

**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Not reportable

Not of interest to other Judges

CASE NO :91022/15

DATE: 31/3/16

In the matter between:

THE STANDARD BANK OF SOUTH AFRICA LIMITED

Applicant

and

TREVOR KEITH TOERIEN

Respondent

J U D G M E N T

MAKGOKA. J

[1] This is an opposed application for summary judgment. The applicant issued a simple summons against the defendant for payment of R1 217 516.72. The plaintiff also seeks interest on the above amount, costs as between attorney and client, as well as an order declaring the defendant's immovable property specially executable, and for the authorization of execution against the immovable property. The plaintiff's action is in respect of monies lent and advanced to the defendant in terms of a home loan agreement concluded between the parties on 30 April 2010. The loan was secured by a mortgage bond registered over the defendant's property situated at erf [1...] South Kensington, Johannesburg, in favour of the plaintiff. The provisions of the home loan agreement are subject to the National Credit Act 34 of 2005 (the Act).

[2] The plaintiff alleges that the defendant had failed to pay the monthly installments due in terms of the home loan agreement read with the provisions of mortgage bond. The monthly repayment in terms of the mortgage bond was R12 465.38. The plaintiff alleges that as at 15 October 2015, the defendant was R83 960.91 in arrears. In support of the defendant's alleged indebtedness, the plaintiff has attached to its summons, a certificate of balance signed by its manager, reflecting the claimed amount. Consequently, the plaintiff alleges that the defendant is in breach of the agreement and the mortgage bond, which entitles it to claim the full balance owing under the mortgage bond.

[3] There is no dispute about any of the relevant formalities required by the Act, the Constitution¹ and the Uniform Rules of Court. Two notices in terms of s 129 of the Act were sent on 22 October 2015 and delivered to the defendant on 25 October 2015 and 16 October 2015, respectively. The defendant's attention was also drawn to the provisions of ss 26 (1) and 26 (3) of the Constitution, as well as those of Rule 46 (1) of the Uniform Rules of Court.

[4] The defendant represents himself. He delivered a notice of intention to defend on 20 November 2015. This was followed by an application for summary judgment. The defendant filed a number of documents, amongst which, are documents titled 'Response to Summons- Acceptance' and 'Truth Affidavit of Peace Declaration'. The former document is prefaced with a long list of definitions of various legal concepts, mostly found in the Bills of Exchange Act 34 of 1964. To avoid mis-characterization of the contents of the defendant's documents by attempting to summarise or paraphrase them, I intend to quote liberally from both documents. At the end of a long preface to the document titled 'Response to Summons – Acceptance', the defendant states the following:

'I come in Peace, by special visitation, I am Trevor of the House Toerien, a living, breathing sentient Man, the undersigned and secured party, a private attorney authorized by another, to act in the place instead for the alleged debtor, herein referred to as the defendant. The defendant in this action see annexure "A" for the particular purpose and particular act to

¹ Constitution of the Republic of South Africa Act, 1996.

contract the matter relating to case number 2015.91022, through the transaction of business in general not of a legal character.

There is no dispute with any of the facts in the instant matter. The facts of this case and all charges, offers, dishonours are accepted for value and returned in exchange for fair settlement and closure, by exercising the rights as provided for in Public Policy, the Bill of Exchange Act, Act 34 of 1964 as amended by Act 56 of 2000. Accepting the full amount allegedly outstanding, due, owed and payable specifically in terms of section 9 of Act 56 of 2000, which substituted section 25 of the principal Act:

Holder for value "A holder takes a Bill for value if he takes it under onerous title".

I did not find a cheque or replemond bond enclosed in the attorney for plaintiff Haasbroek & Boezaart, offer, summons case no. 2015191022, date-stamped 2015-11-11, served on the defendant.

Therefore the contract on the implied agreement, evidenced by the Certificate of Balance dated 15 October 2015 and signed by the private Woman Tamlyn Wells acting on the roll for and on behalf of the Plaintiff as Manager-Home Loans, Personal and Business Credit is executed in terms of section 19 of the Bills of Exchange Act **34** of 1964, annexure "B" and with delivery the acceptance to become complete and irrevocable, in order to discharge any liens against the defendant.

By redeeming the now valuable negotiable instrument, annexure "B" in the same manner the respondent would pay all cheques, Promissory Notes, Bills of exchange, other Negotiable Instruments in order to stay in honour in terms of the public policy as expressed and provided for in the Banks Act, Act 94 of 1990, as amended and previously, the Deposit Taking Institutions Act which provides for the regulation and supervision of the business of public companies taking deposits from the public.

