

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case Number: A3031/2020

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED: NO

30 August 2021

In the matter between:

CONSOLIDATED STEEL INDUSTRIES (PTY) LIMITED
t/a GLOBAL ROOFING SOLUTIONS
(Reg No: [...])

Appellant

and

CARRACK, STEPHEN

Respondent

In re:

CONSOLIDATED STEEL INDUSTRIES (PTY) LIMITED
t/a GLOBAL ROOFING SOLUTIONS
(Reg No: [...])

Plaintiff

and

SONSTEP TRADING (PTY) LIMITED (IN LIQUIDATION)

First Defendant

JUDGMENT

MATTHYSEN AJ:

Introduction

[1] The Plaintiff sued the Defendants for goods sold and delivered pursuant to the grant of an incidental credit facility arising from a written agreement between the parties, which includes a suretyship. First Defendant is in liquidation and the Plaintiff proceeded only against the Second Defendant (the Respondent) as surety.

[2] The matter reached the stage of summary judgment and the learned Magistrate granted judgment for the capital and costs in accordance with the agreement, but granted interest in his own discretion.

[3] This latter order as to interest is the subject of this appeal. The appeal is not opposed.

[4] The Magistrate confirmed that no facts were in dispute, that there was no opposition and yet he did not grant judgment as prayed for in respect of the interest component of the claim. In particular, the Magistrate ordered (i) interest at the mora rate of 10.25% and (ii) interest to run from date of service of summons and not *a tempore morae*.

[5] It is clear from the agreement entered into between the parties that interest would be calculated at the rate of 3% above prime. Clause 6.7 of the agreement states as follows:

‘The Company reserves the right to levy interest on all overdue amounts at 3% above the then current commercial prime overdraft rate as quoted by First National Bank interest.’

[6] Counsel for the Appellant argued that the Magistrate elected to ignore the agreed interest rate and instead granted interest at the prescribed rate. He goes further and states that the prescribed rate for mora interest is regulated by the Prescribed Rate of Interest Act, 55 of 1975. Section 1 of this Act specifically provides that the prescribed rate only applies in the absence of agreement or other methods which would set the interest rate.

[7] In my view the learned Magistrate was wrong in not giving effect to the agreement and granting interest at the agreed amount.

[8] The learned Magistrate only granted interest at the rate of 10.25%.

[9] In paragraph 4 of the heads of argument counsel for the Appellant stated that the Appellant lost an amount of R3 240.00.

Discussion

[10] It is clear that the learned Magistrate erred in not granting the interest rate as agreed between the parties.

[11] For this simple reason the appeal should be upheld.

Costs of appeal

[12] Counsel for the Appellant in both his heads of argument as well as the notice of appeal does not seek any cost order.

[13] I am of the view that the Respondent should not be punished by a cost order in this appeal.

[14] The costs of this appeal would clearly amount to at least R50 000.00. The amount of R3 240.00 does not justify costs on appeal.

[15] I am therefore of the view that the appeal should be upheld but that the costs should be borne by the Appellant.

order

[16] I thus make the following order:

1.1. The appeal succeeds;

1.2. The interest order is deleted and replaced with the following:

‘Interest is payable on such amount calculated at 3% above the prime overdraft rate of First National Bank Limited, upon the reducing capital balance, from 1 June 2019 to date of final payment, both days inclusive;’

MATTHYSEN AJ
HIGH COURT ACTING JUDGE
GAUTENG LOCAL DIVISION, JOHANNESBURG

I concur,

FISHER J
HIGH COURT JUDGE
GAUTENG LOCAL DIVISION, JOHANNESBURG

Date of Hearing: 19 July 2021.

Judgment Delivered: August 2021.

APPEARANCES:

For the Appellant:

Adv C D Roux

Instructed by:

RC Christie incorporated

For the Respondent:

No appearance