Magistrate at Kempton Park granted a review order declaring the defendants to be over-indebted and ordered that a re-arrangement proposal dated 18 July 2011, marked SA1-SA2, be made an order of court. Regarding the debt review order, the proposal payment for the Defendant's debts with Absa, including overdraft, credit card, vehicle finance, cheque account, and home loan, amounted to R14,241.47, including interest. The instalment was paid directly to the Payment Distribution Agency for distribution to all the accounts the Applicant had with Absa. The monthly repayment for the home loan was R5,697.96, payable over 125 months.

[36] The Plaintiff avers that the Defendants defaulted on the obligations as per the court order by making no payments or sporadic payments in accordance with the order.

[37] The main defence of the Defendants is that they have paid the debt in full. The Respondents rely on the court order (Annexure "I"), the debt counsellor's report (Annexure "PWA 2"), and the proof of payment of R6800 in 2019 (Annexure "PWA 3") as evidence of payment and settlement of their debts.

⁶ Ibid, para 13.

[38] The Defendant's Statement from Payment Distribution Agency, from the date of the first payment, being 11 August 2011, to 23 December 2015, reflects that the total payments received amounted to R886,500, with the last payment amounting to R20,100. In 2015, the National Payment Distribution Agency statement reflected a balance outstanding. According to this statement, the home loan was only R88,303.57 as of 15 August 2011, and on 6 September 2011, it reflected an amount of R79,967.70. As of 3 November 2011, the home loan amount is R848,701.10.

[39] The Plaintiff brought three claims against the Defendant; the First and Third loans are admitted; however, the Defendant denies the existence of the Second loan in the amount of R335,000. The Plaintiff claims to have lost the original Mortgage Loan Agreement, but has filed a copy of the second bond. The Plaintiff relies solely on the endorsement of the Registrar's Deeds on the cover of the bond recording, which indicates that he was shown the power of attorney to register the bond. The Plaintiff claims that the Registrar cannot lie in a public document.

[40] Secondly, the Plaintiff filed the reconciliatory statements, which the Plaintiff contended would begin from the inception of the loan agreements, starting on 02 February 2009, 7 years after the inception of the first loan agreement. There are no records of the statements of the second loan. The statement only starts in 2009. There is no explanation why the statement does not start from the inception, at the very least. This may require oral evidence.

[41] The conveyancing procedure is one of the most organised transactions, where both the lender and the borrower have conveyancers who must ensure the interests of their respective clients are looked after. The borrower and lender must sign the power of attorney in the presence of their respective conveyancers, granting them the authority to act on their behalf to pass the property transfer and to register bonds. The copies of all the documents are filed in the Deeds Office. Losing documents is a common occurrence; however, an application can be submitted to the Registrar of Deeds for a lost deed. However, the contents of the file can be retrieved for informational purposes only by any party who requires it; for example, the power of attorney in this case can be retrieved from the file.

[42] I am of the considered view that the Defendant has raised a triable issue that will require oral evidence. The Respondent has fully disclosed the grounds of defence at least in relation to the Second loan agreement.

[43] Summary judgment must be refused.

[44] While this should conclude the application, I must express my concerns regarding the valuer's affidavit filed in support of Rule 46(A) and the implications of my findings, which I consider to be bordering on unethical conduct. This situation leaves susceptible defaulters at a disadvantage, as they may be short-changed by the Applicants responsible for filing the Valuer's report in court to assist the court in determining the reserved price of the property. I want to stress that I am not insinuating any wrongdoing by the Applicant's legal representatives; rather, I believe that the firm's practices warrant scrutiny and should be addressed by the Legal Practice Council. Similarly, the Valuers Board must scrutinise the valuer's affidavit and report.

[45] The Plaintiff used the same set of papers to seek a court order to declare the Defendant's property especially executable and to authorise the Registrar to issue a warrant of attachment against the immovable property. According to Rule 46(9)(b), when determining a reserve price, the court is mandated to consider the market value of the immovable property.

[46] On 30 January 2025, exactly 10 days before the hearing of this application, the Applicant filed a supplementary affidavit intended to offer updated information in support of the relief sought in the summary judgment application. However, this supplementary affidavit does not actually pertain to the merits of the summary judgment request; instead, it focuses on compliance with Rule 46A. The Plaintiff avers that in compliance with Rule 46A, he confirms the following:

- i. The Plaintiff's independent valuer valued the property at R1 450 000 and attached a copy of the valuer's affidavit.
- ii. The Municipal valuation is also R1 450 000, and the rates and taxes owed to the municipality were estimated at R2 703.73

- iii. As at 10 January 2025, the accounts statements indicate that the Defendants were in arrears with instalments in the amount of R782 309.24, calculated at 29.7 months in arrears. The arrears accumulated partially as a result of sporadic and non-payment of the instalments from 1 July 2022 to January 2025.
- iv. The current instalment is R26 306.23.
- v. The amount owing on the Mortgage loan as at 11 January is R1 541 552.72, as confirmed by the Plaintiff's certificate

[47] The Applicant filed an affidavit from Ms Charity Matlala marked "MTP2". She states that she is an adult (male or female) valuer employed at Spectrum Valuations and Asserts Solutions. She does not specify the address of her employer nor indicate whether she is a registered professional valuer under the Valuers Act.

