

REPUBLIC OF SOUTH AFRICA



SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO: 12341/2013

- (1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

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DATE

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SIGNATURE

In the matter between:

JOHANNES PETRUS VAN ZYL
JOJOB VAN LONGGERENBURG
APPLICANT

FIRST APPLICANT
SECOND

And

STANDARD BANK SOUTH AFRICA LTD

RESPONDANT

Summary

The appeal is against the dismissal of an application for the rescission of a default judgment granted in the absence of the appellants.

The appellants were defendants as sureties for the principal debtor's indebtedness to the plaintiff. The principal indebtedness arose in terms of an instalment sale agreement between the plaintiff and the principal debtor.

The main issue to be dealt with in the appeal was whether the appellants (applicants in the court a quo) disclosed that their application was bona fide and not made with the intention of merely delaying the plaintiff's claim.

One of the defences raised in the application (the only one in respect of which leave to appeal was granted) was that the principal debtor had been evicted from certain plant which eviction had excused the principal debtor, and therefore the appellants as sureties, from the obligation to make further payments to the plaintiff.

The Court considered various dicta concerning the requirement of good cause based on the existence of a bona fide defence, including those to the effect that in considering whether a bona fide defence is disclosed, it is not necessary to deal fully with the merits of the case and that the court need not scrutinise too closely whether the defence is well-founded. What is required in such cases is that there is a prima facie defence setting out averments which if established at the trial would entitle the defendant to the relief asked for.

Applying these summarised principles, the Court found that the appellants had disclosed the existence of a defence which if proved at the trial would probably result in the successful defence of the action based on a breach of the warranty against eviction.

Accordingly the Court made an order upholding the appeal, rescinding the judgment granted by default against the appellants, granting the appellants leave to deliver their pleas within 20 days of the date of the order and that the costs of the appeal, including the costs of the application for leave to appeal, are costs of the cause of the action.