IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case No. **1267/2020**

1. REPORTABLE: NO
2. OF INTEREST TO OTHERS JUDGES: NO
3. REVISED: 18/7/2023

DATE: 19 July 2023

SIGNATURE

In the matter between:

NEDBANKLIMITED **Applicant**

(Registration number: 1[…])

and

SHEPARD MPHAMBELA **1st Respondent**

GERTRUDE SARUCHERA **2nd Respondent**

JUDGMENT

YENDE AJ

Introduction

Both the counsel for the applicant and respondents have presented good heads of argument in support of their cases and the court has borrowed to a larger extent from both the Applicants' and the Respondent's heads of argument in setting out the court's analysis as it will appear later in this judgment .

Parties

[1] The **APPLICANT** herein, which was also the Plaintiff in the main action instituted under the above case number, is **NEDBANK LIMITED** (registration number: 1[…]), a duly registered credit provider with registration number: N[…] 1[…], a public company duly registered and incorporated in accordance with the Company Laws of the Republic of South Africa ; and also trading as a deposit taking institution in terms of the Banks Act ,94 of 1990 (previously the Deposit Taking Institutions Act) and having its principle place of business at Nedbank, 1[…] R[…] Campus , 1[…] R[…], Sandown, Sandton, Johannesburg ,Gauteng.

[2] The **FIRST RESPONDENT** herein, which was also the First Defendant in the main action instituted under the above case number, is **SHEPARD MPHAMBELA** a major male person and the **SECOND RESPONDENT** herein, which was also the Second Defendant in the main action instituted under the above case number, is **GERTRUDE SARACHERA** a major female person and with address [**….], W[…], EXTENTION 2[…] ROODEPOORT.**

Nature of the proceedings

[3] Before court is an opposed application for condonation of late filing of an application for summary judgment same is opposed.

[4] The Applicant seeks relief in terms of two claims against the respondents: -

[5] Claim 1 arose from a (first) home loan agreement concluded between the applicant and the respondents, being married to each other in community of property, on **21 June 2010.**

[6] The respondents' indebtedness in terms of the first home loan agreement was secured by registration of a mortgage bond (under mortgage bond **B[…]**) over certain immovable property with property description:

[ERF….]W[…] EXTENSION 1[…] TOWNSHIP; REGISTRATION DIVISION I.Q, PROVINCE OF GAUTENG MEASURING: 271 (TWO HUNDRED AND SEVENTY-ONE) SQUARE METRES;

Held by Deed of Transfer number **T[…]**, subject to the conditions contained therein and especially to the reservation of rights to minerals (hereinafter referred to as "the first immovable property").

[7] Claim 2 arose from a (second) home loan agreement concluded between the applicant and the respondents on **20 June 2016**.

[8] The respondents' indebtedness in terms of the second home loan agreement was secured by registration of a mortgage bond (under mortgage bond **B[…]**) over certain immovable property with property description:

[**ERF…] W[…] PARK EXTENSION 2[…] TOWNSHIP; REGISTRATION DIVISION I.Q, PROVINCE OF GAUTENG MEASURING: 991 (NINE HUNDRED AND NINETY-ONE) SQUARE METRES**;

Held by Deed of Transfer number **T[…]** (hereinafter referred to as "the second immovable property").

Applicant's submissions

[9] Counsel for the applicant contends that the respondents breached the terms of the first and second home loan agreements, in that the respondents failed to make

payment, timeously and in full, of the monthly instalments due in terms of the respective agreements. Consequently, the applicant instituted enforcement steps by the dispatch of a notice as contemplated in terms of **Section 129 of the National Credit Act, 34 of 2005** (hereinafter "the NCA"). The said notice was served personally on the First Respondent on **3 December 2019. (see caselines paginated page(s) 0000-2-4).**

[10] Subsequently, the applicant instituted action under the above case number. Initially, no defence was entered and therefore an application for judgment by default was instituted. The application for default judgment was set-down for the 29 January 2021. Subsequently the respondents served and filed a notice of intention to defend ,resulting in the application for judgment by default being removed from the roll by notice.(see caselines paginated page ZG1). Despite the notice of removal, judgment by default was (incorrectly) granted.(see caselines paginated page ZH1-ZH4).

