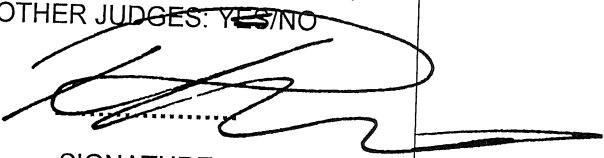


IN THE HIGH COURT OF SOUTH AFRICA



GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NUMBER: 12/25826

<b>DELETE WHICHEVER IS NOT APPLICABLE</b>	
(1) REPORTABLE: YES/NO	
(2) OF INTEREST TO OTHER JUDGES: YES/NO	
(3) REVISED :	
.....	
DATE	SIGNATURE

In the matter between:

**ABSA BANK LIMITED**

**PLAINTIFF**

**AND**

**HAVERFORD CONSULTING CC**

**FIRST DEFENDANT**

**BEKKER, GERRIT JOHANNES**

**SECOND DEFENDANT**

**BEKKER, BADEEAH**

**THIRD DEFENDANT**

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**JUDGMENT**

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**HERTENBERGER AJ:**

[1] This matter is instituted against Defendants by the Plaintiff based on two mortgage loan agreement, the mortgage bonds which were registered over the First Defendant's immovable property and the suretyships signed by the Second and Third Defendants in respect thereof. The Plaintiff seeks inter alia repayment in the amount of R1 762 054.51 and an order declaring the First Defendant's immovable property executable. The Defendants seek a postponement of the trial, which postponement the Plaintiff opposes.

[2] It is important to note that the matter was launched in or about July 2012 and comes before court only in November 2018. Pre-trials were held in April 2016 and in November 2018. It is clear from the Pleadings, that the Defendants have taken a backseat approach in this matter. Counsel for the Defendant handed up a Notice of Motion in an attempt to have this matter removed from the roll or postponed sine die and requests this court to compel the Plaintiff to discover certain documents. The notice is undated and signed by the Third Defendant. The purported founding affidavit is not commissioned and interestingly reveals that the Second and Third Defendant are currently residing in Holland. The court permitted the parties to argue the postponement on the purported application for postponement.

[3] Counsel for the Defendants confirmed that the Second and Third Defendants have relocated to the Netherlands. He further attempted to persuade this court that the immovable property, which is held by the First Defendant, which is a Close Corporation, ought to be seen as primary residence and that the provisions of Rule 46(1) (a) (ii) of the Uniform Rules of Court are applicable to this matter. Further, his arguments hinged on a lack of proper discovery by the Plaintiff and raised several arguments pertaining to the alleged miscalculation of the quantum by the Plaintiff.

[4] Despite his valiant efforts to persuade this court that his clients were bona fide and simply the victims of a ruthless Plaintiff, I was not convinced by the arguments advanced. I was left with the distinct impression that the Defendants had done everything that was possible to delay the inevitable sale of the Close Corporation's immovable property in execution. It was also of concern that the Second and Third Defendants had left South Africa and despite the fact that they had received personal service of the notice of set down on the 10th of July 2017, they had done nothing in preparation for this trial and had appointed an attorney to act for them only on the 26th of November 2018, which was the very day that the matter was set down for. No proper explanation could be given by Defendants' Counsel in this regard. The matter is further exacerbated by the fact that no payments toward the outstanding loan amounts was made since 2011.

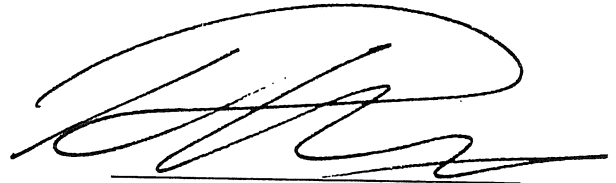
[5] Counsel for the Plaintiff, quite correctly pointed out that the immovable property is held by the Close Corporation and that the provisions of Rule 46 (1) (a) (ii) of the Uniform Rules of Court do not apply in this matter. He further illustrated the lack of action taken by the Defendants in the defense of this matter and that they been represented by various legal

professionals from time to time, who would have assisted them in obtaining proper discovery of the documents that they claim to require to verify the quantum as disputed by them. The court was convinced of the fact that this matter had to be brought to finality.

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

(6.1) the Defendants application for a postponement of the trial is dismissed;

(6.2) the Defendant is ordered to pay the Plaintiff's wasted costs on the scale between attorney and client.



R HERTENBERGER AJ  
ACTING JUDGE OF THE  
GAUTENG LOCAL DIVISION  
JOHANNESBURG

**APPEARANCES:**

COUNSEL FOR PLAINTIFF:	ADV N HORN
PLAINTIFF'S ATTORNEYS:	TIM DU TOIT CORPORATED
COUNSEL FOR DEFENDANT:	ADV D SHAW
DEFENDANT'S ATTORNEYS:	NOOR MOHAMED ATTORNEYS
DATE OF HEARING:	26 NOVEMBER 2018
DATE OF JUDGMENT:	12 APRIL 2019