Please adjust the account for the bonds, proceeds, products accounts and fixtures and release:

The order(s) of the court

The original Title Deed

thereafter to me immediately, to the following address exactly as provided."

[5] In the document titled 'Truth Affidavit of Peace Declaration' the defendant states the following:

"I, Trevor of the House Toerien, Agent for TREVOR KEITH TOERIEN, Exemption [ID 6...] being of sound mind, over the age of 21 years, have first-hand knowledge of the facts stated herein as a Peace Affidavit. I will tell my truth, my whole truth and nothing but my truth under the pains and penalties of perjury.

I am not a created entity, a corporation, a British Commonwealth subjects, a citizen of the corporation of the Republic of South Africa [see Annexure "Z"] subject to the jurisdiction of the corporation of the Republic of South Africa, a resident, citizen or subject of any territory, a citizen nor a resident in any country or land.

I, Trevor of the House Toerien, am a child of my Creator, an heir of the King, Yashua and therefore my citizenship is in Heaven, while having a physical 30 animated flesh and Blood Body, a sojourner on the soil or land of this earth.

I am a sojourner of the surveyed geographical area of the land mass on the Southern Point of Africa, commonly known as South Africa. My Creator, who created the Universe and owns all land is Sovereign, and I am Sovereign.

The corporation known as the Republic of South Africa, and the Government of South Africa, are both fictitious constructs' of the imagination of Wo/Man which revenue and incorporated 'citizens' as corporate fiction trust, each with its own account, with the institution of Birth Certificates. Fictitious creations will never rule any Flesh and Blood Woman or Man. Pursuant to the Maxim "Fiction can rise from Law but Law cannot rise from fiction" are statutes not Law but legislation to regulate and control fictitious constructs like corporations and not Woman and Men, whereas the conduct of interaction between Flesh and Blood Woman and Men are regulated by Natural Law and the Law of the Creator, Common Law and Customary Law.

Nunc Pro Tune, the Birth Certificate [Birth Bond] created for Trevor Keith Toerien, as a 'citizen' employee of the RSA corporations or any derivative thereof, is by this Peace Treaty declared to be the soul property for the benefit of its only contributing beneficiary Trevor of the House Toerien whose infinite value is the only source of value for the trust; where Trevor of the House Toerien shall from this day forth be recognized by all Agents of the corporation known as the Republic of South Africa, and Government of the Republic of South Africa as the only Administrator and Director of the trust and the corporation known as the Republic of South Africa shall under the Directorship of Trevor of the House Toerien be held liable as trustee.

I, Trevor of the House Toerien, hereby declare a Peace Treaty with the trustee of his/her Birth Trust, the corporations registered as the Republic of South Africa. I am a natural born soul on the land South Africa, a sojourner of the land South Africa, a South African National, where the land will forever belong to the Women and Men by Natural Law.

From this day forward, I, Trevor: Toerien, will live at peace with the corporations the Republic of South Africa and the Government of the Republic of South Africa, and its territories and anyone dealing in commerce.

This declaration of Peace is *nunc pro tune* as of the Trading with the Enemy Act of 1916. I have never been at war with anyone or any nation and I am at peace with all men, all

governments, all Kings and queens and anyone who would profess to be my enemy. My Creator has declared Peace with the one people, men and women and therefore I am at peace with the one people, men and women.

Matthew 5:9 Blessed are the peacemakers: for they shall be called the children of God. 10: Blessed are they which are persecuted for righteousness' sake: for theirs is the Kingdom of heaven. 11: Blessed are ye, when men shall revile you, persecute you, and shall say all manner of evil against you falsely for my sake. King James Bible 1611.

I, Trevor of the House Toerien, hereby declare a Peace Treaty with the Republic of South Africa. Women and men are created by the Creator as Sovereign, Living Souls with inherent rights to life, Liberty, Property and happiness.

Peace, Peace, Peace be unto all men and women in this world. Self-defence is a right given by the Creator, to all of his creatures including Women and Men, but as much as I can, I will live at peace with all Men and Women.

This Peace Treaty was prepared by Trevor of the house Toerien on this 07th day on November, 2015 and if un-rebutted within thirty (30) days is *nunc pro tunc* to 1916.'