[11] Summary judgment application was enrolled on opposed roll on the 10 October 2022, the matter was removed from the roll to allow the opportunity for the rescission of the (incorrectly) granted default judgment order. The applicant then launched an unopposed application for rescission of the default judgment order same was enrolled and heard on the 20 March 2023 culminated in a rescission order being granted. In response to the filing of the plea, the present summary judgment application was instituted**. (see caselines paginated page(s) 0000-2-5)**.

[12] Inlight of the chronology mentioned *supra* the current application for summary judgment was launched outside the **15-day** time period. The applicant is seeking condonation for the belated filing of the summary judgment application**. (see caselines paginated page(s) 0000-2-5).**

Condonation Application

[13] This application is instituted to request condonation for the belated launching of an application for summary judgment, in light of the fact that the said application was

delivered subsequent to the lapse of the 15 (fifteen) day period as contemplated in terms of Rule 32 of the Uniforms Rules of Court.

[13] The applicant avers that the reason for the delay in launching same, was as a result of the reasons herein under mentioned *seriatim* that;

[14] *"The litigation in this matter has been lengthy and ongoing in that having instituted legal action as far back as January 2020, the applicant previously stayed the litigious process in an attempt to assist the respondents to catch-up with the arrears and to be up to date with their respective mortgage loans repayments. The respondents defaulted with their obligations in terms of the respective mortgage loan agreements in that they failed to make payment of the respective monthly instalments due fully and punctually in terms thereof.*

[15] *Consequently, the applicant commenced enforcement steps. There been no response in terms of a pre-enforcement notices as contemplated in terms of Section 129 of the National Credit Act, 34 of 2005, the applicant instituted the action under the above case number during January 2020. In response to the action a notice of intention to defend was filed on behalf of the respondents (the Defendants in the main action) and a plea was served on the 25 November 2021.* ***(see caselines paginated page(s) 002-7 to 002-9).***

[16] *The lapse of time between the institution of the action and the filling of the plea was borne from the fact that the representatives of the respondents requested the litigation process to be stayed, to allow the respondents an opportunity to sell one of the two encumbered properties. Despite various instances where it was indicated that a sale may be imminent, the respondents failed to effect payment of the purchase price to the applicant, as a result the litigation process was proceeded with.*

[17] *In reaction to the filling of the plea, and specifically in light thereof the plea did not disclose a bona fide defence, the applicant instructed its legal representatives to*

*institute a summary judgment. The instructions to this effect was conveyed to counsel on 1 December 2021. Counsel provided the legal representatives of the applicant with the draft documents on 6 December 2021 and the documents were conveyed to the applicant on 8 December 2021****. (see caselines paginated page(s) 002-7 to 002-9).***

[18] *There was some information which had to be supplemented in the affidavit, specifically information pertaining to the valuation and the outstanding balance due on the account. The outstanding information was requested to be obtained when the draft affidavit was sent through to the applicant on 8 December 2021. Some of the outstanding information could however only be obtained by 21 December 2021. The remainder of the information was obtained only during the beginning of January 2022****. (see caselines paginated page(s) 002-9).*** *This delay in obtaining this important information resulted in the summary judgment being launched 14 (fourteen) court days after the lapse of the 15 day required time period in terms of the Uniform Rules of the Court".*

[19] The applicant submitted that the respondents will not be prejudiced by the belated delivery of the summary judgment. That the applicant has a prospect of success in the summary judgment application in light of the fact that the respondent's plea did not disclose a *bona fide* defence. The applicant further averred that respondents pleaded that there was a signed offer to purchase ("OTP") same is admitted however no guarantees in terms of the offer to purchase was presented and the result was that the sale fell through.

[20] Counsel for the applicant argued that the failure to comply with the provisions of the Uniform Rules of the Court in respect of the institution of the summary judgment application was not due to a deliberate disregard of the provisions of the Rules on the part of the applicant but simply due to unforeseen extraneous circumstances resulting from the fact that the applicant struggled to timeously obtain all the relevant information required to finalize the application. It was submitted on behalf of the applicant that currently the arrears in respect of **claim 1 amounts to R**

570 836.00 and in respect of claim 2 the arrears **amounts to R1 021 157.00**. This submission was never denied by the respondent's counsel. Counsel for the applicant further averred that both immovable properties are still registered in the names of the respondents and that the applicant will continue to suffer financial prejudice if the sought relief is not granted and similarly the respondents are financially prejudiced by the continued escalation of the arrears in respect of both the mortgaged properties.

