



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES / NO.

(2) OF INTEREST TO OTHER JUDGES: YES /  
NO.

(3) REVISED.

DATE

SIGNATURE

CASE NO: 458/2014

DATE: 25 APRIL 2014

In the matter between:

**ABSA BANK LIMITED**

Plaintiff/Applicant

and

**INVESTMENT PROPERTY 42 (PTY) LTD**

First Defendant/  
First Respondent

**WILLEM OTTO**

Second Defendant/  
Second Respondent

**GEORGE FREDERICK DELPORT**

Third Defendant/  
Third Respondent

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JUDGMENT

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**MOTHLE J**

1. This is an application for summary judgment by the Plaintiff against the Third Defendant. I will refer to the parties as they are cited in the action proceedings.
2. On the 8<sup>th</sup> January 2014 the Plaintiff issued summons against the three Defendants for payment of an amount of R216, 992.02 arising out of an alleged agreement of sale ("*sale agreement*") of a motor vehicle to the First Defendant, a company. The Plaintiff alleges that the Second and Third Defendants had signed as sureties for the debts of the First Defendant.
3. The First and Second Defendants failed to enter appearance to defend the action while on 21 January 2014, the Third Defendant delivered his notice of intention to defend the action.
4. On the 7<sup>th</sup> February 2014 the Plaintiff delivered an application for summary judgment in terms of Rule 32 of the Uniform Rules of Court. The Third Defendant opposes the summary judgment.
5. It is trite that in an application for summary judgment, a Plaintiff/Applicant must allege that the Defendant/Respondent has no *bona fide* defence to the action and that he has simply

entered appearance to delay the proceedings.<sup>1</sup> The same rule requires of a Defendant/Respondent to disclose the nature and grounds of his defence and the material facts upon which it is based in order to establish that he has a *bona fide* defence to the action, *alternatively* raise an issue which ought to be tried.<sup>2</sup>

6. The Plaintiff, in the particulars of claim attached to the summons pleads that the First Defendant is in breach of the sale agreement in that it purchased a motor vehicle, a 2007 Land Rover Discovery 3 TD V6 S with engine number 0249803276DT from the Plaintiff, but failed to make the necessary payments. The Plaintiff further avers that the vehicle has not been recovered.
7. In his opposing affidavit the Third Defendant denies that the agreement on which the Plaintiff relies was entered into on behalf of the First Respondent and thus denies any knowledge of the sale agreement and the delivery or whereabouts of the said vehicle. The Third Defendant however admits that there was a general deed of suretyship signed long before the alleged sale agreement.

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<sup>1</sup> Rule 32 (2) of the Uniform Rules.

<sup>2</sup> Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 (A); Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture 2009 (5) SA 1 (SCA).

8. The Plaintiff attached two separate copies of the deeds of suretyship signed by the Second and Third Defendants.<sup>3</sup> It needs to be mentioned that after the Third Defendant delivered his notice to defend the action, the Plaintiff filed a Lost Document Affidavit stating that the originals of the instalment sale agreement and the deeds of suretyship are “*misplaced or lost for the time being*”,<sup>4</sup> and thus it relies on copies to prove its claim.
9. The Third Defendant in essence denies any knowledge of the sale agreement and further disputes that the signature which appears on the alleged sale agreement is his.
10. Apart from denying any knowledge of the sale agreement, the Third Defendant also denies that he is indebted to the Plaintiff in the amount stated in that the Plaintiff has not produced proof of delivery of the vehicle to the First Defendant.
11. Counsel for the Plaintiff in argument submits that summary judgment should be granted because the Third Defendant has no *bona fide* defence in that he denies knowledge of the sale

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<sup>3</sup> The deed of surety signed by the Second Defendant is dated “9 Maart 2005” and that of the Third Defendant is dated 26 July 2005.

<sup>4</sup> Page 53 of the paginated Court documents.

agreement and therefore does not disclose the grounds upon which he disputes the Plaintiff's claim, with material facts underlying the disputes raised.

12. The copy of the sale agreement attached to the summons and the affidavit of the Plaintiff does not indicate the particulars of the person who contracted with the Plaintiff on behalf of the First Defendant. The copy of the sale agreement only contains a signature. In addition thereto, the Plaintiff, in the particulars of claim, fails to plead the particulars of the person who represented the First Defendant and whether such person had the necessary authority to conclude the sale agreement on behalf of the First Defendant.<sup>5</sup> The deed of surety signed by the Third Defendant does not authorise the Plaintiff to conclude sale agreements with undisclosed persons purporting to act on behalf of the First Defendant.
13. The Third Defendant's ground of defence is that he denies any knowledge of the sale agreement or the delivery of the vehicle to the First Defendant. I am unable to see how, as argued for the Plaintiff, he could state his ground of the defence with reference to "*material facts underlying the dispute.*" The Plaintiff thus

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<sup>5</sup> Rule 18 (6) of the Uniform Rules requires a party who relies on a contract, to state when, where and by whom it was concluded. Failure to do so is an irregular step, Rule 18 (12).

bears the onus to plead and proof the existence of the sale agreement and the identity and/or authority of the person with whom it concluded the sale agreement. This is an issue which in my view ought to be decided by the trial court.

14. I am thus satisfied that the Third Defendant in his opposing affidavit raises a *bona fide* defence or issues which ought to be dealt with at trial.
15. In the premises I am of the view that the summary judgment must fail.

I therefore make the following order:

1. The application for summary judgment is dismissed.
2. The Third Defendant is granted leave to defend the action.
3. The costs of this application will be costs in the action proceedings.

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**S P MOTHLE**  
**Judge of the High Court**  
**Gauteng Division, Pretoria**