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

CASE NO: 2017/22794

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED

In the matter between:

ABSA BANK LIMITED

Applicant

And

ANTHONY DAVID WOON

First Respondent

(Identity Number: [....])

**CITY OF EKURHULENI METROPOLITAN
MUNICIPALITY**

Second Respondent

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 31 May 2022.

JUDGMENT

MALINDI J:

Introduction

[1] This is an application for money judgment and to declare property specially executable. The Applicant alleges that the First Respondent is in breach of the credit agreement. The First Respondent raised at least three defences.

[2] The Applicant's cause of action is based on three loan agreements for R160 000.00, R80 000.00 and R400 000.00, entered into in 1997, 2005 & 2006, respectively.

[3] After summons were issued against the Respondent on 26 June 2017 when the Respondent's arrears were R60 604.87 and the total balance due was R596 821.09, the parties sought to reach a resolution of the dispute by entering into a settle agreement on 4 September 2017, which was made an order of court on 7 September 2017. It is not necessary to repeat the terms and conditions of the settlement agreement, save to state that in terms of clause 10 it was agreed that it does not novate or compromise the Applicant's right in terms of the Mortgage Loan Agreement, the Mortgage Bond/s or the action issued under the current case number.

[4] The Applicant alleges a breach of the settlement agreement and has utilised clause 10 after the breach and when the arrears stood at R247 010.49, equivalent to a 23 months' period of non-payment by the Respondent.

[5] The Respondent's defences are that:

5.1 The second bond is fraudulent in that the signature appearing thereon is not his;

5.2 The third bond was to run concurrently with the first bond, with the result that both should have been paid off by 2017; and

5.3. The calculations of the arrears are incorrect as he has made payments that the Applicant does not account for

[6] I agree with Mr Peter, for the Applicant, that by entering into the settlement agreement in September 2017 the Respondent acknowledged his indebtedness to the Applicant including the validity of the concerned bond agreements and statements of account. The Respondent submitted that he had told the Applicant since August 2016 regarding his dissatisfactions and raised disputes. It is therefore inconceivable that he would have signed the settlement agreement despite his knowledge of the defences that he is now raising. It also does not make sense that he would have done so unwillingly, "*and with the sole purpose of appeasement to ABSA*", as he states in his answering affidavit, heads of argument and in oral submissions.

[7] Even if I were to accept that the Respondent is entitled to raise these defences despite his acknowledgment of the facts set out in the settlement agreement, he has not supported the defences with sufficient facts and evidence to evaluate them properly against the extensive evidence of the Applicant. For example, the allegation that the second bond is fraudulent because the signature on there is not his was allegedly pursued with the transferring attorneys and the South African Police Service (SAPS) since 2017. He has, however, not provided a report of the police investigation in this regard. The Respondent has averred that R75 000.00 of this bond was debited into his bond account of 2005 without him questioning this.

[8] The Respondent chose to repudiate the settlement agreement instead of rescinding it upon discovering the alleged fraud. Rescission of a contract induced by a misrepresentation or fraudulent misrepresentation is dealt with in *Christie's Law of Contract in South Africa*.¹ The respondents did not rescind the settlement agreement but chose to repudiate it. The applicant became entitled to resort back to its main action in terms of Clause 10 thereof.

Conclusion

¹ RH Christie & GB Bradfield: Christies Law of Contract in South Africa (7ed), LexisNexis (2016) at Chapter 7.

[9] I have come to the conclusion therefore that the Applicant has made out its case and make an order in the following terms:

1. Payment of the sum of R596 821.09 together with interest thereon at the rate of 10.50% per annum, capitalised monthly, from 25 May 2017 to date of payment, both days inclusive;
2. An order declaring the following immovable property especially executable: ERF [....] A [....] EXTENSION [....] TOWNSHIP, REGISTRATION DIVISION I.R., THE PROVINCE OF GAUTENG MEASURING 1137 (ONE THOUSAND ONE HUNDRED AND THIRTY-SEVEN) SQUARE METRES HELD BY DEED OF TRANSFER NUMBER T[....] SUBJECT TO THE CONDITIONS THEREIN CONTAINED AND ESPECIALLY THE RESERVATION OF MINERAL RIGHTS.
3. The Registrar of this Court is directed to issue a warrant of execution to enable the sheriff to attach and execute upon the immovable property as described in prayer 2, in satisfaction of the judgment debt, interest and costs.
4. The Court accordingly sets a reasonable reserve price of R450 000.000 for the first sale in execution.
5. The Applicant be and is hereby entitled to approach this Court on the same papers (duly supplemented) for a variation of the Reserve Price, if a change in the factors influencing the reserve price necessitates a change of the Reserve Price.
6. The First Respondent is advised that the provisions of sections 129(3)(a) and (4) of the National Credit Act 34 of 2004 ("the NCA") may apply to the judgment granted in favour of the Applicant.
7. The First Respondent may prevent the sale of the property referred to in paragraph 1 above if the First Respondent pays to the Plaintiff all of the arrear amounts owing to the Applicant, together with the

Applicant's permitted default charges and reasonable costs of enforcing the agreement up to the time of re-instatement, prior to the property being sold in execution;

8. The arrear amounts, enforcement costs and default charges referred to above may be obtained from the Applicant.

9. The First Respondent is advised that the arrear amount is not the full amount of the Judgment debt, but the amount owing by the First Respondent to the Applicant, without reference to the accelerated amount.

10. A copy of this order is to be served on the First Respondent, as soon as is practicable after the order is granted, but prior to any sale in execution; and

11. The Respondent is to pay the costs of the application on the attorney and client scale.

G MALINDI J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

FOR THE APPLICANT: L. PETER
INSTRUCTED BY: LOWNDES DLAMINI INC

FOR THE RESPONDENT: ANTHONY DAVID WOON (SELF-REPRESENTED)

DATE OF THE HEARING: 7 March 2022

DATE OF JUDGMENT: 31 May 2022