Respondents' submissions

[21] Counsel for the respondents contend that the applicant's application for summary judgment does not comply with the **Uniform Rule 32(2)(a)** which states that the application must be delivered within 15 days of receiving the Plea**. (see caselines paginated page(s) 0000-3-2 to 0000-3-3).**

[22] Despite not adhering to such time period, the applicant fails to adequately detail the 14 days' delay and furthermore, why such delay was unreasonable and ought not to be condoned. Counsel for the respondent contends further that even with the additional days to bring this application, the annexures attached to the application for summary judgment are still incorrect.

INCORRECT ANNEXURES

[23] The Respondent contends that the following annexures comprise some of the annexures attached to applicant's affidavit: .(see caselines paginated page(s) 0000-3-7 to 0000-3-8).

[1] "Annexure 2.1 - Certificate of Balance for the Witkoppen Property;

[2] Annexure 2.2 – Certificate of Balance for the Weltevreden Property;

[3] Annexure 3.1 - Property assessment of Weltevreden Property;

[4] Annexure 3.2 – City of Johannesburg account for the Weltevreden Property; and

[5] Annexure 3.3 - Windeed report for the Weltevreden Property.

[24] Counsel for the respondents contend that these are not however referred in the Affidavit supporting Summary Judgment, which states as follows:

[1] Annexure NED2.1 and NED2.2 are meant to be the Certificate of Balance and payment profile in respect of the Witkoppen Property. Annexure 2.2 refers to the Weltevreden Property;

[2] NED3.1 and NED2.2 are then referred to as the Certificate of Balance and payment profile in respect of the Weltevreden Property. Annexure 3.1. is a property assessment of the Weltevreden Property;

[3] No payment profiles are attached in respect of either of the properties, and accordingly the Honourable Court cannot see when Defendants made the last payments in respect of the accounts or what the payment behaviour of Defendants is in respect of these accounts; and

[4] There are Annexures NED2.3 and NED2.4 referred however there are no such annexures attached (which are meant to show how the Weltevreden Property loan agreement has been conducted).

[25] The annexures referred in the affidavit do not correspond with the annexures attached to the affidavit, and there are certain annexures that have not been attached at all. Save for the Certificate of Balance in respect of the Witkoppen Property, no further documentation is attached in support of the relief sought against such property. Notably, as much as applicant refers to the service being properly effected, Counsel for the respondents contend that no Returns of Service are attached (in respect of the action or the Section 129 notices)".

[26] It was the respondents counsel's contention that the applicant has not placed before Court a proper case, thus on that basis alone, this application should be dismissed with costs.

BONA FIDE DEFENCE

[27] Counsel for the respondents contended that apart from the late delivering of the application, as well as the incorrect annexures, the application falls short of proving that there is not a triable issue in casu. respondents raise inter alia the following as a defence to the applicant's claims;

[1] That the respondents had been involved in extensive discussions regarding the respective loan accounts in *casu*;

[2] "That respondents have signed an Offer to Purchase ("OTP") the immovable property in respect of Claim 1, of which OTP applicant is well-aware;

[3] Accordingly, that such transfer of the immoveable property would enable the entire loan amount (referred in Claim 1) to become settled and would result in there potentially being a surplus (which the respondents can then allocate to any amount that may be owing on the second loan referred in *casu"*). **(see caselines paginated page(s) 0000-3-10 to 0000-3-11).**

Principles governing condonation.

[28] The approach to adopt when deciding an application for condonation was set out by Boshielo AJ (writing for the majority refused to condone the delays of 30 court days) (as he then was) in *Grootboom v National Prosecuting Authority and Another* CCT 08/13 [2013] ZACC 37; 2014 (2) SA 68 (CC); 2014 (1) BCLR 65 (CC); [2014] 1 BLLR 1 (CC); (2014) 35 ILJ 121 (CC) (21 OCTOBER 2013) at paragraph 23, where he stated that:

"It is now trite that condonation cannot be had for the mere asking. A party seeking condonation must make out a case entitling it to the court's indulgence. It must show sufficient cause. This requires a party to give a full explanation for the non-compliance with the rules or court's directions. Of great significance, the explanation must be reasonable enough to excuse the default."