[6] Rule 32(3)(b) of the Uniform Rules of Court affords a mechanism for a defendant faced with an application for summary judgment. It provides:

'Upon the hearing of an application for summary judgment the defendant may ...satisfy the court by affidavit ...that he has a *bona fide* defence to the action: such affidavit or evidence shall disclose fully the nature and grounds of the defence and the material facts relied upon thereof.'

[7] The authorities have over centuries held that in order to stave off summary judgment, the defendant has to disclose a *bona fide* defence. This means a defence set up *bona fide* or honestly, which if proved at the trial, would constitute a defence to the plaintiff's claim (*Bentley Maudesley & Co. Ltd v "Carburol" (Pty) Ltd and Another* 1949 (4) SA 873 (C); *Lombard v Van der Westhuizen* 1953 (4) SA 84 (C) at 88).

[8] The plaintiff contends that none of the documents filed by the defendant meets the requirements of rule 32(3)(b) referred to above, and accordingly, do not disclose a *bona fide* defence. I must confess that I am not certain what the import of the defendant's defence is. It seems that he contends that the mortgage bond attached to the plaintiff's summons is a negotiable instrument and that the Bills of

Exchange Act is applicable to the mortgage bond. According to the defendant, the plaintiff did not comply with the provisions of the Bills of Exchange Act by failing to attach a cheque or replemond bond. If that be the defendant's case, there is no merit in it. A mortgage bond is not a negotiable instrument² the Bills of Exchange Act is not applicable in this matter.

[9] The defendant has raised no defence at all, to the plaintiff's summons. The plaintiff is therefore entitled to summary judgment. The defendant's so-called affidavit is disjointed, incoherent, and incomprehensible. I am quite aware of the 'drastic' nature of the remedy of summary judgment as it allows judgment to be entered against a defendant without evidence. On the other hand, the court would be remiss in its duties if unmeritorious defences, clearly devoid of any *bona fides*, stand in the way of a plaintiff who is clearly entitled to relief.

[10] The ever-increasing perception that any defence, whatever its merits, is sufficient to stave off summary judgment, is misplaced and not supported by the trite general principles developed over many decades. See for example the well-known decision of *Maharaj v Barclays National Bank Ltd* (supra). See also generally, *Herb Dyers (Pty) Ltd v Mohamed and Another* 1965 (1) 31 (T) at 31H-32A-B; *Caltex Oil (SA) Ltd v Webb and Another* 1965 (2) SA 914 (N) AT 9160-H; *Arend and Another v Astra Furnishers (Pty) Ltd* 1974 (1) SA (C) at 303F-H; *Shepstone v Shepstone* 1974 (2) 462 (N) at 467A-H and *Breytenbach v Fiat SA (Edms) Bpk* 1976 (2) 226 (T).

[11] Recently the Supreme Court of Appeal (the SCA) restated the purpose of summary judgment procedure in *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture* 2009 (5) SA 1 (SCA). At paras 31 and 33 the following is stated:

'[31] [I]t was intended to prevent sham defences from defeating the rights of parties by delay, and at the same time causing great loss to plaintiffs who were endeavouring to enforce their rights.

[33] Having regard to its purpose and its proper application, summary judgment proceedings do not hold terrors and are 'drastic' for a defendant who has no defence.

² LAWSA, Vol 17 2ed, 329

Perhaps the time has come to discard these labels and to concentrate rather on the proper application of the rule, as set out with customary clarity and elegance by Corbett JA in the *Maharaj* case at 425G-426E.'

[12] In the result judgment is granted against the defendant for:

1. Payment of the amount of R1 217 616, 72;
2. Interest on the above amount at the rate of 9,36% per annum with effect from 15 October 2015 to date of payment, both days inclusive;
3. An order declaring specially executable –

**ERF [1...] SOUTH KENSINGTON TOWNSHIP
REGISTRATION DIVISION: I.R., THE PROVINCE OF GAUTENG
MEASURING 991 SQUARE METRES
HELD BY DEED OF TRANSFER NO. T [14.../2010]**

4. The Registrar to issue a Warrant of Execution against Immovable Property mentioned in paragraph 3 above, in terms of Rule 46(1) of the Uniform Rules of Court;
5. Costs to be taxed as between attorney and client.

Date of hearing: 23 February 2016

Date of Judgment: 31 March 2016

For the Plaintiff: Adv. SM Maritz

Instructed by: Haasbroek & Boezaart Inc.. Pretoria.

The Defendant in person.