

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NUMBER:

13342/10

DATE:

20 AUGUSTUS 2010

5 In the matter between:

ABSA BANK LIMITED

Applicant

and

KARDRE INVESTMENTS CC

Respondent

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J U D G M E N T**BAARTMAN, J:**

[1] This is an opposed application for summary judgment.
The facts relevant to this application appear from the
15 record to be the following:

The Applicant's Version

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(a) Absa Bank ("the applicant") issued summons
against the defendant for the payment of
R3 641 496,28 together with interest at a rate of
13% from 28 March 2009.

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(b) The applicant alleged that the debt arose from the
respondent's failure to have made payments in
respect of mortgage loan agreements. The

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applicant alleged that it and the respondent had entered into the following mortgage loan agreements:

- 5 (i) On 6 September 2005 at Roodepoort for R2 300 000
- (ii) On 11 March 2008 at Midrand for R1 000 000
- (iii) On 1 August 2008 at Pretoria for R200 000.
- 10 (c) The applicant alleged that it lent and advanced the amounts to the respondent. The respondent registered 3 mortgage bonds, B103389/2005, B23553/2008 and B54283/2008, on 28 September 2005, 8 April 2008 and 28 August 2008, in favour of the applicant.
- 15 (d) The applicant alleged that the respondent had failed to make payments in respect of the mortgage loans and that it was indebted in the amount stated above.

The Respondent's version

- 20 [2] The respondent's version appears from its affidavit filed in opposition to the summary judgment application to be the following:

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“3.1.1 None of the annexures attached to the summons nor the particulars of claim make any reference as to when the amounts lent and advanced were to be repaid.

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3.1.3 The plaintiff attached three loan agreements and mortgage bonds to the particulars of claim and I do not know in respect of which of the three the defendant is allegedly in default. This renders the summons vague and embarrassing and accordingly it is excipiable.

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3.1.9 The particulars of claim in par. 13 merely say that the defendant did not pay regularly but does say whether the defendant is currently in arrears. Irregular payments do not automatically mean that there are arrears. Arrears may very well have been brought up to date but the particulars of claim are silent in this regard making it difficult for the defendant to respond meaningfully.”

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[3] The respondent further alleged that the applicant never advised it when the payments became due.

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Discussion

[4] Rule 32(3)(b) provides that the respondent in summary judgment proceedings may:

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“Satisfy the court by affidavit...of himself or any other person who can swear positively to the fact that he 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 therefore.”

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[5] In Breitenbach v Fiat SA (Edms) Bpk 1976(2) SA 226 (TPD), the court said:

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“... all that is called for is that the statement of material facts be sufficiently full to persuade the Court that what the Defendant has alleged, if it is proved at the trial, would constitute a defence to the Plaintiff’s claim. If the defence is averred in a manner which appears in all circumstances to be needlessly bald, vague or sketchy, that would constitute material for the Court to consider in relation to the requirement of *bona fides*.”

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[6] The purpose of summary judgment proceedings is to preclude a defendant who does not have a *bona fide* defence to a claim from unnecessarily abusing the court's process by delaying the matter.

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"The procedure is not intended to 'shut' (a defendant) out from defending, unless it was very clear that he had no case in the action."

(See Joob Joob Investments v Stocks Mavuundla 2009(5) SA (1) (SCA).)

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[7] The respondent's counsel argued that the respondent should be afforded the opportunity to proceed to trial where it could prove:

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"... that no demand for payment was made nor was the Defendant advised of when payment of instalments should commence."

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[8] It appears from clause 2 of the last loan entered into between the parties that "the date of first payment was to be advised..." Clause 3.3 of the same agreement stipulates that instalments are payable after registration of the mortgage bond and that it would be repayable in 240 monthly instalments over a 20 year period.

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[9] The respondent has not denied that the loans were in fact advanced as alleged by the applicant nor that the bonds were registered. In my view, the respondent has not shown that it has a *bona fide* defence that is good in law.

Conclusion

[10] For reasons stated above, I make the following order:

- (a) Summary judgment is granted in terms of prayers 1, 2, 3 and 4 of the application.

A handwritten signature in dark ink, consisting of a large, stylized capital 'B' followed by a smaller capital 'J' and a horizontal stroke.

BAARTMAN, J