[29] The test for condonation is set out in a separate judgment and in paragraph (50) in *Grootboom* by Zondo J (as he then was) when he stated that:

"*In this Court the test for determining whether condonation should be granted or refused is the interest of justice. If it is in the interest of justice that condonation be granted, it will be granted. If it is not in the interest of justice to do so, it will not be granted. The factors that are taken into account in that inquiry include:*

1. *the length of the delay;*

2. *the explanation for, or cause for, the delay;*

4. *the prospects of success for the party seeking condonation;*

5. *the importance of the issue (s) that the matter raises;*

6. *the prejudice to the other party or parties; and*

6. *the effect of the delay on the administration of justice."*

At paragraph (53) he further stated that:-

"The main judgment does not take into account that there are at least four factors which favour granting condonation to the respondents.

These are:

(a) the existence of reasonable prospects of success;

(b) the importance of the issue raised by the matter;

(c) the absence of prejudice to the applicant; and

(d) the fact that the periods of delay (i.e.15 court days in one case and 30 court days in the other) are not excessive."

[30] In principle, the existence of the prospects of success in favour of the party seeking Condonation is not decisive, it is an important factor to be considered in favour of granting condonation.

[31] Recently the Constitutional Court in *Steenkamp v Edcon limited* [2019] ZACC 17 per Basson AJ in paragraph *[26] said that:*

"…the principle is firmly established in our law that where time limits are set, whether statutory or in terms of the rules of court, a court has inherent discretion to grant condonation where the interests of justice demand it and where the reasons for non-compliance with the time limits have been explained to the satisfaction of the court". The con-court further endorsed with approval the earlier Judgment in Grootboom where it held that "[i]t is axiomatic that condoning a party's non-compliance with the rules of court or directions is an indulgence. The court seized with the matter has discretion whether to grant condonation."

[32] The Apex-court further stated at paragraph (35) of the Grootboom case mentioned *supra* that;

"It is by now axiomatic that the granting or refusal of condonation is a matter of judicial discretion. It involves a value judgment by the court seized with a matter based on the facts of that particular case".

[33] It is equally apposite to also to mention the caution sounded by the Constitutional Court in Grootboom case when the Apex-Court said the following at paragraph (32):

"*I need to remind practitioners and litigants that the rules and court's directive(s) serve a necessary purpose. Their primary aim is to ensure that the business of our courts is run effectively and efficiently. Invariably this will lead to the orderly management of our court's rolls, which in turn will bring about the expeditious disposal of cases in the most cost –effective manner. This is particularly important given the ever-increasing costs of litigation, which if left unchecked will make access to justice too expensive".*

[34] **Rule 27(3)** of the **Uniform Rules of Superior Courts** stipulates that: "The court may, on good cause shown, condone any non-compliance with these rules". The learned author of Superior Courts practice, provides the following guidelines to the consideration of an application for condonation:

[35] Generally, the courts have a discretion, which must be exercised judicially on a consideration of the facts of each case; in essence it is a matter of justiciable fairness to both the applicant and the respondents. A judicial discretion is not an absolute or unqualified discretion but must be exercised in accordance with recognised principles.

[36] Among the factors that the court has regard to are the degree of non-compliance, the explanation of the delay, the prospects of success, the importance of the case, the nature of the relief sought, the other party's interest in finality (an inordinate delay induces a reasonable belief that the order had become unassailable), prejudice to the other side, the avoidance of unnecessary delay in the administration of justice and the degree of negligence of the persons responsible for the non-compliance**.(see caselines paginated page(s) 0000-2-5 to 0000-2-7)**

Consideration of condonation

[37] The applicant submitted that the belated institution of the application for summary judgment (which was filed 14 days late) was not due to a deliberate disregard of the provisions of the Rules on part of the applicant but simply due to unforeseen extraneous circumstances.

[38] Counsel for the applicant averred further that there was some information which had to be supplemented in the affidavit, specifically information pertaining to the valuation and the outstanding balance on the respondent's account.That information was sent to the applicant on the 8 December 2021. Some of the outstanding information was only obtained by 21 December 2021 and the remainder of the information was obtained only during the beginning of January 2022.

[39] Once the affidavit supporting the summary judgment was finalized the summary judgment application could then be instituted and same was served 14 court days after the lapse of the required time period. In my considered view and in light of the *stare dicesis* and precedence mentioned supra there can be no doubt that 14 (fourteen) court day delay in filing the applicant's application for summary judgment is not excessive and the court is content with the reasons advanced by the applicant for the delay in complying with the Uniform Rule 32(2)(a).

