

SOUTH AFRICA / JUDGMENT

ABSA Bank Ltd v Arbee (3117/2011) [2013] ZAKZDHC 8 (15 March 2013)

[2013] ZAKZDHC 8

COURT

Kwazulu-Natal High Court, Durban

BEFORE

Ndlovu

CASE / FILE NUMBER

3117/2011

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IN THE KWAZULU NATAL HIGH COURT, DURBAN

REPUBLIC OF SOUTH AFRICA

CASE NO. 3117/2011

In the matter between:

ABSA BANK LIMITED PLAINTIFF/APPLICANT

and

JUNAID ARBEE DEFENDANT/RESPONDENT

J U D G M E N T

NDLOVU J

Factual background

- [1] In this matter the plaintiff, a commercial bank, seeks judgment against the defendant for payment of the sum of R1 203 759,24 plus interest and costs on attorney and client scale. The judgment is sought in terms of Rule 31(1)(c) of the Uniform Rules of this Court. The defendant objects to the granting of judgment mainly on the ground that he signed the consent to judgment papers under duress.
- [2] The defendant is the sole member of a close corporation known as Imvusa Trading 1203 CC (“Imvusa”) which, on or about 23 December 2009 concluded a loan agreement with the plaintiff bank in terms of which the plaintiff lent to Imvusa the sum of R1 336 300,00 against registration of a mortgage bond in favour of the plaintiff as security for the loan. Further details in relation to the mortgage bond are not relevant for the present purpose.

- [3] On or about 30 October 2009 the defendant, in terms of a written deed of suretyship, interposed and bound himself as surety and co-principal debtor (with Imvusa being the principal debtor) for the repayment on demand of all or any such sum or sums of money which Imvusa might then owe or from time to time be indebted to the plaintiff. The plaintiff duly accepted the defendant's suretyship.
- [4] Imvusa defaulted in its repayments in terms of the loan agreement and this culminated in the plaintiff instituting legal action against Imvusa and, subsequently, liquidation proceedings. On or about 9 March 2011 the plaintiff instituted an action against the defendant in the latter's capacity as surety for Imvusa for recovery of the debt. Once the defendant entered an appearance to defend the action, the plaintiff filed an application for summary judgment, which was opposed by the defendant. It is, however, apparent that the summary judgment process was not pursued by the plaintiff and that the defendant eventually filed his plea on or about 6 December 2011. This was done on the defendant's behalf by his then attorneys of record, Abbas Latib and Company.
- [5] In his plea the defendant raised two preliminary objections to the summons by way of special pleas. He pleaded the existence of, firstly, a pactum de non petendo and, secondly, novation of the plaintiff's cause of action, both of which he alleged were subsequently agreed upon between the plaintiff, duly represented by its attorneys of record and himself, appearing in person. In terms of this subsequent agreement the plaintiff was precluded from proceeding with the action. In pleading over, the defendant merely raised a bare denial of the allegations contained in the particulars of claim and put the plaintiff to the proof thereof. Notably, this defence was the same as the one which the defendant had raised in his affidavit opposing the granting of summary judgment against him.
- [6] It is common cause that on 7 June 2012 the plaintiff's attorneys held a meeting with the defendant at their offices in Morningside, Durban, with a view to exploring the way forward in terms of a possible settlement. As to the question whether the meeting was requested by the defendant or the plaintiff's attorneys, the parties were not in agreement. However, nothing seems to turn on that aspect of the matter.
- [7] Indeed, it is also common cause that at the meeting of 7 June 2012 certain agreements were reached between the parties. On the same day the plaintiff's attorneys addressed and emailed a letter ("the settlement letter") marked "without prejudice" to Imvusa confirming the discussion and agreements aforesaid. The settlement letter read thus:

"Dear Sirs,

Absa Bank Limited/Imvusa Trading 1203 CC and Junaid Arbee

The above matter refers.

We confirm that our client (the Absa Bank) has agreed to afford you (the debtors) an opportunity of resolving the liquidation application instituted against Imvusa Trading 1203 CC hereinafter referred to as Imvusa under Durban High Court Case No. 4551/2012 and the action instituted against Dr Junaid Arbee under Durban High Court Case No. 3117/2011, on the following terms and conditions, namely:

You both acknowledge that Imvusa and Dr Arbee are jointly and severally currently indebted to the applicant in the sum of R1 435 888,50 together with interest thereon at the rate of 9.35% per annum from 7 February 2011 to date of payment, calculated daily, compounded monthly, both days inclusive, and costs on an attorney and client scale.

