

SOUTH AFRICA / JUDGMENT

Belstead Industries (Pty) Ltd v Slabbert and Others (3047/2024) [2025] ZAMPMHC 5 (21 February 2025) [2025] ZAMPMHC 5

COURT

Middelburg High Court, Mpumalanga

BEFORE

KF Phahlamohlaka

CASE / FILE NUMBER

3047/2024

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IN THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION, MIDDELBURG

CASE NO: 3047/2024

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

DATE 21/02/2025.

SIGNATURE

In the matter between:

BELSTEAD INDUSTRIES (PTY) LTD PLAINTIFF/APPLICANT

and

PIETER FRANSCIOUS SLABBERT

FIRST DEFENDANT/RESPONDENT

SOUTH REEF MINING (PTY) LTD

SECOND DEFENDANT/RESPONDENT

FRANCO SLABBERT

THIRD DEFENDANT/RESPONDENT

TAMARA COAL HOLDINGS

FOURTH DEFENDANT/RESPONDENT

ARMANDT LOUIS BASSON

FIFTH DEFENDANT/RESPONDENT

LELIEFONTEIN COLLIERY (PTY) LTD SIXTH DEFENDANT/RESPONDENT

INVESTEC LIMITED

SEVENTH DEFENDANT/RESPONDENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 10:00 on 21 February 2025.

JUDGMENT (SUMMARY JUDGMENT)

Phahlamohlaka AJ

- [1] This is an application for summary judgment only against the fourth and the fifth defendants, jointly and severally the one paying the other to be absolved, for payment of the amount of R2,199,950.00 (two million nine hundred and ninety-nine thousand) plus interest and costs. Alternatively, the applicant prays that to the fourth and the fifth respondents be granted leave to defend on condition that they furnish security in the amount of R1,099,975.00 (one million and ninety-nine thousand nine hundred and seventy-five rand) each, or in such other amount as the combined teams appropriate. The application was brought in terms of Rule 32 of the Uniform Rules of Court.
- [2] The application is opposed, the fourth and fifth defendants contending, among others, that the plaintiff is suing for damages and therefore summary judgment cannot be granted in a claim for damages.
- [3] According to the plaintiff, the claim arises from an oral agreement that was entered into between the plaintiff and the fourth defendant, duly represented by the first defendant. In the particulars of claim the plaintiff alleges that the material terms of the agreement were as follows:

3.1 The plaintiff would purchase 4500 tons of RB3 coal duff ("the coal") from the fourth defendant.

3.2 The coal would be supplied to the plaintiff from a mine known as Droogvallei Coal Mine located at Carolina, Mpumalanga ("the Droogvallei Colliery").

3.3 The coal would be loaded from the Droogvallei Colliery onto trucks provided by the plaintiff.

3.4 The plaintiff would pay the purchase price of R500.00 per ton to the fourth defendant, in the total sum of R2,587,500.00 (“the Funds”).