[40] Consequently, the applicant's late filling of its application for summary judgment is hereby condoned in the interest of justice.

Consideration of summary judgment application

[41] Generally, Summary judgment Applications are *sui generis* in nature .The purpose thereof is speedy and expedient adjudication of issues and given the nature of summary judgment it is the court's strong held view that the application for summary judgment must be correct in all material respect the first time. At its very basis, summary judgment is intended to entrench the admirable principle that an applicant's claim, based on a certain cause of action, should not be delayed by what is tantamount to an abuse of

court process, namely a recalcitrant respondent, with no *bona fide* defence to the applicant's action, entering an appearance to defend that action, merely for dilatory purposes. At the same time, summary judgment entitles an applicant to apply to court to have judgment entered summarily against such a respondent, therefore putting an end to the matter, thus avoiding the applicant being put to a protracted and costly trial . Conversely, summary judgment is never intended to shut the door upon a face of a respondent who could, at the very least, show that he and/or she has demonstrated a *bona fide* defence, applicable to the claim. In those instances, a respondent is surely granted leave to defend the action and summary judgment is refused.

[42] The defendant is required to disclose fully the nature and grounds of the defence and the material facts relied upon, therefore. The locus classicus dicta was laid down that bold, vague, and sketchy defences should not be countenanced(See Beitenbach v Fiat SA (Edms) Bpk 1976 (2) SA 226 (T) at 229F-H). In the matter of Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture 2009 (5) SA 1 (SCA) at 11G-12D the Supreme Court of Appeal held that "*the rationale behind summary judgment applications are impeccable. The procedure is not intended to deprive a defendant with a triable issue or a sustainable defence of his/her day in court. In considering whether a defendant does indeed have a triable issue or sustainable defence, the court should first consider whether there was a sufficient disclosure by the defendant of the defence sought to be relied upon. Secondly, it should be considered whether the defence so disclosed is bona fide and good in law".*

[43] In the matter of NPGS Protection and Security Services CC & another v FirstRand Bank Ltd 2020 (1) SA 494 (SCA). 21 At par 11, the Supreme Court of Appeal held that; "Rule 32(3) of the uniform rules requires an opposing affidavit to disclose fully the nature and grounds of the defence and the material facts relied upon therefor. To stave off summary judgment, a defendant cannot content him or herself with bald denials, for example, that it is not clear how the amount claimed was made up. Something more is required. If a defendant disputes the amount claimed, he or she should say so and set

out a factual basis for such denial. This could be done by giving examples of payments made by them which have not been credited to their account".

[44] In *casu* the court had to enthralled with the fact that this is an opposed application for summary judgment in terms of Rule 32(2)(a) and Rule 46(1) and Rule 46A. Application (i.e., monetary relief for the outstanding indebtedness due on the two mortgage loan agreements, authorization to execute on the two immovable properties and costs) by virtue of the fact that the respondents have breached the terms of the mortgage loan agreements.

Common cause facts:

[45] The applicant and the respondents concluded a first home loan agreement, indebtedness of which was secured by registration of a mortgage bond over the first immovable property as mentioned *supra,* a second home loan agreement was concluded, and the indebtedness was also secured by registration of a mortgage bond over the second immovable property.

[46] The National Credit Act, 34 of 2005, is applicable to both the first and the second home loan agreement. The applicant has complied with the terms of the first and the second home loan agreements, there has been a monotonous breach on the part of both the respondents with the terms of the first and second home loan agreements respectively. The applicant has complied with the requisite pre-enforcement steps as contemplated in terms of the NCA. The indebtedness including the arrears amounts continues to escalate unabated to the financial detriment of both the applicant and the respondents. The respondents failed dismally to demonstrate both their financial ability to keep-up with their legal obligation in terms of servicing their respective home loan agreements. **(see caselines paginated page(s) 0000-2-9 to 0000—2-11).**

Discussion

[47] In the opposing affidavit including the plea filed by the respondents it become obvious that the respondents rely on vague general and uninformative averments, unsupported by facts. Even a perfunctory reading of the opposing affidavit reveals that: -