You both, jointly and severally, undertake to settle the arrears owing in respect of joint account number 7010075115 as follows –

Payment of the sum of R100 000,00 on or before the close of business on 12 June 2012;

Payment of the surplus resultant from the transfer of the immovable property described as Erf 2284, Umhlanga Rocks (Ext 21);

Notwithstanding the contents of paragraphs 2.1 and 2.2 above, the arrears must be settled in full, on or before the close of business on 29 June 2012.

Imvusa further agrees to resume its normal monthly bond repayments, in accordance with the terms of the mortgage bond loan agreement, with immediate effect.

Dr Arbee agrees to furnish Absa Bank's attorneys, Johnston and Partners, with a consent to judgment in terms of the prayers sought in Absa Bank's summons in respect of Durban High Court Case No. 3117/2011.

Should any one of the payments not be made on due date, the Absa Bank shall have the right, without notice, to proceed with the liquidation of Imvusa on an unopposed basis. In this regard, the Absa Bank requires you to sign the attached consent order.

We are accepting this offer purely as an indulgence. In the circumstances our client is not novating its claim against you and its claim is neither extinguished nor reduced.

Kindly confirm that this is acceptable by signing, in the space provided for below and (sic) the attached documentation and returning same, by the close of business on 8 June 2012.

Yours faithfully

JOHNSTON & PARTNERS

Duly authorised for and on behalf of

IMVUSA TRADING 1203 CC : __Signed __

DR JUNAID ARBEE: __Signed ____ ”

- [8] The attached documentation referred to in the last paragraph of the settlement letter apparently included an unsigned consent to judgment (referred to in item 4 of the settlement letter) which the defendant was required to sign and return to the plaintiff's offices by the close of business on 8 June 2012. However, it is common cause that the defendant signed the consent letter at Tongaat on 11 June 2012. In terms thereof the defendant consented to judgment, in favour of the plaintiff, as follows:

“(a) Payment of the amount of R1 435 888,50;

- (b) Interest on the amount of R1 435 888,50 at the rate of 9.35% per annum from 7 February 2011 to date of payment;
- (c) Costs of suit on an attorney and client scale;
- (d) Further and/or alternative relief.”

- [9] However, it was common cause that the defendant subsequently paid to the plaintiff the sum of R213 000,00 as part payment towards the debt, which then reduced the amount owing to that extent. The arrangement between the parties was that the plaintiff would lodge the consent to judgment, in terms of Rule 31(1)(c), only in the event of the defendant defaulting with his payments as agreed in terms of the settlement letter. Hence, it was upon the defendant's failure to honour this agreement that the plaintiff lodged the present application, in terms of Rule 31(1)(c). However, the Rule 31(1)(c) application process did not follow the usual route of being considered by a Judge in chambers. This was occasioned by the fact that the defendant opposed the application.

- [10] In his affidavit opposing the Rule 31(1)(c) application the defendant made certain serious allegations against the plaintiff's attorney which, according to the defendant, constituted duress having been unduly exerted upon him to sign the consent to judgment. It is apposite to refer to the relevant paragraphs of the defendant's affidavit in this regard:

“4. I admit that my signatures appear on the consent to judgment, however, I deny that the consent to judgment was freely and voluntarily signed by me. I was at the time of signature represented by attorney Abbas Latib and Company.

5. I had delivered my plea in the action under case number 3117/2011 on or about the 6th December 2011, and in this regard I fully associate myself with the facts contained in the plea, a copy of which I am unable to presently annex to these papers but which I shall ensure will be made available to the above Honourable Court at the time that this matter is heard on an opposed basis. I place on record that aside from my denial of the allegations contained in the Plaintiff's Particulars of Claim, I had raised two special pleas, namely, that the Plaintiff and I had concluded an agreement, which constituted a pactum de non petendo, alternatively was a novation of the Plaintiff's original cause of action. The nature of these defences had been set forth in my answering affidavit in the summary judgment application.

6. The Plaintiff and I had been engaged in extensive negotiations in this matter and in or about the 7th June 2012, the Plaintiff's attorney made certain proposals to me in respect of a liquidation matter, which is related to this matter and invited me to settle the matter directly with them. At the time I was under extreme financial pressure in the light

of the other matter. I was not convinced of the merits of the Plaintiff's suggestions and I called upon the offices of the

Plaintiff's attorneys in order to personally discuss the terms of settlement.