[48] Ms Matlala states as follows:

"2. My qualifications and experience are set out hereinunder as follows:

4.1 I have been practising as a property valuer for approximately 10 years

5. I respectfully submit that such qualifications and experience qualify me as an expert in the valuation of immovable property.

6. On 2024-09-04, I attended at :

ERF1[...] K[...] P[...] EXTENSION 6 TOWNSHIP

REGISTRATION DIVISION I.R

PROVINCE OF GAUTENG

MEASURING 1115(ONE THOUSAND ONE HUNDRED AND FIFTEEN)

SQUARE METERS

Held by deed of transfer T33045/2002

Subject to the conditions therein contained and especially to the reservation of mineral rights

Situated at the earth 1[...] K[...] P[...] EXTENSION 5, Gauteng, also known as 4[...] G[...] Avenue, K[...] P[...], Gauteng 1620(the property), in order to prepare for the Applicant-Plaintiff's cited in this matter, a residential valuation report valuing the property and confirming the contents in the evaluation are true. Proof of the evaluation report is attached to the application for judgment.

5. My observations of the property were as follows:

5.1 The property is a residence that consists of :

Main dwellin consistin of

5.2 The property appears to be in a to as outside

5.3 The property appears to be

5.4 Having regard to the Nature, locality, condition, extent of the property and comparing these two recently registered sales of similar properties that have taken place in the surrounding area I believe that sum of r1,450,000 is a fair and market related value for the property in question and the valuation report attached to the application is a true reflection of the correct affairs relating to the set property.”

[49] The affidavit is illegible and appears to be fraudulent. It does not appear to be the original affidavit; it has been tampered with, contains missing information, and has gaps. The absence of critical information significantly hampers the evaluation of the application and undermines the fundamental rights of the property owner. Furthermore, the details pertaining to the commissioner of the oath are illegible, leading to ambiguity regarding the individual who commissioned the valuation affidavit, the timing of its execution, and the identity of the commissioner. This situation constitutes a clear abuse of the court process.

[50] Fisher J in SB Guarantee discussed the role of expert valuation in the context of Rule 46A, where the court stated as follows:

'When considering an application under rule 46A the court is obliged to ("must") consider whether a reserve price is to be set⁷ and, in making this determination, is required to ("shall") take into account various stated factors, starting with market value.⁸

Rule 46A represents an entrenchment in the execution process of a recognition of the fundamental section 26 rights (the right to adequate housing) and the further rights that flow from this Constitutional right. The spirit of the rule requires that the vested rights of the opposing parties in the property at stake be given their proper and proportional consideration and weight.

In *Absa Bank Ltd v Mokebe and Related Cases*⁹ The Full Court of this Division was tasked, under s 14(1)(a) of the Superior Courts Act, with determining the procedures to be followed by financial institutions when foreclosing mortgages on primary residences under Rule 46A. The court held in relation to the setting of a reserve price that it was incumbent upon an applicant, as part of its obligation under the rule, to place all relevant circumstances before the court, including "a proper valuation of the property (under oath)"¹⁰

Clearly, the need for such a valuation is not designed to put impediments in the path of a creditor's attempts at execution. The debtor is not absolved of responsibility in the process. If a debtor fails to place facts before the court despite the opportunity to do so, the court is bound to determine the application without the benefit of the debtor's input, and it should not hesitate to do so.

Whilst it is, rightly, an expectation of a delinquent debtor that he should muster his resources to state his case, he should also be allowed to accept the veracity of the case put up by the applicant. If the debtor has the comfort of an independent valuation by an expert whose credentials are acceptable,

⁷ Rule 46 A(9)(a)

⁸ Rule 46(9)(b)

⁹ *Absa Bank Ltd v Mokebe and Related Cases* 2018 (6) SA 492 (GJ)

¹⁰ *Mokebe* op cit n 5 at para 57.

he is able to rely on such valuation in order to administer his affairs, including his approach to the application to declare. It is, after all, unlikely that a distressed debtor would be in a position to challenge a proper expert valuation.

