

IN THE HIGH COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

DATE: 2/8/2005

CASE NUMBER: 6435/04

In the matter between:

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES /NO.	
(2) OF INTEREST TO OTHER JUDGES: YES /NO.	
(3) REVISED.	
26/7/05	<i>[Signature]</i>
DATE	SIGNATURE

FIRSTRAND BANK LIMITED

Applicant/Plaintiff

and

ALLAUDDIN HABAB THOBANI

Respondent/Defendant

JUDGMENT

- (1) In this matter Firstrand Bank, the Plaintiff filed an exception to the Defendant's plea as lacking averments necessary to sustain a defence.

- (2) The Plaintiff's cause of action is founded on a written deed of suretyship in terms of which the Defendant bound himself onto and in favour of the Plaintiff as surety in solidum for and c-principal debtor jointly and severally with Dotcom Trading 1011 (Pty) Ltd ("the principal debtor") for the due payment of all moneys owing

to the Plaintiff from time to time from whatsoever cause.

- (3) The Defendant filed a plea in terms of which he admitted the contractual relationship between the Plaintiff and the principal debtor as pleaded by the Plaintiff including the deed of suretyship, the Plaintiff's compliance with its obligations pertaining to the contractual relationship and the principal debtor's breach of contract.
- (4) The Defendant however disputes the contents of paragraphs 11, 12 and 14 of the Particulars of Claim of the Plaintiff on the basis that Defendant has no knowledge regarding the allegations contained in the paragraphs referred to and that the Defendant consequently denies same and puts the Plaintiff to the proof thereof.
- (5) The averments contained in paragraphs 11, 12 and 14 of the Particulars of Claim are as follows:
 - (a) That on 19 February 2004 the amount outstanding, due, owing and payable by the principal debtor to the Plaintiff amounted to R1 104 518.86 plus interest at the rate of 11,5 % per annum with interest calculated up and until 31 January 2004, included in the capital amount. The amount referred to is evidenced by a certificate of balance of which a copy is attached as IF4".

- (b) Despite due demand, the principal debtor has failed or refused to repay the amount of the claim or any part thereof.
 - (c) In the premises the Defendant is indebted to the Plaintiff in the amount of R1 080 000.00 (the maximum amount for which the suretyship provides)
- (6) The Defendant in effect denied all of the averments referred to on the premise that the Defendant has no knowledge regarding the correctness of the amount claimed and that the Plaintiff must proof the claim. This the Defendant contends is a permissible way of pleading by virtue of the fact that the Plaintiffs case is a simple one and that the Defendant need not go any further and state facts in support of the denial.
- (7) It is the Plaintiffs case that the Defendant baldly denies the outstanding balance owed to the Plaintiff without alleging any material facts on which the Defendant relies for such contention as envisaged by Rule 22(2) of the Rules of Court and furthermore, that the Defendant has failed to allege any material facts which can or may rebut the *prima facie* evidence of the certificate of balance attached to the Plaintiffs declaration.
- (8) In respect of the above it was argued on behalf of the Defendant that the requirement of Rule 22(2) that the material facts on which the Defendant relies must be pleaded, does not apply to the plea, as the defence is based solely on

negating the Plaintiffs allegation. In respect of the certificate, the Defendant argues that the certificate is disputed and that the Plaintiff still has to prove the admissibility of the certificate during the trial.

- (9) It is acceptable practice that a Defendant who can neither admit nor deny a fact, to allege that he has no knowledge of that fact, does not admit it and puts the Plaintiff to the proof of it. When the Defendant does not have knowledge of the material facts it is open to him to state this in his plea. **Standard Bank Factors Ltd v Fumcor Agencies (Pty) Ltd and Others 1985 (3) SA 410 (C) at 417A-1**

- (10) Even if circumstances suggest that the Defendant knows or should know whether particular allegations in the Plaintiffs particulars of claim are correct or not, will not preclude the Defendant from pleading that he has no knowledge thereof, does not admit same, and puts the Plaintiff to the proof thereof. Such a plea should in the circumstances not found an exception to the plea of the Defendant. It has been found that the technical adequacy of such a plea cannot be doubted as Rule 22(2) and (3) specifically provides for such a plea. **Standard Bank Factors Ltd v Fumcor Agencies (Pty) Ltd and Others supra, p.416E-1**

- (11) In respect of the certificate and the *prima facie* proof it creates, the Plaintiff is correct in its submission that if the Plaintiff proves the admissibility of the certificate at the trial, despite the fact that the Defendant pleads no knowledge, the Defendant will be entitled to cross examine the Plaintiffs witnesses and to

lead evidence at the trial to rebut the *prima facie* case created by the certificate. **N Goodwin Design (Pty) Ltd v Moscak 1992 (1) SA 154 (C)**

- (12) The issue of onus, the discharge thereof, the admissibility of the certificate of balance or an attack on the correctness thereof are all matters relevant at the trial and not at the exception stage.
- (13) In the result the exception falls to be dismissed with costs.

M A BADEN HORST (AJ)

Firststrand bank Ltd

Plaintiff

Vs

A H Thobani

Defendant

Plaintiff's attorney

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Plaintiff's counsel

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