7.1 The Plaintiff's attorney represented to me in a bullish manner that there was no merit in my defence set forth in my plea and that it was only a matter of time within which the Plaintiff would be able to obtain judgment against me and that the Plaintiff would immediately execute against me personally, which would cause me untold prejudice and embarrassment as I am aside from a businessman also a practicing medical practitioner, which will result me in my creditworthiness being compromised.

7.2 The Plaintiff's attorney demanded that I sign certain documents relating to a consent to judgment on the misrepresentation that there was no merit to my defences and on a threat that the Plaintiff will proceed to obtain an order for the liquidation of a close corporation of which I am a member and will proceed to seek judgment and execute against me immediately with the express intention to cause me financial and professional embarrassment in the event that I proceed to defend the present action.

7.3 The Plaintiff's attorney intentionally misrepresented to me that the Plaintiff will be lenient on the enforcement of the consent to judgment, in the event that I co-operated and signed the consent to judgment documents.

7.4 The Plaintiff's attorney refused to permit me to consult with my attorneys prior to making any decision and informed me that the offer was only acceptable for a limited period.

7.5 I now verily believe that the Plaintiff's attorney would have been trying to avoid the ventilation of the action at trial as my defence to the trial in the main related to an agreement I had reached with the Plaintiff's attorney, which no doubt would have put the Plaintiff's attorney in an invidious position.

8. At the time that I had signed the documents in respect of the consent to judgment, I did so purely as a consequence of the Plaintiff's attorney's unlawful threats to financially persecute my close corporation and I in the event that I refused to co-operate and elected to proceed further with the trial action. I respectfully submit that I had, in the reasonable and bona fide belief that the Plaintiff's attorney would in fact carry out their threats and for the purposes of maintaining the integrity of my reputation and creditworthiness credit (sic) and the solvency of my close corporation, capitulated to the Plaintiff's attorney's unlawful demands and appended my signatures to the documents presented to me by the Plaintiff's attorney, which was signed at the offices of the Plaintiff's attorney of record. But for the Plaintiff's attorney's unlawful threats, I would not have signed the consent to judgment.

9. In the circumstances, I respectfully submit that I did not sign the consent to judgment freely and voluntarily and that in doing so, I had under duress and pressure being unlawfully placed upon me by the Plaintiff's attorney. I accordingly submit that the consent to judgment is void and the Plaintiff cannot seek to rely upon it to obtain judgment against me. By virtue of the unlawful conduct of the Plaintiff's

legal representatives, I seek that the application be dismissed with costs on a punitive scale."

The Issue

- [11] Indeed, the issue for determination is whether the defendant signed the consent to judgment as a result of any duress, in the form of unlawful threats, having been exerted upon him by the plaintiff's attorney.

Submissions on behalf of the parties

- [12] Counsel appearing for the defendant, Mr Dheoduth, submitted that it was impossible to determine on the papers the question of whether the defendant signed the consent to judgment freely and voluntarily or under duress without the parties having an opportunity to adduce oral evidence and to cross-examine the deponents to the various affidavits. He proposed, on that basis, that the matter be referred for the hearing of oral evidence and agreed that the material issue to be referred was a narrow one, namely, whether the defendant signed the consent to judgment freely and voluntarily or under duress, subject to such other issues as might be determined by the Court or as agreed upon by the parties. Counsel conceded that in this regard the defendant bears the onus of proof.

- [13] Mr Dheoduth submitted that it was clear from the defendant's opposing affidavit that he went to the plaintiff's offices on 7 June

2012 at the invitation of the plaintiff's attorney to negotiate a settlement of the matter directly with them. Counsel also noted that, as at that time, the defendant was legally represented by his erstwhile attorneys of record Abbas Latib and Company and that, for that reason, it was improper of the defendant to have negotiated with the plaintiff's attorneys without the knowledge and assistance of his attorneys. He pointed out, however, that in practice it was not uncommon to encounter clients, especially the educated and sophisticated ones, challenging the advice and guidance given to them by their lawyers and legal advisers and then deciding to handle certain aspects of their case themselves. In any event, he asked the Court, on the question of the alleged duress, to determine the subjective mind of the defendant at the time when he signed the consent to judgment whether he did so freely and voluntarily or not. He pointed out that in his plea the defendant had raised two special pleas which he had sought to rely upon at the trial. However, the plaintiff's attorney misrepresented to him that his defence had no merit and that it was only a matter of time before the plaintiff would obtain judgment against him.

