


REPUBLIC OF SOUTH AFRICA



SOUTH GAUTENG HIGH COURT
(JOHANNESBURG)

CASE NO: 2012/36199

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED.
20 February 2013	
 FHD VAN OOSTEN	

In the matter between

STANDARD BANK OF SA (PTY) LTD

PLAINTIFF

and

AFRICAN RENNAISSANCE HOLDINGS LTD

DEFENDANT

Practice - exception by plaintiff to certain paragraphs of the defendant's plea on the basis that the plea lacks averments necessary to sustain a defence alternatively vague and embarrassing - defendant's plea that it "cannot confirm" that the copy of the agreement annexed to the particulars of claim, "is the correct document" and "consequently" that it "must deny the correctness" in absence of reason pleaded for inability to so confirm vague and embarrassing - denial that amount alleged by plaintiff owing coupled with a specific denial that no amount owing and/or payable in absence of reason pleaded for specific denial vague and embarrassing - exception upheld with costs.

JUDGMENT

VAN OOSTEN J:

[1] This is an exception taken by the plaintiff against certain paragraphs of the defendant's plea on the basis that the plea lacks averments necessary to sustain a defence. The defendant concedes the exception against paragraphs 3 and 8 of the defendant's plea. The remaining paragraphs under attack are paragraphs 4 and 5 of the plea. I turn to deal with each paragraph separately.

[2] The plaintiff's cause of action is based on a deed of suretyship signed by the defendant in favour of the plaintiff in respect of all amounts owing to it by the principal debtor, African Renaissance Aviation Corporation (Pty) Ltd. The two amounts claimed by the plaintiff, are alleged to be due by the principal debtor, and therefore the surety, arising from an instalment sale agreement (Claim "A") and a business current banking account held with the plaintiff (Claim "B").

[3] In paragraph 4 of the plea the defendant admits that the instalment sale agreement was concluded but then pleads that it "cannot confirm" that the copy of the agreement annexed to the particulars of claim, "is the correct document" and "consequently" that it "must deny the correctness" thereof. The contentious paragraph contains both an admission and denial which, as pleaded, are irreconcilable. A mere denial, as pleaded, in my view, cannot stand in light of the admission. The reason for the defendant's pleaded inability to "confirm" the correctness of the document ought to have been pleaded. Counsel for the defendant submitted that it is competent for the defendant, as surety and therefore a remote party to the instalment sale agreement, to dispute the correctness of the agreement. If this is to be accepted, there is no reason why the defendant could not have pleaded as much. It follows that the exception against paragraph 4 of the plea must be upheld.

[4] Paragraph 5 of the defendant's plea deals with the allegations made by the plaintiff concerning the amount owing in respect of the instalment of sale agreement. In this regard the plaintiff relies on certificate of balance provided for in the agreement. The defendant denies that the amount stated, or any amount at all, is owing. It further pleads:


'...specifically that there is no amount due, owing and/or payable and puts the plaintiff to the proof thereof.'

It is not clear why the "specific" denial is made. If the defendant chooses to make a specific denial, it should set out the reason therefore. This has not been done. The exception against this paragraph similarly must succeed.

[5] As to costs, the plaintiff, as the successful party, is entitled thereto.

[6] In the result the following order is made:

1. The exception against paragraphs 3, 4, 5 and 8 of the defendant's plea is upheld and those paragraphs are set aside.
2. The defendant is granted leave to amend the defendant's plea within 15 days of the date of this order.
3. The defendant is ordered to pay the costs of the exception.



FHD VAN OOSTEN
JUDGE OF THE HIGH COURT

COUNSEL FOR PLAINTIFF

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PLAINTIFF'S ATTORNEYS

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COUNSEL FOR DEFENDANT

ADV L HOLLANDER

DEFENDANT'S ATTORNEYS

A DU PLESSIS ATTORNEYS

DATE OF HEARING
DATE OF JUDGMENT

19 FEBRUARY 2013
20 FEBRUARY 2013