

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)



CASE NO: A243/2016

(1) REPORTABLE:NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED:NO

20 June 2017

JS NYATHI

A handwritten signature in black ink, appearing to be "JS Nyathi", is written over a horizontal line.

In the matter between

PINNACLE MICRO (PTY) LTD

PLAINTIFF

and

INVENT DIGITAL CC

1st DEFENDANT

ALEXANDER PETER STANILAND

2nd DEFENDANT

MARK ANTHONY RAISUN

3rd DEFENDANT

J U D G M E N T

NYATHI AJ:

INTRODUCTION

- [1] This is an application for summary judgment in which the plaintiff seeks recourse against the second defendant as surety for the first defendant. First defendant is indebted to the plaintiff in the amount of R530 756.64 for goods sold and delivered during March 2016.
- [2] The second defendant has filed an opposing affidavit. The second defendant does not dispute:
- 2.1 The agreement upon which plaintiff's claim is based;
 - 2.2 That goods were sold and delivered by the plaintiff to the first defendant as alleged in the plaintiff's particulars of claim;
 - 2.3. The quantum of plaintiff's claim;
 - 2.4 That he entered into the suretyship or the terms thereof;
 - 2.5 That the agreement constitutes an incidental credit agreement as alleged in the plaintiff's particulars of claim;

DEFENDANT'S CASE

- [3] The second defendant raises three defences based on the National Credit Act 4 of 2005 ("the NCA") namely:
- 3.1 That the plaintiff is not registered as a credit provider as required by the NCA;
 - 3.2 That the plaintiff did not carry out credit checks or financial assessments as required by section 81 (2) of the NCA;

3.3 That the plaintiff has not complied with section 129 of the NCA in that the plaintiff has not provided "track and trace" documentation.

[4] The second defendant advances further defences; namely:

4.1 That he is no longer a member of the first defendant and therefore not liable in terms of the suretyship.

4.2 That the plaintiff exceeded the "maximum credit limit" and that the plaintiff was not entitled to deliver goods in circumstances where the arrears exceeded the maximum credit limit;

4.3 That the plaintiff therefore breached the agreement by exceeding the maximum credit limit and continuing to supply goods notwithstanding that the facility was in arrears for more than 30 days and in excess of the credit limit.

4.3 That the plaintiff has failed to provide a certificate of balance.

PLAINTIFF'S CASE

[5] The second defendant has filed an opposing affidavit from which it is clear that apart from advancing the above defences, the second defendant does not dispute:

5.1 The agreement upon which plaintiff's claim is based;

5.2 That goods were sold and delivered by the plaintiff to the first defendant as alleged in the plaintiff's particulars of claim;

5.3 The quantum of the plaintiff's claim;

- 5.4 That he entered into the suretyship or dispute the terms of the suretyship;
- 5.5 That the agreement is a credit agreement;
- 5.6 That the agreement constitutes an incidental credit agreement, as alleged in the plaintiff's particulars of claim;

THE LAW

- [6] The law regulating the provision of goods and/or services on credit is the National Credit Act.¹ It provides for credit agreements and incidental credit agreements.
- [7] The difference between the above was determined by the court in *JMV Textiles (Pty) Ltd v. De Chatain Spareinvest 14 CC and Others*.² As follows:
- The difference between a credit facility and an incidental credit agreement is that a fee, charge or interest only becomes payable in terms of an incidental credit agreement if the consumer does not pay his debt on the agreed date and interest is only levied to compensate the credit provider for late payment.
- [8] A credit provider entering into an incidental credit facility is not obliged to register as a credit provider

¹ Act 34 of 2005 ("the NCA")

² 2010 (6) SA 173 (KZD)

- [9] The Act further provides that should a credit provider be desirous of enforcing the incidental credit agreement, a section 129 read with section 130 notice has to be issued before legal proceedings can be instituted.
- [10] In *Sebola v. Standard Bank*³ the Constitutional Court ruled clearly that compliance with the provisions of section 129 before commencement of action is a mandatory step.
- [11] In *The Land and Agricultural Development Bank of South Africa v. Chidawaya and Another*,⁴ Baqwa J followed the decision in *Sebola*, postponed the application for summary judgment before him and directed the litigating credit provider to serve Section 129 (1) (a) notices on the defendants.
- [12] *In casu*, it is clear from the papers filed of record that Section 129 (1) (a) was complied with.

CONCLUSION

- [13] In the current matter, having regard to the evidence provided, and having heard Counsels for both the plaintiff and the defendant, I am not persuaded that second defendant has managed to set out a defence to the plaintiff's claim.

³ 2012 (5) SA 142 CC

⁴ 2016 (2) SA 27 (GPHC)

[14] Second defendant has failed to meet the requirements adequate to oppose the granting of summary judgment.

ORDER

The following order is therefore made:

That summary judgment is granted in favour of the plaintiff against the First, Second and Third Defendants jointly and severally, the one paying the others to be absolved for:-

- (a) Payment in the sum of R530 756. 64;
- (b) Interest at the rate 10.25% per annum *a tempore morae* to date of final payment;
- (c) Costs on the scale of attorney and client.



J.S. Nyathi

Acting Judge of the High Court

Date of Hearing: 20 April 2017

Judgment Delivered: 20 June 2017

APPEARANCES

On Behalf of the Applicant: N Felgate

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On Behalf of the Respondent: Adv S Kok

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