- [14] Ms Mills, for the plaintiff, submitted that there was no material and genuine dispute of fact in this matter warranting it to be referred for oral evidence. She argued that even if the defendant's allegations were true, they would not establish duress. The threats which the

defendant alleged were made by the plaintiff's attorney were simply that judgment would be entered and executed against the defendant and that the close corporation would be liquidated, if the matter was not settled. These actions would not have constituted unlawful threats, but would only have indicated the inevitable result of the existing litigation. Ms Mills also referred to the correspondence which was exchanged between the plaintiff's attorneys and the current defendant's attorneys of record (Rughbeer and Associates) during which not a single occasion was it ever mentioned by the defendant's attorneys that the defendant was forced to sign the consent to judgment. Counsel further reiterated that the onus was on the defendant to prove that he signed the consent to judgment under duress and that in determining the issue, the Court was enjoined to apply the objective test, and not the subjective test as contended by counsel for the defendant.

The Law and Evaluation

[15] Rule 31(1) provides, in part, as follows:

“(a) ... [A] defendant may at any time confess in whole or in part the claim contained in the summons.

- (b) Such confession shall be signed by the defendant personally and his signature shall either be witnessed by an attorney acting for him, not being the attorney acting for the plaintiff, or be verified by affidavit.
- (c) Such confession shall then be furnished to the plaintiff, whereupon the plaintiff may apply in writing through the registrar to a judge for judgment according to such confession.”

[16] The word ‘judge’ referred to in Rule 31(1)(c) is defined in Rule 1 as ‘a judge sitting otherwise than in open court’. (See also Erasmus Superior Court Practice at B1-197). It follows, accordingly, that the application envisaged in Rule 31(1)(c) was intended ordinarily to be made only before a judge in chambers and not in open court. The application is made ‘through the registrar’ and there is no requirement that the other party, i.e. the confessing party or the defendant, should be served with the papers. However, it seems clear to me that the defendant or any person affected by the granting of judgment under Rule 31(1) is not precluded from challenging the process, either before or after the judgment has been granted, on any ground recognised by law, including fraud, duress or justus error. Once such challenge is made the matter is then dealt with in open court in one way or the other, depending on the status of the case when the challenge was made.

[17] The terms of the consent to judgment must be unambiguous and unconditional in relation to the confession on which the judgment is sought. Otherwise the Judge dealing with the matter will refuse to grant judgment in terms of Rule 31(1)(c). In *Moshal Gevisser (Trademark) Ltd v Midlands Paraffin Co 1977 (1) SA 64 (N)* the Court (per Hefer J) observed (at 69H-70A):

“[T]he only difference is that the Judge who deals with the application in terms of the Rule, being aware (from the terms of the consent itself) of the arrangement that it cannot be utilized for the purpose of obtaining judgment unless the defendant has failed to comply with its terms, may require to be satisfied by the plaintiff that the defendant has indeed failed to do so, and may require notice to the defendant before disposing of the matter. But if and when judgment is eventually granted, it is granted by reason of the consent; the defendant not having complied with the terms of the arrangement between the parties, it is the consent which is employed in order to obtain judgment.”

[18] In Moshal Gevisser, the defendant who had signed a consent to judgment, pleaded that he had done so in error and challenged the granting of

judgment

in terms of Rule 31(1), thus necessitating the matter to be argued in open court. The learned Judge recalled the decision in *George v Fairmead (Pty) Ltd* 1958 (2) SA 465 (A) where, in formulating the principles underlying the defence of justus error, the Appellate Division (per Fagan CJ) stated, in part, as follows (at 472):

"When a man is asked to put his signature to a document he cannot fail to realise that he is called upon to signify, by doing so, his assent to whatever words appear above his signature."

[19] After referring to various authorities and analysing the case before it the Court (in Moshal Gevisser) held, among other things, as follows:

“The signing of such a consent by a defendant is a formal step in the proceedings and to allow him to withdraw it any stage for no rhyme or reason, would make a mockery of Rule 31(1)” (at 68E);

The reason to withdraw such the consent must be good and valid. (at 68G-H);

Where the consent is a result of a settlement between the parties it may not be regarded as a unilateral act because it is a record of the settlement terms. (at 69A).

Where a signatory to the consent to judgment sought to avoid judgment based on that consent the matter must be approached along the same lines and judged according to the same principles as in instances where a party sought to resile from a contract on the ground of justus error or mistake (at 69B-C).

