



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

(1)	REPORTABLE: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO
(2)	OF INTEREST TO OTHER JUDGES: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO
(3)	REVISED.
<u>30/5/19</u> DATE	
<u>[Signature]</u> SIGNATURE	

Case No: 6830/2019

In the matter between:

**C J NOLTE**

Plaintiff/Applicant

and

**N KORB**

First Defendant/First Respondent

**D W VAN DER WATT**

Second Defendant/Second Respondent

**L S VAN DER WATT**

Third Defendant/Third Respondent

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**JUDGMENT**

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**D S FOURIE, J:**

[1] This is an application for summary judgment which is opposed by the respondents. The applicant's cause of action is founded upon a written sale of shares agreement in terms of which he claims payment of R283 796.00 from the respondents jointly and severally. The respondents have raised four points *in limine* incorporating other defences as well. During argument counsel for the

respondents indicated that they no longer rely on the second and third points *in limine*.

[2] In terms of the written agreement the applicant sold 100 shares and his loan account in 10G Consulting Services (Pty) Ltd to the first and second respondents for a purchase price of R4 050 000.00. It was agreed that the purchase price was to be paid by means of monthly instalments of R50 000.00, first payment to be made on 1 June 2017 and then 74 payments thereafter with a final payment of R300 000.00 payable as soon as possible, but no later than three years after signing of the agreement.

[3] It is alleged that during December 2017 the respondents requested a reduction of the monthly amount payable in terms of the payment plan. The respondents would make payment to the plaintiff in the amount of R30 000.00 per month, but only for the period 1 January 2018 until 30 June 2018. Thereafter monthly payments would continue as agreed in terms of the agreement.

[4] It is alleged that the respondents failed to make payments as agreed and the arrear amount for the period June 2017 until January 2019 amounts to R283 796.00. However, in terms of the application for summary judgment an order is sought against "*respondents/defendants*" without specifying that it should be jointly and severally. The third respondent is not a party to the written agreement, but according to the particulars of claim she has been joined "*by virtue of her marriage to the second defendant in community of property*".

### FIRST POINT IN LIMINE

[5] It has been pleaded that a factual dispute exists between the parties and that the respondents should be granted the opportunity to ventilate this dispute at a trial. Reference is made to a letter dated 28 January 2019 (annexure "C") wherein it is alleged that a letter of the plaintiff's attorney dated 7 January 2019 is regarded *"as an attempt by your client to repudiate the agreement, which repudiation is accepted"*. It is then also alleged that the applicant committed a misrepresentation when the agreement was entered into and, in addition thereto, the applicant *"made performance in terms of the agreement (for the respondents) impossible"*. These allegations, taken together, should therefore be regarded as constituting a dispute of fact which can only be resolved at a trial.

[6] There are several problems with this defence. The letter of the applicant's attorney dated 7 January 2019 is, according to its heading, a *"notice of default in terms of section 129(1) of the National Credit Act, 34 of 2005"*. In terms thereof it is alleged that the respondents are in default with their obligations in terms of the agreement. It is also clearly stated that this letter *"serves as a letter of demand"* and *"should you not ... effect payment ... the agreement may be cancelled"*.

[7] Repudiation takes place when the conduct of a party, objectively interpreted, leads to the conclusion that he does not intend to fulfil his part of the

contract (Tuckers Land & Development Corporation v Hovis 1980 (1) SA 645 (A) at 653F). The letter concerned does not indicate such an intention. It is an ordinary letter of demand to claim payment. There is no indication of any repudiation. This part of the defence is therefore without any merit.

[8] The reference to a misrepresentation is nothing more than a bald statement. The letter of 28 January 2019 contains no particulars in this regard. The answering affidavit is likewise of no assistance and it takes the matter no further. This is an allegation without any substance and it discloses no defence at all.

[9] It is also alleged in the letter of 28 January 2019 and the answering affidavit that the applicant's failure to assist the respondents "as per the agreement" made it impossible for the respondents to perform the terms of the agreement. During argument counsel for the respondents relied on the provisions of clause 9.6 and 9.8 of the agreement which provide as follows:

*"The seller will stay on in the company as a financial advisor with his own financial advisors' code and is permitted to do business under the name of the company and will be entitled to the normal remuneration which is applicable on financial advisors.*

*The purchasers will accommodate Come Nolte as a financial advisor in the company on condition that a formal employment agreement is reached between the company and Mr C Nolte."*

No particulars have been pleaded in the answering affidavit or in the letter dated 28 January 2019 to put the applicant's conduct within the ambit of these two

clauses. One does not know whether a formal employment agreement was entered into between the applicant and the company, whether the applicant refused to give his cooperation, or whether the applicant refused to stay on in the company as a financial advisor. Again, the allegation that the plaintiff made it impossible for the respondents to perform in terms of the agreement is nothing more than a bald statement without any substance. This defence is also without any merit.

#### **FOURTH POINT IN LIMINE**

[10] It is alleged in the answering affidavit that the respondents have suffered damages *"which was caused by the applicant due to the misrepresentation, alternatively the applicant's conduct that made performance in terms of the agreement impossible"*. Therefore, so it is alleged, the respondents have a counterclaim which they intend to institute against the applicant. I have already indicated above that there is no merit in the defence of a misrepresentation or that the applicant's conduct made performance for the respondents impossible. That being so, there is no basis to claim damages by means of a counterclaim. This defence is therefore also without any merit.

#### **CONCLUSION:**

[11] In the result I am of the view that no *bona fide* defence has been indicated. It means that the applicant should be entitled to summary judgment. I have already indicated above that the third respondent is not a party to the agreement. It appears not to be in dispute that the second and third

respondents are married in community of property to each other. Section 17(5) of the Matrimonial Property Act, No 88 of 1984 provides that where a debt is recoverable from a joint estate, the spouse who incurred the debt "*or both spouses jointly*" may be sued therefor. During argument counsel for the applicant indicated that an order is sought against all the respondents jointly and not jointly and severally.

### ORDER

Summary judgment is granted against all the respondents jointly for:

- (a) Payment of R283 796.00;
- (b) Interest on the said amount at the rate of 10% per annum *a tempore morae*;
- (c) Costs of suit to date hereof.



**D S FOURIE**  
JUDGE OF THE HIGH COURT  
PRETORIA

Date: <sup>31</sup>~~20~~ May 2019