[1] no discernible defence much less a *bona fide* defence, is and/was raised in the opposing affidavit including the plea served and filed save the admission of indebtedness to the effect that: the parties had been involved in extensive discussions regarding the respective loan accounts. This reference on part of the respondents thereto that discussion in respect of the rehabilitation of the relevant accounts were conducted and the possibility that the first immovable property may be sold, simply does not provide a defence to the entitlement on part of the applicant to the relief sought herein. **(see caselines paginated page(s) 0000-2-13).**

[2] That the respondents have signed an Offer to Purchase ("OTP") the immovable property in respect of Claim 1, of which ("OTP') the applicant is and/was well-aware, Such transfer of the immoveable property would enable the entire loan amount (referred in Claim 1) to become settled and would result in there potentially being a surplus (which the respondents can then allocate to any amount that may be owing on the second loan referred *in casu*).This contention is not a defence in *casu,* because since the institution of the legal process in this matter no guarantees were presented to the applicant and the result being that no transfer in respect of ('Claim 1') mortgage property was effected instead the mortgage property being ('Claim 1') is still remains registered in the names of the respondents. **(see caselines paginated page 0000-2-13).**

[3] Not an iota of evidence is placed before the court that the said Offer to Purchase ("OTP") was duly signed and the guarantees presented to the applicant. The respondents provide no factual basis for their denial of breach of the respective home loan agreements and accordingly the denial in this respect is therefore simply bald, vague, sketchy and bad in law.

[4] In respect of the denial that the full indebtedness amount is due by the respondent, the entitlement on the part of the applicant to claim the full indebtedness amount arises from the fact that the breach on the part of the respondents caused the acceleration clause contained in the respective home loan agreements to become operative**. (see caselines paginated page(s) (0000-2-11 to 0000-2-12) par 7.2.1 to 7.3).**

[5] In the matter of F & I Advisors (Edms) Bpk en 'n Ander v Eerste Nasionale Bank Van Suidelike Afrika Bpk 1999 (1) SA 515 (SCA). it was held by the Supreme Court of Appeal, that " it is not required from a Plaintiff to deconstruct the manner in which a claim amount was constituted in the pleadings if the claim amount is not placed in dispute (same also applicable to the relevant interest rate). Once the claim amount is sufficiently placed in dispute, only then will it be required from a Plaintiff to deconstruct and prove the manner in which the claim amount has been constituted ".

[6] The financial positions of the respondents are not known to the applicant but given the respondent's default and non-payment of the amounts due to the Applicant, it is reasonable to assume that the respondents are currently experiencing financial difficulties. The outstanding debts including the arrear amounts due to the applicant in respect of the two mortgage loans are substantial and ever increasing monthly and, it is improbable that the respondents will recover sufficient money to settle the outstanding debts the arrears.

[48] As mentioned *supra* the respondents have not set out a *bona fide* defence to the applicants claim and the court finds that there are no real and factual tenable points in this matter. The respondents contend that they have a *bona fide* defence and have raised triable and tenable issues that entitle them leave to defend the applicants claims. In law the respondents will only avoid the summary judgment should they as mentioned *supra* proffer and advance factual contentious issues that can be argued in a subsequent trial. The court has to be satisfied that the respondents has a *bona fide* defence and need not prove same .

[49] In the matter of Maharaj v Barclays Bank Ltd 1976 (1) SA 418 (A) there the Court held that “in determining whether the defendant has established a *bona fide* defence, the court has to enquire whether the defendant has with sufficient particularity disclosed the nature and grounds of his defence and the material facts upon which his defence is based. The defendant does not have to establish his *bona fides,* it is the defence which must be *bona fide*. All what he has to do is to swear to the defence which is competent in law in a manner which is not inherently or seriously unconvincing”. The same sentiments were echoed in the matter of Standard Bank South Ltd v Friedman 199 (2) SA 456 (C) at 462 par G.

[50] The defendant must set out facts which , if proven at a trial will constitute an answer to the applicant’s claim. Conversely, it is expected of the applicant as mentioned *supra* to convince the court that he has made out a case for summary judgment.
Since summary judgment is an extraordinary ,stringent at times referred to as draconian and a speedy or drastic remedy , it requires strict compliance with the prerequisites as provided for in Rule 32 (2) (b) .(see also Gull Steel (Pty) Ltd v Rack Hire BOP (Pty) Ltd 1998 (1) SA (O) at 683 H.

[51] As mentioned *supra* in this judgment the respondents have not set out *bona fide* defence to the applicant’s claim and the court find that the defences raised by the respondents are technical in nature and fanciful. There are not real and factually tenable and / or triable points in this matter.