A court should be placed in a position where it can feel similarly comforted by a reliable valuation.

The evidence under oath of a person who is shown to be expertly qualified to determine value is a commercial forensic standard. In application proceedings expert valuations are routinely presented as attachments to the application in the form of an affidavit attested to by a valuer whose independence and expertise is disclosed.

There appears, without more in any given case, to be no reason why this standard should be departed from in the normal course in applications for foreclosure. Provided the sworn valuation is reliable, it serves a chastening purpose: the defendant would be entitled to rely on the valuation and a court would, likewise, be confident in its assessment of the application.’

The Court held, further, that:

[1.1] The Property Valuers Profession Act, 47 of 2000 (the Valuers Act) provides for the establishment of the South African Council for the Property Valuers Profession (the Council) to oversee and administer a profession which is recognised, controlled and administered under the Valuers Act and known as the Property Valuers Profession;¹¹

[1.2] the Valuers Act, the regulations and the Code of Conduct form a legislative scheme which provides for educational norms and standards for the Property Valuers Profession and for a national registration of certified valuers and candidate valuers. The Valuers Act closely regulates the activities and conduct of those involved in the valuation of property’;¹²

¹¹ *SB Guarantee Company (Pty) Ltd v De Sousa* (2023/035447) [2024] ZAGPJHC 459; 2024 (6) SA 625 (GJ)
At para 67

¹² *Ibid* at para [68]-[69]

[1.3] the Valuers Act also empowers the Council to register appropriately qualified persons on a national database of professional valuers upon their application. Such registration entails the process of assessment of competency of applicants for registration. It requires that the Council be satisfied that the applicant meets certain criteria as to age, residency, the passing of certain examinations and the acquisition of practical experience in the field;¹³

[1.4] all registered persons must comply with the Code of Conduct drawn up and imposed under the Valuers Act, and failure to do so constitutes improper conduct;¹⁴

[1.5] the scheme facilitates the involvement of candidate valuers in the valuation process under the supervision of registered professionals. A candidate valuer is precluded from taking instructions other than from a professional valuer. The valuation process is intended to benefit the candidate on the basis that he or she is allowed to gain experience. A candidate cannot herself produce a sworn valuation under the scheme. The system of candidacy and mentorship is important. It serves in the transfer of professional skills where more experienced valuers mentor and teach those with less experience. The professionals are expected to adhere to the standards espoused under the legislative scheme and convey, by example and training, the skills necessary to facilitate the coming into being of a new generation of professional valuers.¹⁵

In short, held the Court, *'the scheme creates an accountable profession which is statutorily regulated and committed to achieving professional standards so that the valuations of these accepted experts can be relied on'*.¹⁶

[51] The purported affidavit of Ms Matlala does not meet the requirements of regulation 3(1) of the Regulations Governing the Administration of an Oath

¹³ *SB Guarantee Company* at para 70-71

¹⁴ *SB Guarantee Company* at para 72

¹⁵ *SB Guarantee Company* at para 74 – 76

¹⁶ *SB Guarantee Company* at para 77

promulgated under the Justices of the Peace and Commissioners of Oaths Act ¹⁷ and appears to be invalid.

[52] The valuations should, in the absence of other evidence that may satisfy a court regarding the expertise of the person who has determined that value, be those of accredited professional valuers registered under the Valuers Act.

[53] It seems to me that the Council of Property Valuers may have an interest in this judgment. I have directed the Registrar to deliver a copy of this judgment to the South African Council for the Property Valuers Profession established under the Property Valuers Profession Act, 47 of 2000, and to draw their attention to paragraphs 45-50.

[54] As a result, I make the following order:

1. The application for summary judgment is refused.
2. The defendant is granted leave to defend the action.
3. The Registrar is directed to deliver a copy of this judgment to the South African Council for the Property Valuers Profession established under the Property Valuers Profession Act, 47 of 2000, and to draw their attention to paragraphs 45-50 of the judgment
4. The costs shall be the costs in the cause.

FLATELA LULEKA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

¹⁷ Act 16 of 1963,

This Judgment was handed down electronically by circulation to the parties and or parties' representatives by email and by being uploaded to CaseLines. The date and time for the hand down is deemed to be 10h00 on 10 October 2025.

Certain property

Appearances

Counsel for the Applicant: Adv W.J Roos

Instructed by: Velilie Tinto & Associates Inc

Counsel for the Respondents: Adv T.L Jacobs

Instructed by: Legal Aid South Africa - Tembisa Local Office
c/o Legal Aid South Africa – Pretoria Local Office

Date of the Hearing: 10 February 2025

Date of the Judgement: 10 October 2025