- [4] The fourth and fifth defendants filed a detailed plea alleging among others that the fourth (defendant truly represented by the fifth defendant) and the second defendant (duly represented by the first defendant), entered into a joint venture agreement in respect of the Lielifontein mine (the mine) in Mpumalanga province (unrelated in any manner to the six defendant) wherein the parties agreed to inter alia cooperate in respect of mining activities on the mine over various activities (the agreement).
- [5] In the affidavit resisting the summary judgment, the fourth and fifth defendants deny their indebtedness to the plaintiff in the amounts claimed. They further stated that they have a bona fide defence against the claim by the plaintiff.
- [6] The defendants admit that a meeting indeed took place on or about 6 March 2024 at the plaintiff's offices with the plaintiff's representatives, Kriel, Basson and one Botha, and the first and third defendants being present. However, the defendants denied that an agreement was reached as pleaded by the plaintiff. Further, contend the defendants, in the event there was an agreement then and in that event it would have had to have been between the plaintiff and Tamara coal, whom the fifth defendant represented at all times. It is therefore denied that the agreement was reached therein.
- [7] Summary judgment procedure is a procedure afforded to a plaintiff, who has an unanswerable case against a defendant who has no defence. Rule 32 provides that the plaintiff may, after the defendant has delivered a plea, applied to court for summary judgment on each of such claims in the summons as is only- on a liquid document, for a liquidated amount in money.
- [8] Counsel for the plaintiff submitted that according to the respondents, Slabbert had no authority to conclude the deal on behalf of Tamara. This means that their representation to this effect was false. This false representation induced Belstead to pay R2,587,500.00 into an account nominated by Slabbert. Thereafter Slabbert paid off Tamara Coal creditors to the value of R1,184,952.20. The plaintiff further submitted that the above scenario meets the definition of civil fraud. Basson made a false representation to Kriel inducing him to act on that representation, and as a result Belstead suffered loss. The representation was intentional because Basson benefited from the representation; namely that Tamara Coal's creditors were paid off to the value of R1,184,952.20.
- [9] The plaintiff further submitted that, in the alternative, if the representation was not intentional, it was at least negligent, in that a reasonable person in Basson's position would have known that the circumstances of the meeting would have led Kriel to believe that Slabbert was authorized to conclude the deal on behalf of Tamara Coal. The same factors also mean that Tamara Coal is estopped from denying that Slabbert had the necessary authority to bind Tamara Coal to the deal.

[10] It is an established principle that summary judgment must be refused if the defendant can show that it has a legally cognizable defence on the face of it, and that the defence is genuine or bona fide.

[11] In *Ooos-raandse Bantoesake Administrasieraad v Santam Verseekeringsmaatskappy Bpk*[1] the court said the following:

“Not a great deal is required of a defendant but that he or she must lay enough before the court to persuade it that he or she has a genuine desire and intention of adducing at trial, evidence of facts which, if true, would constitute a valid defence. All that the court inquires into is whether the defendant has fully disclosed the nature and grounds of his defence and the material facts upon which it is founded and whether, on the facts so disclosed the defendant appears to have a defence which is bona fide and good in law.”

[12] It is not expected of the defendant resisting judgement application to lay all the facts regarding his or her defence. However, a party resisting summary judgment must persuade the court that he or she has a valid defense or a benefited defense.

[13] In *Maharaj v Barclays National Bank Ltd*[2] the court held that”

“All that court inquires into is:

- (a) whether the defendant has fully disclosed the nature and grounds of his defence and the material facts upon which it is founded, and
- (b) Whether on the facts so disclosed the defendant appears to have, as to either the whole or part of the claim, the defense which is both bona fide and good in law. If satisfied on these matters the court must refuse summary judgment either wholly or in part, as the case may be.”

[14] In my view, the fourth and fifth respondent raised a defence that cannot be ventilated in the summary judgment proceedings. The fact that civil fraud could have been committed cannot just be ignored. Further, it is not clear who authorised Slabbert to solicit money from the plaintiff. These issues ought to be ventilated in trial proceedings. Consequently, the application for summary judgment stands to fail.

[15] This brings me to the issue of costs. Although it is an established principle of our law that the successful party must be awarded costs, it is my considered view that the applicant approached the court in terms of the court rules. I will therefore exercise my discretion not to award costs in favour of the respondent at this stage, but to make an order that costs should be in the cause.

[16] In the result I make the following order: the

- (a) The application is dismissed, and the respondents are granted leave to defend the action.
- (b) Costs in the summary judgment to be costs in the cause.

KF PHAHLAMOHLAKA

ACTING JUDGE OF THE HIGH COURT

APPEARANCES

For the Plaintiff: Adv M Meyerowitz Instructed by: Prinsloo Inc. Email: nel@prinslooinc.com For the Defendant: Adv Kruger Instructed by: Negota Attorneys Email: jnegota81@gmail.com Date judgment reserved: 21 November 2024 Date judgment delivered: 21 February 2025

[1] 1978(1) SA 164(W) at 171

[2] 1976(3) SA 418 at 426 B-G

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Prepared on 10 October 2026 · Esheria