

Sneller Verbatim/lks


IN THE HIGH COURT OF SOUTH AFRICA

JOHANNESBURG

CASE NO: 99/17575

2000-11-27

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DATE WHENEVER IS NOT APPLICABLE	
(1) REPORTABLE YES/NO	NO
(2) OF INTEREST TO OTHER JUDGES	YES
(3) REVISED	✓
DATE 29/1/2001	SIGNATURE 

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In the matter between

ABSA BANK LTD

Plaintiff

and

VAN DER WALT, THEUNIS PETRUS N.O.

First Defendant

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VAN DER WALT, LYNETTE N.O.

Second Defendant

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## J U D G M E N T

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WILLIS, J: The writ amounts of R393 578,55 and R760 868,04 together with interest are claimed against both defendants. The claim arises from a loan which the plaintiff made to a Family Trust of which the two defendants were trustees. The loan was secured by a property and also by two separate suretyship documents signed by both the parties. It appears clear that both the defendants are themselves practising attorneys.

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The trial was earlier postponed on 17 May 2000. The reasons for the postponement on 17 May were that the first defendant was too ill to attend the trial.

The matter was set down on 16 August 2000 for hearing on 24 November 2000. It would appear from evidence led by Mr Bothma, the attorney for the plaintiff, that on Tuesday last week, in other words, 21 November 2000, he was informed by the attorney acting for the first and second defendant that the first defendant would be too ill to attend the trial.

It would appear that on the date of the set down there was no evidence whatsoever put before the court in order to enable it to determine whether or not a postponement should be granted.

The matter was enrolled before my brother Navsa J in order for him to determine whether or not to grant the postponement. I am reliably informed by counsel from the Bar that my brother Navsa J indicated that he would at least require an affidavit. This affidavit was not produced on 24 November, nor was it available when court proceedings commenced this morning at 10:00. Nevertheless, sometime between 10:00 and the present an affidavit by a Dr Johannes Lodewickus Tait was submitted. What appears in a scrawled medical certificate by him it reads as follows:

"Heil die Leser

Mnr van der Walt ly aan (illegible) peptiese gastritis asook erge depressie. Hy is deur my na Dr Isaacs en Dr Brink, Psigiater verwys wat hom tans in Flora Clinic behandel. Hy is nie in staat

om enige hofverrigtinge by te woon vir minstens die volgende  
tien dae nie.

Die uwe."

Mr Roux, who appears for the plaintiff, correctly adopted the  
view that he was not obliged to accept the affidavit tendered on 5  
behalf of the first defendant. In the circumstances it is hardly  
surprising that he has taken such an attitude. After all, this matter  
was previously postponed for essentially the same reason. He is  
entitled, in my view, to cross-examine the doctor to find out when it  
is likely that the first defendant would be in a position to proceed with 10  
the trial and also to test the veracity of the allegation that the first  
defendant is indeed so ill that he cannot on the second postponement  
opportunity give evidence with regard to his defence.

The defence, as I understand it, is one of a denial of his  
signature which is really a rather simple matter over which to testify 15  
and should not entail exhausting cross-examination over several days.  
There is also a defence that the rate of interest charges is incorrect  
but this is ancillary. In any event, the defence is that the agreed rate  
of interest was 1% below prime. This, *prima facie*, is a most unusual  
defence. Most ordinary customers of banks have to pay the prime 20  
rate plus a percent or two, depending on their creditworthiness.

I asked Mr Bothma whether the doctor was available to testify  
and he informed me that he was no. It is common cause that he has  
not been in attendance at court on Friday, the 24th, nor is he in  
attendance today. 25

Accordingly, in my view, a proper case is made out for the dismissal of the application for the postponement, with costs, and such an order is accordingly made.

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ON BEHALF OF PLAINTIFF : ADV ROUX

Instructed by :

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ON BEHALF OF DEFENDANTS : ADV BOTHMA

Instructed by : De Vries Incorporated

DATE OF JUDGMENT : 27 NOVEMBER 2000

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