

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 19105/2021

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
	8/9/2022
	SIGNATURE

In the matter between:

RHENUS LOGISTICS (PTY) LTD

Plaintiff

And

REED RICHARD

Defendant

JUDGMENT

MAKUME, J:

- [1] In this matter the Plaintiff issued summons against the Defendant claiming payment of the sum of R1 773 825.12 arising out of an agreement to render services by the Plaintiff to a company now in business rescue called Incedon. The Defendant signed surely binding himself to the Plaintiff in respect of all amounts owing by Incedon to the Plaintiff.

- [2] The Defendant pleaded and now the Plaintiff has filed an exception against the Defendant's plea citing that it is vague.
- [3] On the 6th July 2021 the Plaintiff filed a notice to remove the cause of complaint in terms of Rule 23(1). The Defendant did not comply with that notice.
- [4] There are two grounds of exception taken against the Defendant's plea. The first ground is that the plea is vague and embarrassing because having admitted contents of a written agreement concluded between the Plaintiff and Incledon (In business rescue) the Defendant in paragraph 10 baldly denies the allegations made by the Plaintiff in respect of invoices for services rendered he gives no explanation for his bold denial. This is despite the Defendant's admission that the invoice falls within the period during which he admitted that the services were rendered. The denial is accordingly contradictory and vague.
- [5] The second ground of exception is to be found in the Defendant's plea in his paragraph 11. The plea is in response to what the Plaintiff alleges in its paragraphs 16 and 17 wherein mention is made that the Defendant bound himself in writing in his personal capacity as co-principal debtor with Incledon for the due and punctual payment of sums of money due to the Plaintiff.
- [6] In his paragraph 11 the Defendant admits that he signed the written agreement but alleges that he deleted the words "as surety" in the written agreement. In his view the Defendant pleads that by deleting the word "as surety" that absolves him from being bound as surety including but not limited to being bound as co-principal debtor.
- [7] The Plaintiff's claim is not based on surety but on the principle of co-principal debtorship which is a distinct and separate contract from that of suretyship (See **Jans v Nedbank Bank Ltd 2003 (2) ALL SA 11 (SCA) at paragraph 9**).

[8] The resultant effect of the Defendant's plea is that the Plaintiff is not clear as to what the Defendant's defence is and thus renders it vague and embarrassing. The Plaintiff is not placed in a position to replicate and meet the Defendant's version. In the result I have come to the conclusion that the Defendant's plea is vague and embarrassing in the respects set out and accordingly excipiable.

ORDER:

1. The Plaintiff 's exception is upheld.
2. The Defendant's defence is struck out.
3. The Defendant is ordered to pay the taxed party and party costs of the Plaintiff.

Dated at Johannesburg on this 8 day of September 2022


M A MAKUME
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Appearances:

DATE OF HEARING : 24 AUGUST 2022
DATE OF JUDGMENT : 08 SEPTEMBER 2022
FOR PPLAINTIFF : ADV MANNING
INSTRUCTED BY : MESSRS
FOR DEFENDANT : IN PERSON