[52] In the circumstances, I make the following order:

[53] Summary judgment is granted against the first and second respondents, jointly and severally the one paying the other to be absolved for;

CLAIM 1: HOME LOAN ACCOUNT NUMBER: 8000 9185 49101

[1] Payment of the amount of **R 1 012 943.39;**

[2] Payment of Interest on the aforesaid amount R1 012 943.93 calculated at the rate of **10.50%** per annum, compounded monthly in arrear from the **01st of NOVEMBER 2019** to date of final payment, both days inclusive (being the base rate of **10.50%** as at 01st of NOVEMBER 2019 less 0.50%);

[3] An Order declaring the property known as: **ERF […] WITKOPEN EXTENSION 129 TOWNSHIP; REGISTRATION DIVISION I.Q., THE PROVINCE OF GAUTENG MEASURING: 271 (TWO HUNDRED AND SEVENTY-ONE) SQUARE METRES; Held by Deed of Transfer number T[…] SUBJECT TO THE CONDITIONS THEREIN CONTAINED AND ESPECIALLY TO THE RESERVATION OF RIGHTS TO MINERALS**
specially executable for the said sums;

[4] An order in terms of Rule 46 to authorize the Registrar to issue a Warrant of Execution against the immovable property to obtain an attachment over the property and an ultimate sale in execution;

[5] That the first immovable property known as **ERF […] WITKOPPEN EXT 129**, be declared specially executable subject to a reserve price of **R 800 000.00**

[6] Should the Sheriff not receive a bid for any amount as contemplated in [5] above then and in such an event the sale should be cancelled, and the sheriff should file his report in terms of Rule 46 A Section 9(c) provided in the required 5 days from date of which the sale was cancelled.

CLAIM 2: HOME LOAN ACCOUNT NUMBER: 8002 9145 43301

[7] Payment of the amount of **R 2 198 382.61;**

[8] Payment of interest on the aforesaid amount of **R 2 198 382.61** calculated at the rate of **10.00%** per annum, compounded monthly in arrear from the **01st of NOVEMBER 2019** to date of final payment, both days inclusive (being the base rate of **10.00% as at 01st of NOVEMBER 2019 less -0.50%**);

[9] An Order declaring the property known as:

ERF[…] WELTEVREDEN PARK EXTENSION 28 TOWNSHIP; REGISTRATION DIVISION I.Q., PROVINCE OF GAUTENG MEASURING: 991 (NINE HUNDRED AND NINETY-ONE) SQUARE METRES; Held by Deed of Transfer number T[…]
specially executable for the said sums;

[10] An order in terms of Rule 46 to authorize the Registrar to issue a Warrant of Execution against the immovable property to obtain an attachment over the property and an ultimate sale in execution;

[11] That the second immovable property known as **ERF […] WELTEVREDEN PARK EXT 28 ROODEPOORT**, be declared specially executable subject to a reserve price of **R 1 593 000.00.**

[12] Should the Sheriff not receive a bid for any amount as contemplated in [11] above then and in such an event the sale should be cancelled, and the sheriff should file his report in terms of Rule 46 A Section 9(c) provided in the required 5 days from date of which the sale was cancelled.

[13] That the Applicant be granted leave to approach this Court on the same papers, duly supplemented for a variation of the Reserve Price, where applicable;

[14] Attorney and own client costs as provided for in terms of the said mortgage bond(s);

[15] The operation of the order in respect of **('Claim 2')** is suspended for a period of **(3) Three months** from date of the order pending the sale in respect if Claim 1: **ERF[…] WITKOPEN EXTENSION 129 TOWNSHIP; REGISTRATION DIVISION I.Q., THE PROVINCE OF GAUTENG MEASURING: 271 (TWO HUNDRED AND SEVENTY-ONE) SQUARE METRES; Held by Deed of Transfer number T57994/2010 SUBJECT TO THE CONDITIONS THEREIN CONTAINED AND ESPECIALLY TO THE RESERVATION OF RIGHTS TO MINERALS.**

J YENDE
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Delivered: this judgment was prepared and authored by the judge whose name is reflected and is handed down electronically and by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date for handing down is deemed to be 19 July 2023

APPEARANCES:

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Date heard:	29 May 2023
Date of Judgment:	19 July 2023