A single occasion of accepting late payment of instalment cannot constitute the waiver on the part of the plaintiff. (70B-C).

[20] In *National and Overseas Distributors Corporation (Pty) Ltd v Potato Board* 1958

(2) SA 473 (A) (followed in Moshal Gevisser) the Appellate Division (per Schreiner JA) stated (at 479G-H):

“Our law allows a party to set up his own mistake in certain circumstances in order to escape liability under a contract into which he has entered. But where the other party has not made any misrepresentation and has not appreciated at the time of acceptance that his offer was being accepted

under a misapprehension, the scope for a defence of unilateral mistake is very narrow, if it exists at all. At least the mistake (error) would have to be reasonable (justus) and it would have to be pleaded. In the present case the plea makes no mention of mistake and there is no basis in the evidence for a contention that the mistake was reasonable.”

- [21] In the present case I am satisfied that there is no material dispute of fact that is such as to warrant that the case be referred for oral evidence. It would be appropriate, it seems to me, to apply the ‘robust common sense approach’ and deal with the matter on the papers. (Soffiantini v Mould 1956 (4) SA 150 (E) at 154G – H). In any event, as will become apparent in due course, even if the defendant’s factual allegations (i.e. what he alleges the plaintiff’s attorney did to him before he signed the consent to judgment) are to be accepted as true they would still not constitute a successful defence for the defendant.
- [22] I am also satisfied, in the light of Moshal Gevisser that in an instance, such as the present, where a signatory to the consent to judgment seeks to avoid judgment under Rule 31(1)(c) on the ground of duress the matter must be approached along the same lines and judged according to the same principles as in instances where a party seeks to resile from a contract on the ground of justus error or mistake. This includes the application of an objective test to determine whether the defendant party signed the consent to judgment under duress or not.
- [23] To my mind, there are several observations which seem to militate against the conclusion that the defendant signed the consent to judgment under duress in the manner pleaded by him. I propose to refer to these observations presently.
- [24] The defendant was a well-educated and sophisticated person – being a qualified medical practitioner and apparently a once successful businessman. At all relevant and material times he was legally represented either by his erstwhile attorneys of record Abbas Latib and Company or his current attorneys of record, Rughbeer and Associates. He was therefore in a good position to have understood fully and clearly all his rights in relation to the case lodged against him by the plaintiff. However, despite being so legally represented, he went behind his attorney’s back and decided to deal with the plaintiff’s attorneys directly, which culminated in him proceeding to have a meeting with the plaintiff’s attorneys at their offices on 7 June 2012.
- [25] The defendant’s allegation that he “capitulated to the plaintiff’s attorney’s unlawful demands and appended (his) signatures to the documents presented to (him) by the plaintiff’s attorney, which was signed at the offices of the plaintiff’s attorney of record” (paragraph 8 of the opposing affidavit) is factually untrue. The consent to judgment was signed by the defendant in Tongaat (which corresponded with his domicillium citandi et executandi, being 1 Watsonia Drive, Tongaat) and his affidavit verifying his signature (in terms of Rule 31(1)(b)) was also attested to by him and commissioned at the (SAPS) police station in Tongaat on 11 June 2012. Therefore, the defendant’s allegation that this happened at the offices of the plaintiff’s attorneys constitutes, in my view, a recent fabrication on the part of

the defendant. This seems to be a feeble attempt on his part to cast a false depiction that he had found himself like somewhat ‘detained in this strange office’ when he was coerced by the plaintiff’s attorney to sign the consent to judgment. Unfortunately, he had seemingly forgotten, or perhaps overlooked, the fact that the documents signed by him reflected the place where that was done.

- [26] It is beyond one’s imagination how, if the defendant was coerced into signing the consent to judgment at the offices of the plaintiff’s attorneys on 7 June 2012, he was unable to communicate the alleged incident of duress to his attorneys of record for the entire four day period since then until he actually signed the documents on the 11th. This period accorded him ample time but he failed to do anything about it.
- [27] There was a further period of some four months from the time that the defendant signed the consent to judgment papers (on 11 June 2012) until the day when he deposed to his opposing affidavit in which he disclosed for the first time his allegation of duress (on 9 October 2012). He did not explain why he did not report the alleged duress to his attorneys of record. Significantly, even in the opposing affidavit he only mentioned the duress but failed to explain the reason or reasons why such a serious incident was not reported to his attorneys or, for that matter, any other responsible person or authority.
- [28] I am satisfied that the defendant’s attorneys were uninformed about the allegation of duress until on or about 9 October 2012 when the defendant raised the issue for the first time in the opposing affidavit. The fact of his attorneys being ignorant about the allegation is further demonstrable from the correspondence which they exchanged with the plaintiff’s attorneys, which all invariably dealt with proposals and counter-proposals in relation to the issue of how the defendant would make repayments to the plaintiff. Two of such letters (both from the defendant’s attorneys of record) are dated 17 June 2012, apparently mistaken for 17 July 2012 (annexure “H”) and 26 July 2012 (annexure “K”) are referred to hereunder to serve as examples.

