

IN THE HIGH COURT OF SOUTH AFRICA



GAUTENG LOCAL DIVISION

CASE NO: 32905/13

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

In the matter between:

LOMBARD INSURANCE COMPANY LIMITED

Applicant

And

L & D ENTERPRISES (PTY) LTD

First Respondent

CLIDET NO 1041 (PTY) LTD

Second Respondent

PIETER GABRIEL KNOX

Third Respondent

PAULO GEORGE FERNANDES DA SILVA

Fourth Respondent

JUDGMENT

MAKOPO AJ:

[1] The Applicant seeks an order in the following terms that:

- 1.1 the first and second Respondent, jointly and severally the one paying the other to be absolved are to pay to the Applicant an amount of R1 135 869.47.
- 1.2 the Third Respondent be ordered to pay the Applicant an amount of R56 793.47, jointly and severally with any payment in the paragraph above.
- 1.3 the Respondents be ordered to pay the Applicant interest on the amounts above from 27 March 2013 to date of final payment at the prime overdraft rate of Nedbank Limited, plus 2% (two per cent).
- 1.4 the Respondents be ordered to pay the costs of suit on the scale between attorney and client.

[2] The Applicant Lombard Insurance Company Ltd, hereinafter referred to as Lombard, is an insurer, it agreed to issue construction guarantees from time to time on behalf of the First Respondent, a construction company, in exchange for indemnity for or on behalf of the First Respondent and the provision of suitable security.

- 2.1 The First Respondent entered into the contract of indemnity that appears at “LOM3”.

2.1.1 “LOM3” is admitted¹.

- [3] As a security, the Second Respondent entered into the contract of suretyship with Lombard that is “LOM4”.

3.1 “LOM4” is admitted².

- [4] As further security, the Third Respondent entered into the contract of suretyship with Lombard “LOM5”.

4.1 “LOM5” is admitted³.

- [5] On or about 27 November 2012 Lombard (Applicant) at the instance and request of the First Respondent, issued a construction guarantee, hereinafter referred to as “LOM6” in the founding papers.

5.1 It is admitted in para 17 of the First; Second; and Third Respondents answering papers.

- [6] On the 27 March 2013, Lombard (the Applicant) made payment of an amount of R1 135 869.47.

6.1 The First; Second; and Third Respondents admits that payment was made.

¹ See par 12 of the First; Second; and Third Respondents answering affidavit.

² See para 14 of the First; Second; and Third Respondents answering affidavit.

³ See para 16 of the First; Second; and Third Respondents answering affidavit

6.1.1 It is denied however,⁴ that such payment was made in accordance with the guarantee.

[7] The First; Second; and Third Respondent's defence is that the guarantee makes no reference to the Employer.

[8] The First; Second; and Third Respondents on its own admission admits payment and the contracts and suretyship agreements entered between the parties.

8.1 There is no allegation or denial of indebtedness either than the denial of the reference to the "Employer".

[9] The First; Second; and Third Respondents defence does not have merit and there is no denial of indebtedness to the Applicant.

[10] I accordingly grant the amendment as set out in the amended notice of motion dated 11 August 2014.

[11] I accordingly make the following orders:

11.1 A draft order reflecting the amended prayers marked "X" is made an order of the court.

⁴ See para 20.

**N MAKOPO
ACTING JUDGE OF THE
HIGH COURT**

Appearances:

For the Applicant	:	IB Currie
Instructed by	:	Frese Moll & Partners,
For the First; Second and Third Respondents	:	D L Williams
Instructed by	:	Malherbe Rigg & Ranwell Inc
Date of hearing	:	13 August 2014
Date of Judgment	:	08 December 2014

