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**REPUBLIC OF SOUTH AFRICA**



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

**CASE NUMBER: 90223/2019**

(1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: NO  
(3) REVISED.

13/5/2021  
DATE

\_\_\_\_\_  
SIGNATURE

In the matter between:-

**ABSA BANK LIMITED**

Plaintiff/Applicant

and

**DYNAMITE SCREEN PRINTERS CC**  
**(REG. NO.: 1992/002001/23)**

First Defendant/First Respondent

**SAIFUDEEN MAHOMED JAFFER**  
**(ID NO.: [....])**

Second Defendant/Second Respondent

**Delivered.** This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand down is deemed to be 10h00 on 13 May 2021.

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## JUDGMENT

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### **SKOSANA AJ**

[1] This is an application for summary judgment based on an action instituted by the plaintiff against the defendants for the return of goods as well as an order for the enforcement of the defendants' remaining obligations after the goods have been sold. The summons contained eight different claims.

[2] The defendant, in its opposing affidavit raised an issue that the application for summary judgment had been filed outside the prescribed period in that, while the defendant's plea had been served on 05 June 2020, the application for summary judgment was only served at the defendant's physical addresses on 09 September 2020, i.e. outside the prescribed 15 days in terms of Rule 32(2)(a).

[3] In regard to this issue of lateness, the plaintiff's counsel, Mr Eastes referred me to two Practice Directives which covered the relevant period last year, the effect of which was that no one, including attorneys, were allowed in the court building for the purpose of filing documents during that period as a result of

the impact of the COVID-19 pandemic. The Directive also allowed parties to serve papers on one another through electronic mail.

[4] In response, counsel for the defendants, Mr Beaton accepted that there were Directives issued as stated by plaintiff's counsel. It therefore became unnecessary to make any further reference thereto. However, he raised an issue that such Directives could not have ousted the provisions of Rule 4(1)(a)(v) which require service to be effected at the physical address of the defendants.

[5] I am unable to agree with the defendants' counsel. The Rules are issued by the Rules Board and do not constitute substantive law. They merely regulate the court's procedure. The Directives were issued by the Head of this Division with a view to assist in the continuance of the court processes under difficult conditions caused by the pandemic and imposed by virtue of the Disaster Management Act 57 of 2002.

[6] The respondents do not deny that they received the application through email and therefore suffered no prejudice. In the circumstances, it is my view that the application was timeously served in accordance with the Directives of this court. If I am wrong in this regard, I nonetheless apply the inherent powers of this court to condone such non-compliance.

[7] As to the merits of the application for summary judgment, the respondents conceded to claims 2 to 8. In any event, they had not set out any defence in regard to those claims in their affidavit opposing summary judgment.

[8] As to claim 1, the plaintiff's counsel took me through details of the claim which is also supported by the certificate of indebtedness issued in accordance with the parties' written agreement. He submitted that the respondents were unable to even set out the extent of their indebtedness and/or the payments made and that such lack of knowledge does not constitute a defence. Further, he pointed out portions of annexures to the papers showing that a number of payments that the respondents rely on relate to different accounts from the one in question and that therefore the respondents alleged defence was either *mala fide* or unfounded.

[9] Counsel for the respondents did not dispute the factual predicate relied upon by the plaintiff and could not raise any argument contrary thereto. It follows therefore that the plaintiff has made out the case.

[10] In the circumstances, I grant the order as contained in the draft order which I mark "R".

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**DT SKOSANA (AJ)**

**Acting Judge of the High Court  
Pretoria**

**Date of hearing: 12 May 2021**

**Date of judgment: 13 May 2021**

Appearance:

For Applicant: Adv J Eastes

Instructed by Delport Van Den Berg Inc.

Summit Place Office Park

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221 Garstfontein Road

Menlyn, Pretoria

For Respondents: Adv R Beaton SC

Instructed by Jaffer Incorporated

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Pretoria West, Pretoria