[28.1] Letter annexure “H”

“ATTENTION : JOHNSTON AND PARTNERS

PER FAX : (031) 303 6086

RE : ABSA BANK/JUNAID ARBEE – CASE NUMBER 3117/2011

The above refers.

We confirm that we have now been instructed by Junaid Arbee in the above matter and confirm our instructions are as follows:

1. Our client will make payment of R80 000,00 by 11:00am tomorrow (18 July 2012)
2. Payment of the balance of the arrear outstanding amount of R80 000 would be paid on or by 31 July 2012.

Further, our instructions are that in light of the fact that the matter between Absa Bank and Imvusa Trading under Case No. 4551/2012 was adjourned sine die on the 6 July 2012, could your office confirm by close of business on the 18th July 2012 that proceedings in this matter would automatically be stayed.

We submit with respect that there is no prejudice to your client in accepting the above proposal. Our client is amenable to resolving this matter amicably. We await your response herein.

Thanking you.

ARVIN RHUGBEER

RHUGBEER & ASSOCIATES”

[28.2] Letter annexure “K”

“RE : ABSA BANK/JUNAID ARBEE – CASE NUMBER 3117/2011

The above and the telecom between our Mr Rhugbeer and your Ms Ward on the 26th July 2012 refers.

We confirm the following:

Our client intends making payment of R80 000,00;

The balance would be paid by close of business on the 31st July 2012;

Kindly advise if your clients are amenable to stay the consent to judgment upon receipt of proof of payment of R80 000,00.

Kindly advise if your client is amenable to same.”

[29] In my view, there is no better proof, in the light of the above-mentioned letters, that the defendant’s attorneys had absolutely no clue or idea that the defendant was all the time hatching on some kind of technical defence in the form of alleged duress against the plaintiff’s claim. There is very little doubt, if at all, that if the attorneys had known about this defence prior to their exchange of the correspondence aforesaid with the plaintiff’s attorneys they would definitely have raised it then.

[30] In any event, having considered the nature of the alleged threats I am also inclined to agree with Ms Mills that even if the threats were actually made, they would not have constituted unlawful threats at all. Threats of this nature by a judgment creditor to its judgment debtor are not uncommon and they are perfectly legitimate and lawful to make. They are essentially part of a lawful demand to pay. In *Shepstone v Shepstone* 1974 (1) SA 411 (D) the Court (per James JP) stated as follows (at 413 H):

“In my view a threat to take lawful action in the Courts cannot, in these circumstances, be regarded as contra bonos mores. Cf. Jans Rautenbach Produksies (Edms) Bpk v Wijima 1970

(4) SA 31 (T) at p 33”.

[31] For all the above reasons, I am constrained to reject the defendant’s defence of duress and find that he in fact signed the consent to judgment freely and voluntarily, without any duress. When he put his signature on the consent to judgment he could not have failed to realise that he was being “called upon to signify, by doing so, his assent to whatever words appear above his signature”. (See *George v Fairmead*, above). He is, therefore, bound by the terms of the consent which he signed. It was his own free decision to side-step his attorneys of record and went to negotiate a settlement with the plaintiff’s attorneys who had, in the circumstances, no option but to deal with him directly. In this regard he has only himself to blame.

Order

[32] In the result, I grant judgment in terms of Rule 31(1)(c) in favour of the plaintiff as against the defendant in terms of the plaintiff’s amended order prayed (see page 42 of the indexed papers), as follows:

Payment of the sum of R1 203 759,24;

Interest on the aforesaid sum at the rate of 8,85% per annum, calculated from 8 September 2012 to date of payment;

Costs of suit on the scale as between attorney and client.

Application heard on : 15 February 2013

Counsel for the plaintiff : Ms LM Mills

Instructed by : Johnston & Partners

Counsel for the defendant : Mr NN Dheoduth

Instructed by : Rhugbeer & Associates

Judgment handed down on: 15 March 2013

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